Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

No. 103, 2004

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

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN htm)

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Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

No. 103, 2004

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

[*Assented to 30 June 2004*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 June 2004
2. Schedule 1	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
2A. Schedule 2, Parts 1 and 2	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
2B. Schedule 2, Part 3	1 January 2005.	1 January 2005
2C. Schedule 2, Part 4	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
2D. Schedule 2A	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
3. Schedule 3	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
4. Schedule 4, Part 1	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
5. Schedule 4, Part 2	The day after this Act receives the Royal Assent.	1 July 2004
6. Schedule 4, Part 3	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
7. Schedule 4, Part 4	The day after this Act receives the Royal Assent.	1 July 2004
8. Schedule 4, Part 5	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
9. Schedule 5	The later of: (a) 1 July 2004; and (b) the day after this Act receives the Royal Assent.	
10. Schedules 6 and 7	The day after this Act receives the Royal Assent.	1 July 2004
11. Schedules 8 and 9	Immediately after the commencement of the provisions covered by table item 9.	
12. Schedule 10	1 January 2005.	1 January 2005
13. Schedule 11	Immediately after the commencement of the provisions covered by table item 2.	
13A. Schedule 11A	1 January 2005.	1 January 2005
14. Schedule 12	The day on which this Act receives the Royal Assent.	30 June 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

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

Schedule 1—Audit Reform

Part 1—Audit oversight

Australian Securities and Investments Commission Act 2001

1 Paragraph 1(1)(d)

After "Standards Board", insert ", an Auditing and Assurance Standards Board".

2 Subsection 5(1)

Insert:

AUASB means the Auditing and Assurance Standards Board.

3 Subsection 5(1)

Insert:

auditor independence requirements means the auditor independence requirements provided for in:

(a) the Corporations Act; and

(b) the codes of professional conduct.

4 Subsection 5(1)

Insert:

Australian auditor means:

(a) an individual auditor; or

(b) an audit firm; or

(c) an audit company;

that is conducting, or that has conducted, audits undertaken for the purposes of the Corporations Act and includes a registered company auditor who is participating in, or has participated in, audits of that kind.

5 Subsection 5(1)

Insert:

international auditing standards means auditing standards made by:

(a) the International Auditing and Assurance Standards Board; or

(b) another body specified by the regulations.

6 Subsection 5(1) (after paragraph (ea) of the definition of *member*)

Insert:

(eb) in relation to the AUASB—a member of the AUASB; and

7 Subsection 5(1)

Insert:

professional accounting body means a body prescribed by the regulations for the purposes of this definition.

8 Paragraph 127(4)(a)

After "the Disciplinary Board,", insert "the FRC,".

9 After paragraph 213(2)(a)

Insert:

(aa) to the FRC for the purposes of its performance of its functions under the corporations legislation; or

10 Part 12 (heading)

Repeal the heading, substitute:

Part 12—The Australian financial reporting system

11 After paragraph 224(a)

Insert:

(aa) to facilitate the development of auditing and assurance standards and related guidance materials that:

(i) provide Australian auditors with relevant and comprehensive guidance in forming an opinion about, and reporting on, whether financial reports comply with the requirements of the Corporations Act; and

(ii) require the preparation of auditors' reports that are reliable and readily understandable by the users of the financial reports to which they relate; and

12 Subparagraph 224(b)(iii)

Omit "accounting standards", substitute "accounting and auditing standards".

13 Division 1 of Part 12 (heading)

Repeal the heading, substitute:

Division 1—The financial reporting system

14 Subsection 225(2)

Repeal the subsection, substitute:

Functions generally

(1) The FRC functions are:

(a) to provide broad oversight of the processes for setting accounting standards in Australia; and

(b) to provide broad oversight of the processes for setting auditing standards in Australia; and

(c) to monitor the effectiveness of auditor independence requirements in Australia; and

(d) to give the Minister reports and advice about the matters referred to in paragraphs (a), (b) and (c); and

(e) the functions specified in subsections (2) (specific accounting standards functions), (2A) (specific auditing standards functions) and (2B) (specific auditor independence functions); and

(f) to establish appropriate consultative mechanisms; and

(g) to advance and promote the main objects of this Part; and

(h) any other functions that the Minister confers on the FRC by written notice to the FRC Chair.

Note: The FRC was established by subsection 225(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Specific accounting standards functions

(2) The FRC functions include:

(a) appointing the members of the AASB (other than the Chair); and

(b) approving and monitoring the AASB's:

(i) priorities; and

(ii) business plans; and

(iii) budgets; and

(iv) staffing arrangements (including level, structure and composition of staffing); and

(c) determining the AASB's broad strategic direction; and

(d) giving the AASB directions, advice or feedback on matters of general policy and on the AASB's procedures; and

(e) monitoring the development of international accounting standards and the accounting standards that apply in major international financial centres; and

(f) furthering the development of a single set of accounting standards for world-wide use with appropriate regard to international developments; and

(g) promoting the continued adoption of international best practice accounting standards in the Australian accounting standard setting processes if doing so would be in the best interests of both the private and public sectors in the Australian economy; and

(h) monitoring:

(i) the operation of accounting standards to assess their continued relevance and their effectiveness in achieving their objectives in respect of both the private and public sectors of the Australian economy; and

(ii) the effectiveness of the consultative arrangements used by the AASB; and

(i) seeking contributions towards the costs of the Australian accounting standard setting processes; and

(j) monitoring and periodically reviewing the level of funding, and the funding arrangements, for the AASB.

Specific auditing standards functions

(2A) The FRC functions include:

(a) appointing the members of the AUASB (other than the Chair); and

(b) approving and monitoring the AUASB's:

(i) priorities; and

(ii) business plans; and

(iii) budgets; and

(iv) staffing arrangements (including level, structure and composition of staffing); and

(c) determining the AUASB's broad strategic direction; and

(d) giving the AUASB directions, advice or feedback on matters of general policy and on the AUASB's procedures; and

(e) monitoring the development of international auditing standards and the auditing standards that apply in major international financial centres; and

(f) furthering the development of a single set of auditing standards for world-wide use with appropriate regard to international developments; and

(g) promoting the continued adoption of international best practice auditing standards in the Australian auditing standard setting processes if doing so would be in the best interests of both the private and public sectors in the Australian economy; and

(h) monitoring:

(i) the operation of auditing standards to assess their continued relevance and their effectiveness in achieving their objectives in respect of both the private and public sectors of the Australian economy; and

(ii) the effectiveness of the consultative arrangements used by the AUASB; and

(i) seeking contributions towards the costs of the Australian auditing standard setting processes; and

(j) monitoring and periodically reviewing the level of funding, and the funding arrangements, for the AUASB.

Specific auditor independence functions

(2B) The FRC functions include:

(a) monitoring and assessing the nature and overall adequacy of:

(i) the systems and processes used by Australian auditors to ensure compliance with auditor independence requirements; and

(ii) the systems and processes used by professional accounting bodies for planning and performing quality assurance reviews of audit work undertaken by Australian auditors to the extent to which those reviews relate to auditor independence requirements; and

(iii) the action that Australian auditors who have been subject to such quality assurance reviews have taken in response to the reports prepared as a result of those reviews; and

(iv) the action taken by professional accounting bodies to ensure that Australian auditors who have been subject to such quality assurance reviews respond appropriately to the reports prepared as a result of those reviews; and

(v) the investigation and disciplinary procedures of professional accounting bodies as those procedures apply to Australian auditors; and

(b) monitoring the overall compliance by companies, registered schemes and disclosing entities with the audit-related disclosure requirements of the Corporations Act and the accounting standards; and

(c) giving the Minister reports and advice about the matters referred to in paragraphs (a) and (b); and

(d) giving professional accounting bodies reports and advice about the matters referred to in subparagraphs (a)(ii), (iii), (iv) and (v); and

(e) monitoring international developments in auditor independence, assessing the adequacy of the Australian auditor independence requirements provided for in:

(i) the Corporations Act; and

(ii) codes of professional conduct;

in the light of those developments and giving the Minister, and professional accounting bodies, reports and advice on any additional measures needed to enhance the independence of Australian auditors; and

(f) promoting, and monitoring the adequacy of, the teaching of professional and business ethics by, or on behalf of,

professional accounting bodies to the extent to which the teaching of those subjects relates to auditor independence.

15 Subsection 225(6)

Omit "formulated and recommended", substitute "made, formulated or recommended".

16 At the end of section 225

Add:

(7) The FRC does not have power to direct the AUASB in relation to the development, or making, of a particular auditing standard.

(8) The FRC does not have power to veto a standard made, formulated or recommended by the AUASB.

17 After section 225

Insert:

225A Financial Reporting Council's information gathering powers

(1) The Chair of the FRC, acting on behalf of the FRC, may give a professional accounting body a written notice requiring the body to give the FRC:

(a) a copy of:

(i) a code of professional conduct of the body; or

(ii) a proposed code of professional conduct of the body; or

(iii) a proposed amendment of a code of professional conduct of the body; or

(b) information about the body's planning or performance of quality assurance reviews; or

(c) details of the body's investigation or disciplinary procedures.

(2) The notice may require the body to give the FRC information under paragraph (1)(b) or (c) only to the extent to which the information relates to audit work done by Australian auditors.

(3) A professional accounting body has qualified privilege in respect of a disclosure made by the body in response to a notice given to the body under subsection (1).

(4) A person has qualified privilege in respect of a disclosure made by the person, on behalf of a professional accounting body, in response to a notice given to the professional body under subsection (1).

(5) The Chair of the FRC, acting on behalf of the FRC, may give an Australian auditor a written notice requiring the auditor to give the FRC information about, or documents or copies of documents that relate to, one or more of the following:

(a) one or more audits conducted by the auditor or in which the auditor participated;

(b) the measures the auditor adopted, or the procedures the auditor put in place, to ensure that the auditor was, and continues to be, independent of entities it audits;

(c) any other matter prescribed by the regulations for the purposes of this paragraph.

Without limiting this, the documents may be audit working papers.

Note: A person responding to a notice under this subsection has qualified privilege in respect of the response (see section 1289 of the Corporations Act).

(6) Without limiting subsection (5), the notice:

(a) may require the Australian auditor to give the FRC information or a document even if doing so would involve a breach of an obligation of confidentiality that the auditor owes an audited body; and

(b) may require that a copy of a document to be given to the FRC must be certified by a particular person or a person holding a particular office or position.

(7) The notice under subsection (1) or (5) must specify:

(a) the information or documents the professional accounting body or Australian auditor must give; and

(b) the period within which the body or auditor must give the information or documents.

The period specified under paragraph (b) must be not less than 28 days after the day on which the notice is given.

(8) The Chair of the FRC, acting on behalf of the FRC, may, by written notice to the professional accounting body or Australian auditor, extend the period within which the body or auditor must give the information or documents.

(9) A person commits an offence if:

(a) the Chair of the FRC gives the person notice under subsection (1) or (5); and

(b) the person does not comply with the notice.

Penalty: 10 penalty units.

(10) An offence against subsection (9) is an offence of strict liability.

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

(11) A person commits an offence if:

(a) the Chair of the FRC gives a firm a notice under subsection (5); and

(b) the person is a member of the firm when the notice is given; and

(c) the notice is not complied with.

Penalty: 10 penalty units.

(12) An offence against subsection (11) is an offence of strict liability.

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

(13) A member of a firm does not commit an offence at a particular time because of a contravention of subsection (11) if the member either:

(a) does not know at that time that the Chair of the FRC has given the firm the notice under subsection (5); or

(b) knows that the Chair of the FRC has given the firm the notice under subsection (5) at that time but takes all reasonable steps to ensure that the notice is complied with as soon as possible after the member becomes aware of those circumstances.

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

18 Subsection 227(7)

Repeal the subsection, substitute:

227A The Auditing and Assurance Standards Board

(1) The Auditing and Assurance Standards Board is established.

(2) The Auditing and Assurance Standards Board:

(a) is a body corporate with perpetual succession; and

(b) must have a common seal; and

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Auditing and Assurance Standards Board. This Act makes provision for reporting obligations (annual report, interim reports and estimates), accounting records, audit, banking, investment of funds and duties of officers.

(3) All courts, judges and persons acting judicially must:

(a) take judicial notice of the imprint of the common seal of the Auditing and Assurance Standards Board appearing on a document; and

(b) presume that the document was duly sealed.

227B AUASB's functions and powers

Functions

(1) The functions of the AUASB are:

(a) to make auditing standards under section 336 of the Corporations Act for the purposes of the corporations legislation; and

(b) to formulate auditing and assurance standards for other purposes; and

(c) to formulate guidance on auditing and assurance matters; and

(d) to participate in and contribute to the development of a single set of auditing standards for world-wide use; and

(e) to advance and promote the main objects of this Part.

Note 1: The standards made under paragraph (a) are given legal effect by the Corporations Act. The standards formulated under paragraph (b) do not have legal effect under the Corporations Act itself but may be applied or adopted by some other authority.

Note 2: See section 224 and sections 234A to 234D for the framework within which the AUASB is to formulate and make auditing standards.

Powers

(2) The AUASB has power to:

(a) engage staff and consultants; and
(b) establish committees, advisory panels and consultative groups; and
(c) receive money contributed towards its operating costs; and
(d) do anything else that is necessary for, or reasonably incidental to, the performance of its functions.

Manner of making and formulating standards

(3) Without limiting paragraph (1)(a) or (b), the AUASB may make or formulate an auditing standard by issuing the text of an international auditing standard.

(4) The text of the international auditing standard may be modified to the extent necessary to take account of the Australian legal or institutional environment.

Manner of participating in the development of international standards

(5) Without limiting paragraph (1)(d), the AUASB may distribute the text of a draft international auditing standard (whether or not modified to take account of the Australian legal or institutional environment) for the purposes of consultation.

19 Paragraph 232(a)

Omit "paragraph 225(2)(d)", substitute "paragraph 225(2)(c)".

20 Paragraph 232(b)

Omit "paragraph 225(2)(e)", substitute "paragraph 225(2)(d)".

21 Paragraph 232(c)

Omit "paragraph 225(2)(e)", substitute "paragraph 225(2)(d)".

22 After Division 2 of Part 12

Insert:

Division 2A—Auditing standards

234A Purposive interpretation of standards

Objects of this Part

(1) In interpreting an auditing standard made or formulated by the AUASB, a construction that would promote the objects of this Part is to be preferred to a construction that would not promote those objects.

Note: Section 224 states the main objects of this Part.

Purposes or objects of particular standard

(2) In interpreting an auditing standard made or formulated by the AUASB, a construction that would promote a purpose or object of the standard (to the extent to which it is not inconsistent with the objects of this Part) is to be preferred to a construction that would not promote that purpose or object. This is so even if the purpose or object is not expressly stated in the standard.

234B Generic and specific standards

Auditing standards made or formulated by the AUASB may:

(a) be of general or limited application (including a limitation to different types of audit and specified industries, bodies or undertakings); and

(b) differ according to differences in time, place or circumstance.

234C FRC views

In performing its functions, the AUASB must:

(a) follow the broad strategic direction determined by the FRC under paragraph 225(2A)(c); and

(b) follow the general policy directions given by the FRC under paragraph 225(2A)(d); and

(c) take into account the advice and feedback on matters of general policy given by the FRC under paragraph 225(2A)(d).

234D International auditing standards

(1) The Minister may give the AUASB a direction about the role of international auditing standards in the Australian auditing standard setting system.

(2) Before giving a direction under this section, the Minister must receive and consider a report from the FRC about the desirability of giving the direction.

(3) The AUASB must comply with the direction.

234E Validity of auditing standards

A failure to comply with this Division in relation to the making of an auditing standard does not affect the validity of the standard.

23 At the end of paragraph 235B(1)(a)

Add:

(iii) the AUASB and its committees, advisory panels and consultative groups; and

24 After subsection 235B(2)

Insert:

(2A) The report must include details of any change to the AUASB's priorities or business plan that was made as a result of action taken by the FRC.

25 Subsections 235B(5) and (6)

Repeal the subsections, substitute:

235BA Report on auditor independence functions

(1) As soon as practicable after 30 June in each year, and in any event before 31 October, the FRC must give the Minister a report on:

(a) the performance by the FRC, during the year that ended on 30 June in that year, of its functions under subsection 225(2B) (the auditor independence functions); and

(b) the findings and conclusions that the FRC reached in performing those functions; and

(c) the actions (if any) that were taken by the FRC in respect of those findings and conclusions.

The report may be given to the Minister separately or included in the report given to the Minister under section 235B.

(2) The Minister may grant an extension of time in special circumstances.

(3) The Minister must table the report in each House of the Parliament as soon as practicable.

26 Paragraph 236A(3)(a)

Omit "paragraph 225(2)(e)", substitute "paragraph 225(2)(d)".

27 Paragraph 236A(3)(b)

Omit "paragraph 225(2)(e)", substitute "paragraph 225(2)(d)".

28 After Subdivision B of Division 3 of Part 12

Insert:

Subdivision BA—The Auditing and Assurance Standards Board

236E Procedures

(1) Meetings of the AUASB are to be chaired by:
(a) the Chair; or
(b) the Deputy Chair if the Chair is absent; or
(c) a member chosen by the members present if both the Chair and the Deputy Chair are absent.

(2) If a meeting of the AUASB, or a part of one of its meetings, concerns the contents of auditing standards or international auditing standards, the meeting or that part of it must be held in public.

(3) The AUASB must:
(a) comply with any directions about its procedures that the FRC gives under paragraph 225(2A)(d); and
(b) take into account the advice and feedback about its procedures that the FRC gives under paragraph 225(2A)(d).

(4) Otherwise, the AUASB may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

236F Appointment of members of the AUASB

Appointment of Chair

(1) The Minister appoints the Chair of the AUASB.

Appointment of other members

(2) The FRC appoints the other members of the AUASB.

(3) The AUASB may appoint one of its members to be Deputy Chair of the Board.

Qualification for appointment

(4) A person must not be appointed as a member of the AUASB unless their knowledge of, or experience in, business, accounting, auditing, law or government qualifies them for the appointment.

Appointment document

(5) An appointment under subsection (1) or (2) is to be made in writing.

Period of appointment

(6) The appointment document must specify the period of the appointment (not exceeding 5 years).

(7) A member holds office for the period specified in the appointment document and is eligible for re-appointment.

Terms and conditions of appointment

(8) The Chair holds office on the terms and conditions that are determined by the Minister.

(9) The other members hold office on the terms and conditions determined by the FRC.

236G Resignation and termination of appointment

Resignation

(1) A member of the AUASB may resign their appointment by giving a written resignation to:

(a) if the member is the Chair of the AUASB—the Minister; or

(b) in any other case—the Chair of the FRC.

Termination of Chair's appointment

(2) The Chair is not to be removed from office except as provided by subsection (3) or (4).

(3) The Minister may terminate the appointment of the Chair of the AUASB for:

(a) misbehaviour or physical or mental incapacity; or

(b) breach of the terms and conditions of their appointment.

(4) The Minister must terminate the appointment of the Chair of the AUASB if the Chair:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with their creditors; or

(d) makes an assignment of their remuneration or property for the benefit of their creditors; or

(e) contravenes section 237.

Termination of ordinary member's appointment

(5) A member of the AUASB (other than the Chair) is not to be removed from office except as provided by subsection (6) or (7).

(6) The FRC may terminate the appointment of a member of the AUASB (other than the Chair) for:

(a) misbehaviour or physical or mental incapacity; or

(b) breach of the terms and conditions of the member's appointment.

(7) The FRC must terminate the appointment of a member of the AUASB (other than the Chair) if the member:

(a) becomes bankrupt; or
(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
(c) compounds with their creditors; or
(d) makes an assignment of their remuneration or property for the benefit of their creditors; or
(e) contravenes section 237.

236H Acting appointments

(1) The Minister may appoint a person to act as Chair of the AUASB:
(a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

(2) The AUASB may appoint one of its members to act as Deputy Chair of the AUASB:
(a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

(3) The FRC may appoint a person to act as a member of the AUASB (other than the Chair):
(a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

(4) Anything done by, or in relation to, a person purporting to act under an appointment is not invalid merely because:
(a) the occasion for the appointment had not arisen; or
(b) there was a defect in connection with the appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.

29 Subsection 237(1)

Omit "and the AASB", substitute ", the AASB and the AUASB".

30 Paragraph 237(2)(b)

Omit "or the AASB's", substitute ", the AASB's or the AUASB's".

31 Paragraph 237(2)(c)

Omit "a body that sets international accounting standards", substitute "bodies that set international accounting standards or international auditing standards".

32 At the end of subsection 237(2)

Add:

; or (e) is made to the Disciplinary Board for the purposes of its performance of its functions under the corporations legislation; or

(ea) is made to APRA for the purposes of its performance of its functions; or

(f) is made to a professional accounting body for the purposes of its performance of its functions.

33 Paragraphs 238(b) and (c)

Repeal the paragraphs, substitute:

(b) in paying or discharging, or reimbursing someone for, the costs, expenses and other obligations incurred in connection with the performance by the FRC of its functions and the exercise by the FRC of its powers; and

(c) in meeting the administrative expenses of the committees and advisory groups the FRC establishes; and

(d) in payment of any remuneration and allowances payable to any person appointed to the FRC or the AASB under this Part; and

(e) in making payments to the AUASB.

34 At the end of section 238

Add:

(2) The money of the AUASB must be applied only:

(a) in payment or discharge of the costs, expenses and other obligations incurred by the AUASB in the performance of its functions or the exercise of its powers under this Act; and

(b) in paying or discharging, or reimbursing someone for, the costs, expenses and other obligations incurred in connection with the performance by the FRC of its functions and the exercise by the FRC of its powers; and

(c) in meeting the administrative expenses of the committees and advisory groups the FRC establishes; and

(d) in payment of any remuneration and allowances payable to any person appointed to the FRC or the AUASB under this Part; and

(e) in making payments to the AASB.

35 After paragraph 246(h)

Insert:

(i) a person engaged as a member of staff, or a consultant, of the AASB under paragraph 227(3)(a);

(j) a person engaged as a member of staff, or a consultant, of the AUASB under paragraph 227B(2)(a);

(k) an officer or employee of an Agency (within the meaning of the *Public Service Act 1999*), or of an authority of the Commonwealth, whose services are made available to the FRC or the Disciplinary Board in connection with the performance or exercise of any of its functions or powers;

(l) a person engaged by an Agency (within the meaning of the *Public Service Act 1999*), or of an authority of the Commonwealth, to provide services to the FRC in connection with the performance or exercise of any of its functions or powers;

36 At the end of section 246

Add:

(2) Without limiting paragraph (1)(f), the following are taken to be persons appointed for the purposes of this Act:

(a) a member of the Disciplinary Board;

(b) a member of the FRC or of a committee or advisory group established by the FRC;

(c) a member of the AASB or of a committee, advisory panel or consultative group established by the AASB;

(d) a member of the AUASB or of a committee, advisory panel or consultative group established by the AUASB.

Corporations Act 2001

37 Section 9

Insert:

AUASB means the Auditing and Assurance Standards Board.

38 Section 9

Insert:

auditing standard means:

(a) a standard in force under section 336; or

(b) a provision of such a standard as it so has effect.

39 Section 9

Insert:

professional accounting body has the same meaning as in the ASIC Act.

40 After section 307

Insert:

307A Audit to be conducted in accordance with auditing standards

(1) If an individual auditor, or an audit company, conducts:

(a) an audit of the financial report for a financial year; or

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

the individual auditor or audit company must conduct the audit or review in accordance with the auditing standards.

(2) If an audit firm, or an audit company, conducts:

(a) an audit of the financial report for a financial year; or

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

the lead auditor for the audit or review must ensure that the audit or review is conducted in accordance with the auditing standards.

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

307B Audit working papers to be retained for 7 years

Contravention by individual auditor or audit company

(1) An auditor contravenes this subsection if:
  (a) the auditor is an individual auditor or an audit company; and
  (b) the auditor conducts:
    (i) an audit of the financial report for a financial year; or
    (ii) an audit or review of the financial report for a half-year; and
  (c) the auditor does not retain all audit working papers prepared by or for, or considered or used by, the auditor in accordance with the requirements of the auditing standards until:
    (i) the end of 7 years after the date of the audit report prepared in relation to the audit or review to which the audit working papers relate; or
    (ii) an earlier date determined for the audit working papers by ASIC under subsection (6).

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

Contravention by member of audit firm

(3) A person (the ***defendant***) contravenes this subsection if:
  (a) an audit firm conducts:
    (i) an audit of the financial report for a financial year; or
    (ii) an audit or review of the financial report for a half-year; and
  (b) the audit firm fails, at a particular time, to retain all audit working papers prepared by or for, or considered or used by, the audit firm in accordance with the requirements of the auditing standards until:

(i) the end of 7 years after the date of the audit report prepared in relation to the audit or review to which the documents relate; or

(ii) the earlier date determined by ASIC for the audit working papers under subsection (6); and

(c) the defendant is a member of the firm at that time.

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

Note 1: For ***strict liability*** see section 6.1 of the *Criminal Code*.

Note 2: Subsection (5) provides a defence.

(5) A member of an audit firm does not commit an offence at a particular time because of a contravention of subsection (3) if the member either:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (3); or

(b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

Earlier retention date for audit working papers

(6) ASIC may, on application by a person, determine, in writing, an earlier date for the audit working papers for the purposes of paragraphs (1)(c) and (3)(b) if:

(a) the auditor is an individual auditor and the auditor:

(i) dies; or

(ii) ceases to be a registered company auditor; or

(b) the auditor is an audit firm and the firm is dissolved (otherwise than simply as part of a reconstitution of the firm because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or members); or

(c) the auditor is an audit company and the company:

(i) is wound up; or

(ii) ceases to be an authorised audit company.

(7) In deciding whether to make a determination under subsection (6), ASIC must have regard to:

(a) whether ASIC is inquiring into or investigating any matters in respect of:

(i) the auditor; or

(ii) the audited body for the audit to which the documents relate; and

(b) whether the professional accounting bodies have any investigations or disciplinary action pending in relation to the auditor; and

(c) whether civil or criminal proceedings in relation to:

(i) the conduct of the audit; or

(ii) the contents of the financial report to which the audit working papers relate;

have been, or are about to be, commenced; and

(d) any other relevant matter.

Audit working papers kept in electronic form

(8) For the purposes of this section, if audit working papers are in electronic form they are taken to be retained only if they are convertible into hard copy.

41 After subsection 308(3)

Insert:

(3A) The auditor's report must include any statements or disclosures required by the auditing standards.

42 After subsection 309(5)

Insert:

(5A) The auditor's report must include any statements or disclosures required by the auditing standards.

43 Part 2M.5 (heading)

Repeal the heading, substitute:

Part 2M.5—Accounting and auditing standards

44 Sections 337 and 339

Repeal the sections, substitute:

336 Auditing standards

AUASB's power to make auditing standards

(1) The AUASB may make auditing standards for the purposes of this Act. The standards must be in writing and must not be inconsistent with this Act or the regulations.

(2) A standard made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: Section 5C provides that the *Acts Interpretation Act 1901* (as in force on 1 November 2000) applies to this Act.

(3) An auditing standard applies to financial reports in relation to:

(a) periods ending after the commencement of the standard; or

(b) periods ending, or starting, on or after a later date specified in the standard.

(4) If:

(a) the AUASB makes an auditing standard; and

(b) the standard applies to financial reports in relation to particular periods under subsection (3); and

(c) an auditor is conducting an audit of a financial report in relation to a period that occurs before the start of the earliest of those periods;

the auditor may elect to apply the auditing standard to that audit unless the standard says otherwise. The election must be recorded in the audit report.

337 Interpretation of accounting and auditing standards

In interpreting an accounting or auditing standard, unless the contrary intention appears:

(a) expressions used in the standard have the same meanings 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 Evidence of text of accounting standard or auditing standard

(1) This section applies to a document that purports to be published by, or on behalf of, the AASB or the AUASB and to set out the text of:

(a) a specified standard as in force at a specified time under section 334 or 336; 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 this Act 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).

45 After section 989C

Insert:

989CA Audit to be conducted in accordance with auditing standards

(1) If an individual auditor, or an audit company, conducts an audit of a profit and loss statement and balance sheet for the purposes of this Subdivision, the individual auditor or audit company must:

(a) conduct the audit in accordance with the auditing standards; and

(b) include in the audit report on the profit and loss statement, and balance sheet, any statements or disclosures required by the auditing standards.

(2) If an audit firm, or an audit company, conducts an audit of a profit and loss statement and balance sheet for the purposes of this Subdivision, the lead auditor for the audit or review must ensure that:

(a) the audit is conducted in accordance with the auditing standards; and

(b) the audit report on the profit and loss statement, and balance sheet, includes any statements or disclosures required by the auditing standards.

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

46 Schedule 3 (before table item 104)

Insert:

103B	Subsections 307A(1) and (2)	50 penalty units.
103C	Subsection 307B(1)	50 penalty units.
103D	Subsection 307B(3)	50 penalty units.

47 Schedule 3 (table item 104)

Repeal the item, substitute:

104	Subsections 308(1), (2), (3), (3A) and (4)	50 penalty units.

48 Schedule 3 (after table item 104)

Insert:

104A	Subsections 309(1), (2), (3), (4), (5), (5A) and (6)	50 penalty units.

49 Schedule 3 (after table item 283C)

Insert:

283CA	Subsections 989CA(1) and (2)	50 penalty units.

Part 2—Qualifications of auditors

Corporations Act 2001

50 Subparagraph 1274(2)(a)(ii)

After "section 1287", insert ", 1287A".

50A Subsection 1279(2)

Repeal the subsection, substitute:

(2) An application under this section:

(a) must be lodged with ASIC; and

(b) must contain such information as is prescribed in the regulations; and

(c) must be in the prescribed form.

51 Paragraph 1280(2)(a)

Repeal the paragraph, substitute:

(a) the applicant satisfies subsection (2A) or (2B); and

52 Paragraph 1280(2)(b)

Repeal the paragraph, substitute:

(b) ASIC is satisfied that the applicant has either:

(i) satisfied all the components of an auditing competency standard approved by ASIC under section 1280A; or

(ii) had such practical experience in auditing as is prescribed; and

53 After subsection 1280(2)

Insert:

(2A) The applicant satisfies this subsection if the applicant:

(a) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia; and

(b) has, in the course of obtaining that degree, diploma or certificate, passed examinations in such subjects, under whatever name, as the appropriate authority of the university

or other institution certifies to ASIC to represent a course of study:

(i) in accountancy (including auditing) of not less than 3 years duration; and

(ii) in commercial law (including company law) of not less than 2 years duration; and

(c) has satisfactorily completed a course in auditing prescribed by the regulations for the purposes of this paragraph.

(2B) The applicant satisfies this subsection if the applicant has other qualifications and experience that, in ASIC's opinion, are equivalent to the requirements mentioned in subsection (2A).

54 After section 1280

Insert:

1280A Approval of auditing competency standard

(1) ASIC may, on application by any person, approve an auditing competency standard for the purposes of paragraph 1280(2)(b). The approval must be in writing.

(2) If, on application by a person, ASIC approves an auditing competency standard under subsection (1), ASIC may, on application by that person, approve a variation of the standard. The approval must be in writing.

(3) ASIC must not approve an auditing competency standard, or a variation of an auditing competency standard, unless it is satisfied that:

(a) the standard, or the standard as proposed to be varied, provides that a person's performance against each component of the standard is to be appropriately verified by a person who:

(i) is a registered company auditor; and

(ii) has sufficient personal knowledge of the person's work to be able to give that verification; and

(b) the standard, or the standard as proposed to be varied, is not inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and

(c) the standard adequately addresses the level of practical experience needed for registration as a company auditor; and

(d) the standard is harmonised to the greatest extent possible with other approved auditing competency standards.

(4) ASIC may revoke an approval of an auditing competency standard:

(a) on application by the person who applied for the approval; or

(b) if ASIC is no longer satisfied as mentioned in subsection (3).

The revocation must be in writing.

55 At the end of section 1281

Add:

(2) A person to whom the Auditor-General of the Commonwealth, or of a State or Territory, delegates:

(a) the function of conducting an audit; or

(b) the power to conduct an audit;

is taken to be registered as an auditor under this Part for the purposes of applying Chapter 2M to the audit.

56 After section 1287

Insert:

1287A Annual statements by registered company auditors

(1) A person who is a registered company auditor must, within one month after the end of:

(a) the period of 12 months beginning on the day on which the person's registration begins; and

(b) each subsequent period of 12 months;

lodge with ASIC a statement in respect of that period.

(1A) A statement under subsection (1):

(a) must contain such information as is prescribed in the regulations; and

(b) must be in the prescribed form.

(2) ASIC may, on the application of the person made before the end of the period for lodging a statement under subsection (1), extend, or further extend, that period.

57 Subsection 1288(3)

Omit "registered company auditor or".

Note: The heading to section 1288 is altered by omitting "**auditors and**".

58 Subsection 1288(4)

Omit "a registered company auditor or".

59 After Division 2 of Part 9.2

Insert:

Division 2A—Conditions on registration of auditors

1289A ASIC may impose conditions on registration

(1) Under this section, ASIC may impose only conditions of a kind specified in the regulations.

(2) Subject to this section, ASIC may, at any time, by giving written notice to a person registered as an auditor:
  (a) impose conditions, or additional conditions, on their registration; and
  (b) vary or revoke conditions imposed on their registration.

(3) ASIC may do so:
  (a) on its own initiative; or
  (b) if the registered company auditor lodges with ASIC an application for ASIC to do so, which is accompanied by the documents, if any, required by regulations made for the purposes of this paragraph.

  Note: For fees in respect of lodging applications, see Part 9.10.

(4) Except where conditions are varied on the application of the registered company auditor, ASIC may only impose conditions or additional conditions, or vary the conditions, on registration after giving the auditor an opportunity:
  (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
  (b) to make submissions to ASIC in relation to the matter.

  This subsection does not apply to ASIC imposing conditions at the time when the applicant is registered.

60 Subparagraph 1292(1)(a)(i)

Omit "section 1288", substitute "section 1287A".

61 After subparagraph 1292(1)(a)(i)

Insert:

(ia) failed to comply with a condition of the person's registration as an auditor; or

62 After paragraph 1292(1)(a)

Insert:

(b) the person either:

(i) has not performed any audit work during a continuous period of not less than 5 years; or

(ii) has not performed any significant audit work during a continuous period of not less than 5 years;

and, as a result, has ceased to have the practical experience necessary for carrying out audits for the purposes of this Act; or

63 After subsection 1292(1)

Insert:

(1A) In determining for the purposes of subparagraph (1)(b)(ii) whether audit work performed by a person is significant, have regard to:

(a) the nature of the audit; and

(b) the extent to which the person was involved in the audit; and

(c) the level of responsibility the person assumed in relation to the audit.

64 Section 1298

Omit "section 1288", substitute "sections 1287A and 1288".

Part 3—Auditor appointment, independence and rotation requirements

Corporations Act 2001

66 Section 9

Insert:

associated entity has the meaning given by section 50AAA.

67 Section 9

Insert:

audit means an audit conducted for the purposes of this Act and includes a review of a financial report for a half-year conducted for the purposes of this Act.

68 Section 9

Insert:

audit activity: see the definition of ***engage in audit activity***.

69 Section 9

Insert:

audit company means a company that consents to be appointed, or is appointed, as auditor of a company or registered scheme.

70 Section 9

Insert:

audit-critical employee, in relation to a company, or the responsible entity for a registered scheme, that is the audited body for an audit, means a person who:

(a) is an employee of the company or of the responsible entity for the registered scheme; and

(b) is able, because of the position in which the person is employed, to exercise significant influence over:

(i) a material aspect of the contents of the financial report being audited; or

(ii) the conduct or efficacy of the audit.

71 Section 9

Insert:

audited body, in relation to an audit of a company or registered scheme, means the company or registered scheme in relation to which the audit is, or is to be, conducted.

72 Section 9

Insert:

audit firm means a firm that consents to be appointed, or is appointed, as auditor of a company or registered scheme.

73 Section 9

Insert:

auditor independence requirements of this Act means the requirements of Divisions 3, 4 and 5 of Part 2M.4.

74 Section 9

Insert:

authorised audit company means a company registered under Part 9.2A.

75 Section 9

Insert:

engage in audit activity: an individual auditor, audit firm or audit company ***engages in audit activity*** in relation to an audited body for an audit if the individual auditor, audit firm or audit company:

(a) consents to be appointed as auditor of the audited body for a financial year; or

(b) acts as the auditor of the audited body for a financial year; or

(c) prepares a report in relation to the audited body that is required by this Act to be prepared by:

(i) a registered company auditor; or

(ii) an auditor of the audited body in relation to a financial year or half-year.

76 Section 9

Insert:

immediate family member for a person means:

(a) the person's spouse or de facto spouse; or

(b) a person who is wholly or partly dependent on the person for financial support.

77 Section 9

Insert:

individual auditor means an individual who consents to be appointed, or is appointed, as auditor of a company or registered scheme.

78 Section 9

Insert:

investment in a company, disclosing entity or other body means:

(a) a share in the company, disclosing entity or body; or

(b) a debenture of the company, disclosing entity or body; or

(c) a legal or equitable interest in:

(i) a share in the company, disclosing entity or body; or

(ii) a debenture of the company, disclosing entity or body; or

(d) an option to acquire (whether by way of issue or transfer) an investment in the company, disclosing entity or body covered by paragraph (a), (b) or (c); or

(e) an option to dispose of an investment in the company, disclosing entity or body covered by paragraph (a), (b) or (c); or

(f) an interest a person holds under an arrangement that is a derivative if:

(i) the consideration to be provided under the arrangement; or

(ii) the value of the arrangement;

is ultimately determined, derived from or varies by reference to an investment in the company, disclosing entity or body covered by paragraph (a), (b), (c), (d) or (e).

To avoid doubt, the consideration to be provided under, or the value of, an arrangement in relation to an index is not ultimately determined, derived from or varies by reference to an investment in the company merely because the investment is taken into account in determining the value of the index.

79 Section 9

Insert:

investment in a registered scheme means:

(a) an interest in the scheme; or

(b) a legal or equitable interest in an interest in the scheme; or

(c) an option to acquire (whether by way of issue or transfer) an investment in the scheme covered by paragraph (a) or (b); or

(d) an option to dispose of an investment in the scheme covered by paragraph (a) or (b); or

(e) an interest a person holds under an arrangement that is a derivative if:

(i) the consideration to be provided under the arrangement; or

(ii) the value of the arrangement;

is ultimately determined, derived from or varies by reference to an investment in the scheme covered by paragraph (a), (b), (c) or (d); or

(f) an investment in the responsible entity of the scheme.

To avoid doubt, the consideration to be provided under, or the value of, an arrangement in relation to an index is taken not to be ultimately determined, derived from or vary by reference to an investment in the scheme merely because the investment is taken into account in determining the value of the index.

80 Section 9

Insert:

lead auditor has the meaning given by section 324AF.

81 Section 9

Insert:

non-audit services provider for an auditor conducting an audit means a person who:

(a) is not a professional member of the audit team conducting the audit of the audited body; and

(b) is either:

(i) if the auditor is an individual auditor—an employee of the individual auditor (or of an entity acting for, or on behalf of, the individual auditor); or

(ii) if the auditor is an audit firm—a member of the audit firm or senior manager of the audit firm (or of an entity acting for, or on behalf of, the audit firm); or

(iii) if the auditor is an audit company—a director of the audit company or a senior manager of the audit company (or of an entity acting for, or on behalf of, the audit company); and

(c) provides, or has provided, services (other than services related to the conduct of an audit) to the audited body.

82 Section 9

Insert:

play a significant role: a person ***plays a significant role*** in the audit of a company or a registered scheme for a financial year if:

(a) the person is appointed as an individual auditor of the company or scheme for that financial year and:

(i) acts as an auditor for the company or scheme for that financial year; or

(ii) prepares an audit report for the company or the scheme in relation to a financial report of the company or scheme for that financial year or for a half-year falling within that financial year; or

(b) a firm or company is appointed as an auditor of the company or scheme for that financial year and the person:

(i) is a registered company auditor; and

(ii) acts, on behalf of the firm or company, as a lead auditor, or review auditor, in relation to an audit of the company or scheme for that financial year or for a half-year falling within that financial year.

83 Section 9

Insert:

professional employee of an individual auditor, audit firm or audit company means an employee of the auditor, firm or company who participates in the conduct of the audits on behalf of the auditor, firm or company and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:

(a) accounting standards; or

(b) auditing standards; or

(c) the provisions of this Act dealing with financial reporting and the conduct of audits.

84 Section 9

Insert:

professional member of an audit team has the meaning given by section 324AE.

85 Section 9

Insert:

review auditor has the meaning given by section 324AF.

86 Section 9

Insert:

senior manager:

(a) in relation to a corporation—means a person (other than a director or secretary of the corporation) who:

(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(ii) has the capacity to affect significantly the corporation's financial standing; and

(b) in relation to a partnership—means a person (other than a partner) who:

(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the partnership; or

(ii) has the capacity to affect significantly the partnership's financial standing; and

(c) in relation to a trust—means a person (other than a trustee) who:

(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or affairs of the trust; or

(ii) has the capacity to affect significantly the financial standing of the trust; and

(d) in relation to a joint venture—means a person (other than a director or secretary of a corporation participating in the joint venture) who:

(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the joint venture; or

(ii) has the capacity to affect significantly the financial standing of the joint venture.

87 After section 50

Insert:

50AAA Associated entities

(1) One entity (the ***associate***) is an associated entity of another entity (the ***principal***) if subsection (2), (3), (4), (5), (6) or (7) is satisfied.

(2) This subsection is satisfied if the associate and the principal are related bodies corporate.

(3) This subsection is satisfied if the principal controls the associate.

(4) This subsection is satisfied if:

(a) the associate controls the principal; and

(b) the operations, resources or affairs of the principal are material to the associate.

(5) This subsection is satisfied if:

(a) the associate has a qualifying investment (see subsection (8)) in the principal; and

(b) the associate has significant influence over the principal; and

(c) the interest is material to the associate.

(6) This subsection is satisfied if:

(a) the principal has a qualifying investment (see subsection (8)) in the associate; and

(b) the principal has significant influence over the associate; and

(c) the interest is material to the principal.

(7) This subsection is satisfied if:

(a) an entity (the ***third entity)*** controls both the principal and the associate; and

(b) the operations, resources or affairs of the principal and the associate are both material to the third entity.

(8) For the purposes of this section, one entity (the ***first entity***) has a ***qualifying investment*** in another entity (the ***second entity***) if the first entity:

(a) has an asset that is an investment in the second entity; or

(b) has an asset that is the beneficial interest in an investment in the second entity and has control over that asset.

88 At the end of subsection 298(1)

Add:

; and (c) a copy of the auditor's declaration under section 307C in relation to the audit for the financial year.

89 After paragraph 300(1)(c)

Insert:

(ca) the name of each person who:

(i) is an officer of the company, registered scheme or disclosing entity at any time during the year; and

(ii) was a partner in an audit firm, or a director of an audit company, that is an auditor of the company, disclosing entity or registered scheme for the year; and

(iii) was such a partner or director at a time when the audit firm or the audit company undertook an audit of the company, disclosing entity or registered scheme; and

90 Subsection 300(1)

After "subsections (10), (11),", insert "(11A), (11B),".

90A After subsection 300(2)

Insert:

(2A) If subsection (2) is relied on to not include in the directors' report for a financial year details that would otherwise be required to be included in that report under paragraph (11B)(a) or (11C)(b), that report must specify, in the section headed "Non-audit services", where those details may be found in the company's financial report for that financial year.

91 After subsection 300(11)

Insert:

(11A) If a registered company auditor plays a significant role in the audit of a listed company for the financial year in reliance on a declaration made under section 342A, the report for the company must also include details of the declaration.

Listed companies—non-audit services and auditor independence

(11B) The report for a listed company must also include the following in relation to each auditor:

(a) details of the amounts paid or payable to the auditor for non-audit services provided, during the year, by the auditor (or by another person or firm on the auditor's behalf);

(b) a statement whether the directors are satisfied that the provision of non-audit services, during the year, by the auditor (or by another person or firm on the auditor's behalf) is compatible with the general standard of independence for auditors imposed by this Act;

(c) a statement of the directors' reasons for being satisfied that the provision of those non-audit services, during the year, by the auditor (or by another person or firm on the auditor's behalf) did not compromise the auditor independence requirements of this Act.

These details and statements must be included in the directors' report under the heading "Non-audit services". If consolidated financial statements are required, the details and statements must relate to amounts paid or payable to the auditor by, and non-audit services provided to, any entity (including the company, registered scheme or disclosing entity) that is part of the consolidated entity.

(11C) For the purposes of paragraph (11B)(a), the details of amounts paid or payable to an auditor for non-audit services provided, during the year, by the auditor (or by another person or firm on the auditor's behalf) are:

(a) the name of the auditor; and

(b) the dollar amount that:

(i) the listed company; or

(ii) if consolidated financial statements are required—any entity that is part of the consolidated entity;

paid, or is liable to pay, for each of those non-audit services.

(11D) The statements under paragraphs (11B)(b) and (c) must be made in accordance with:

(a) advice provided by the listed company's audit committee if the company has an audit committee; or

(b) a resolution of the directors of the listed company if paragraph (a) does not apply.

(11E) For the purposes of subsection (11D), a statement is taken to be made in accordance with advice provided by the company's audit committee only if:

(a) the statement is consistent with that advice and does not contain any material omission of material included in that advice; and

(b) the advice is endorsed by a resolution passed by the members of the audit committee; and

(c) the advice is written advice signed by a member of the audit committee on behalf of the audit committee and given to the directors.

92 At the end of section 306

Add:

(2) The directors' report must include a copy of the auditor's declaration under section 307C in relation to the audit or review for the half-year.

93 Before section 308

Insert:

307C Auditor's independence declaration

Contravention by individual auditor

(1) If an individual auditor conducts:

(a) an audit of the financial report for a financial year; or

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

the individual auditor must give the directors of the company, registered scheme or disclosing entity:

(c) a written declaration that, to the best of the individual auditor's knowledge and belief, there have been:

(i) no contraventions of the auditor independence requirements of this Act in relation to the audit or review; and

(ii) no contraventions of any applicable code of professional conduct in relation to the audit or review; or

(d) a written declaration that, to the best of the individual auditor's knowledge and belief, the only contraventions of:

(i) the auditor independence requirements of this Act in relation to the audit or review; or

(ii) any applicable code of professional conduct in relation to the audit or review;

are those contraventions details of which are set out in the declaration.

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

Contravention by lead auditor

(3) If an audit firm or audit company conducts:

(a) an audit of the financial report for a financial year; or

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

the lead auditor for the audit must give the directors of the company, registered scheme or disclosing entity:

(c) a written declaration that, to the best of the lead auditor's knowledge and belief, there have been:

(i) no contraventions of the auditor independence requirements of this Act in relation to the audit or review; and

(ii) no contraventions of any applicable code of professional conduct in relation to the audit or review; or

(d) a written declaration that, to the best of the lead auditor's knowledge and belief, the only contraventions of:

(i) the auditor independence requirements of this Act in relation to the audit or review; or

(ii) any applicable code of professional conduct in relation to the audit or review;

are those contraventions details of which are set out in the declaration.

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

(5) The declaration under subsection (1) or (3):

(a) must be given when the audit report is given to the directors of the company, registered scheme or disclosing entity; and

(b) must be signed by the person making the declaration.

Self-incrimination

(6) An individual is not excused from giving a declaration under subsection (1) or (3) on the ground that giving the declaration might tend to incriminate the individual or expose the individual to a penalty.

Use/derivative use indemnity

(7) However, neither:

(a) the information included in the declaration; nor

(b) any information, document or thing obtained as a direct or indirect consequence of including the information in the declaration;

is admissible in evidence against the individual in any criminal proceedings, or in any proceedings that would expose the person to a penalty, other than:

(c) proceedings for an offence against section 1308 or 1309 in relation to the declaration; or

(d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to the declaration.

94 Division 1 of Part 2M.4 (heading)

Repeal the heading, substitute:

Division 1—Entities that may be appointed as an auditor for a company or registered scheme

95 Section 324

Repeal the section, substitute:

324AA Individual auditors, audit firms and authorised audit companies

Subject to this Part, the following may be appointed as auditor for a company or a registered scheme for the purposes of this Act:

(a) an individual;

(b) a firm;

(c) a company.

The company or registered scheme may have more than one auditor.

324AB Effect of appointing firm as auditor—general

(1) The appointment of a firm as auditor of a company or registered scheme is taken to be an appointment of all persons who, at the date of the appointment, are:

(a) members of the firm; and

(b) registered company auditors.

This is so whether or not those persons are resident in Australia.

(2) The appointment of the members of a firm as auditors of a company or registered scheme that is taken by subsection (1) to have been made because of the appointment of the firm as auditor of the company or scheme is not affected by the dissolution of the firm. This subsection has effect subject to section 324AC.

(3) A report or notice that purports to be made or given by a firm appointed as auditor of a company or registered scheme is not taken to be duly made or given unless it is signed by a member of the firm who is a registered company auditor both:

(a) in the firm name; and

(b) in his or her own name.

(4) A notice required or permitted to be given to an audit firm under the Corporations legislation may be given to the firm by giving the notice to a member of the firm.

(5) For the purposes of criminal proceedings under this Act against a member of an audit firm, an act or omission by:

(a) a member of the firm; or

(b) an employee or agent of the audit firm;

acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is also to be attributed to the audit firm.

324AC Effect of appointing firm as auditor—reconstitution of firm

Reconstitution of firm

(1) This section deals with the situation in which:

(a) a firm is appointed as auditor of a company or registered scheme; and

(b) the firm is reconstituted because of either or both of the following:

(i) the death, retirement or withdrawal of a member or members; or

(ii) the admission of a new member or new members.

Retiring or withdrawing member

(2) A person who:

(a) is taken under subsection 324AB(1) to be an auditor of the company; and

(b) retires or withdraws from the firm as previously constituted as mentioned in subparagraph (1)(b)(i) of this section;

is taken to resign as auditor of the company as from the day of his or her retirement or withdrawal.

(3) Section 329 does not apply to the resignation that is taken to occur under subsection (2) unless:

(a) the person who is taken to have resigned was the only member of the firm who was a registered company auditor; and

(b) there is no member of the firm who is a registered company auditor after that person retires or withdraws from the firm.

New member

(4) A person who:

(a) is a registered company auditor; and

(b) is admitted to the firm as mentioned in subparagraph (1)(b)(ii);

is taken to have been appointed as an auditor of the company or registered scheme as from the day of his or her admission to the firm.

Appointments of continuing members not affected

(5) The reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the company or registered scheme.

(6) Nothing in this section affects the operation of section 324BB.

324AD Effect of appointing company as auditor

(1) A report or notice that purports to be made or given by an audit company appointed as auditor of a company or registered scheme is not taken to be duly made or given unless it is signed by a director of the audit company (or the lead auditor or review auditor for the audit) both:

(a) in the audit company's name; and

(b) in his or her own name.

(2) For the purposes of criminal proceedings under this Act against a director of an audit company, an act or omission by:

(a) an officer of the audit company; or

(b) an employee or agent of the audit company;

acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is also to be attributed to the audit company.

324AE Professional members of the audit team

If an individual auditor, audit firm or audit company conducts an audit of a company or registered scheme, the ***professional members of the audit team*** are:

(a) any registered company auditor who participates in the conduct of the audit; and

(b) any other person who participates in the conduct of the audit and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:

(i) accounting standards; or

(ii) auditing standards; or

(iii) the provisions of this Act dealing with financial reporting and the conduct of audits; and

(c) any other person who is in a position to directly influence the outcome of the audit because of the role they play in the design, planning, management, supervision or oversight of the audit.

324AF Lead and review auditors

Lead auditor

(1) If an audit firm or audit company conducts an audit of a company or registered scheme, the ***lead auditor*** for the audit is the registered company auditor who is primarily responsible to the audit firm or the audit company for the conduct of the audit.

Review auditor

(2) If an individual auditor, audit firm or audit company conducts an audit of a company or registered scheme, the ***review auditor*** for the audit is the registered company auditor (if any) who is primarily responsible to the individual auditor, the audit firm or the audit company for reviewing the conduct of the audit.

Division 2—Registration requirements

324BA Registration requirements for appointment of individual as auditor

Subject to section 324BD, an individual contravenes this section if:

(a) the individual:

(i) consents to be appointed as auditor of a company or registered scheme; or

(ii) acts as auditor of a company or registered scheme; or

(iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and

(b) the person is not a registered company auditor.

324BB Registration requirements for appointment of firm as auditor

Contraventions by members of firm

(1) A person (the ***defendant***) contravenes this subsection if:

(a) at a particular time, a firm:

(i) consents to be appointed as auditor of a company or registered scheme; or

(ii) acts as auditor of a company or registered scheme; or

(iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and

(b) at that time, the firm:

(i) does not satisfy subsection (5); or

(ii) does not satisfy subsection (6); and

(c) the defendant is a member of the firm at that time; and

(d) the defendant is aware of the circumstances referred to in paragraphs (a) and (b) at that time.

(2) A person (the ***defendant***) contravenes this subsection if:

(a) at a particular time, a firm:

(i) consents to be appointed as auditor of a company or registered scheme; or

(ii) acts as auditor of a company or registered scheme; or

(iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and

(b) at that time, the firm:

(i) does not satisfy subsection (5); or

(ii) does not satisfy subsection (6); and

(c) the defendant is a member of the firm at that time.

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical elements of the offence specified in paragraphs (2)(a) and (b).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (4) provides a defence.

(4) A member of an audit firm does not commit an offence at a particular time because of a contravention of subsection (2) if the member either:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (2); or

(b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

Registered company auditor requirement

(5) The firm satisfies this subsection if at least 1 member of the firm is a registered company auditor who is ordinarily resident in Australia.

Business name or members names requirement

(6) The firm satisfies this subsection if:

(a) the business name under which the firm is carrying on business is registered under a law of a State or Territory relating to the registration of business names; or

(b) a return in the prescribed form has been lodged showing, in relation to each member of the firm, the member's full name

and address as at the time when the firm so consents, acts or prepares a report.

324BC Registration requirements for appointment of company as auditor

Contravention by company

(1) A company contravenes this subsection if:

(a) the company:

(i) consents to be appointed as auditor of a company or registered scheme; or

(ii) acts as auditor of a company or registered scheme; or

(iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and

(b) the company is not an authorised audit company.

Contraventions by directors of company

(2) A person (the ***defendant***) contravenes this subsection if:

(a) at a particular time, a company:

(i) consents to be appointed as auditor of a company or registered scheme; or

(ii) acts as auditor of a company or registered scheme; or

(iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and

(b) at that time, the company is not an authorised audit company; and

(c) the defendant is a director of the company at that time; and

(d) the defendant is aware of the circumstances referred to in paragraphs (a) and (b) at that time.

(3) A person (the ***defendant***) contravenes this subsection if:

(a) at a particular time, a company:

(i) consents to be appointed as auditor of a company or registered scheme; or

(ii) acts as auditor of a company or registered scheme; or

(iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and

(b) at that time, the company is not an authorised audit company; and

(c) the defendant is a director of the company at that time.

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical elements of the offence specified in paragraphs (3)(a) and (b).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (5) provides a defence.

(5) A director of a company does not commit an offence at a particular time because of a contravention of subsection (3) if the director either:

(a) does not know at that time of the circumstances that constitute the contravention of subsection (3); or

(b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention of subsection (3) as soon as possible after the director becomes aware of those circumstances.

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

324BD Exception from registration requirement for proprietary company

(1) An individual who is not a registered company auditor may be appointed as auditor of a proprietary company if:

(a) ASIC is satisfied that it is impracticable for a proprietary company to obtain the services of:

(i) an individual who could be appointed as auditor consistently with section 324BA; or

(ii) a firm that could be appointed as auditor consistently with section 324BB; or

(iii) a company that could be appointed consistently with section 324BC;

because of the place where the company carries on business; and

(b) ASIC is satisfied that the individual is suitably qualified or experienced; and

(c) ASIC approves the individual for the purposes of this Act in relation to the audit of the company's financial reports.

The appointment is subject to such terms and conditions as are specified in the approval under paragraph (c).

(2) If an individual is appointed in accordance with subsection (1):

(a) the individual is taken to be a registered company auditor in relation to the auditing of any of the company's financial reports; and

(b) the provisions of this Act apply, with the necessary modifications, in relation to the individual accordingly.

Paragraph (a) has effect subject to the terms and conditions of the approval under subsection (1).

(3) If an individual approved by ASIC under subsection (1) is acting as auditor of a company, ASIC may at any time, by notice in writing given to the company:

(a) amend, revoke or vary the terms and conditions of its approval; or

(b) terminate the appointment of that individual as auditor of the company.

(4) A notice under subsection (3) terminating the appointment of an individual as auditor of a company takes effect as if, on the date on which the notice is received by the company, the company had received from the individual notice of the individual's resignation as auditor taking effect from that date.

Division 3—Auditor independence

Subdivision A—General requirement

324CA General requirement for auditor independence—auditors

Contravention by individual auditor or audit company

(1) An individual auditor or audit company contravenes this subsection if:

(a) the individual auditor or audit company engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at that time; and

(c) at that time:

(i) in the case of an individual auditor—the individual auditor is aware that the conflict of interest situation exists; or

(ii) in the case of an audit company—the audit company is aware that the conflict of interest situation exists; and

(d) the individual auditor or audit company does not, as soon as possible after the individual auditor or the audit company becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***, see section 324CD.

Individual auditor or audit company to notify ASIC

(1A) An individual auditor or audit company contravenes this subsection if:

(a) the individual auditor or audit company is the auditor of an audited body; and

(b) a conflict of interest situation exists in relation to the audited body while the individual auditor or audit company is the auditor of the audited body; and

(c) on a particular day (the ***start day***):

(i) in the case of an individual auditor—the individual auditor becomes aware that the conflict of interest situation exists; or

(ii) in the case of an audit company—the audit company becomes aware that the conflict of interest situation exists; and

(d) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) the individual auditor or audit company has not informed ASIC in writing that the conflict of interest situation exists.

Note 1: For ***conflict of interest situation***, see section 324CD.

Note 2: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2A) or (2C) (public company) or 331AAA(2A) or (2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However, if the person is a natural person:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If the individual auditor or audit company gives ASIC a notice under paragraph (1A)(d), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the audited body.

Conflict of interest situation of which individual auditor or audit company is not aware

(2) An individual auditor or audit company contravenes this subsection if:

(a) the individual auditor or audit company engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at the time; and

(c) at that time:

(i) in the case of an individual auditor—the individual auditor is not aware that the conflict of interest situation exists; or

(ii) in the case of an audit company—the audit company is not aware that the conflict of interest situation exists; and

(d) the individual auditor or the audit company would have been aware of the existence of the conflict of interest situation at that time if the individual auditor or audit company had had in place a quality control system reasonably capable of making the individual auditor or audit company aware of the existence of such a conflict of interest situation.

Note: For ***conflict of interest situation***, see section 324CD.

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

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsections (4) and (5) provide defences.

(4) An individual auditor does not commit an offence because of a contravention of subsection (2) in relation to audit activity engaged in by the auditor at a particular time if the individual auditor has reasonable grounds to believe that the individual auditor had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the individual auditor) that the individual auditor and the individual auditor's employees complied with the requirements of this Subdivision.

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

(5) An audit company does not commit an offence because of a contravention of subsection (2) in relation to audit activity engaged in by the audit company at a particular time if the audit company has reasonable grounds to believe that the audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and the audit company's employees complied with the requirements of this Subdivision.

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

Relationship between obligations under this section and other obligations

(6) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

(a) another provision of this Act; or

(b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

324CB General requirement for auditor independence—member of audit firm

Contravention by member of audit firm

(1) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at that time; and

(c) the defendant is a member of the audit firm at that time; and

(d) the defendant is or becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***, see section 324CD.

Member of audit firm to notify ASIC

(1A) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm is the auditor of an audited body; and

(b) a conflict of interest situation exists in relation to the audited body while the audit firm is the auditor of the audited body; and

(c) the defendant is a member of the audit firm at a time when the conflict of interest situation exists; and

(d) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) ASIC has not been informed in writing by the defendant, by another member of the audit firm or by someone else on behalf of the audit firm that the conflict of interest situation exists.

Note 1: For ***conflict of interest situation***, see section 324CD.

Note 2: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2B) (public company) or 331AAA(2B) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If ASIC is given a notice under paragraph (1A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Conflict of interest situation of which another member of audit firm is aware

(2) A person contravenes this subsection if:

(a) an audit firm engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at the time; and

(c) the person is a member of the audit firm at that time; and

(d) at that time, another member of the audit firm is aware that the conflict of interest situation exists; and

(e) the audit firm does not, as soon as possible after the member referred to in paragraph (d) becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note: For ***conflict of interest situation***, see section 324CD.

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical elements of the offence specified in paragraphs (2)(a), (b), (d) and (e).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (6) provides a defence.

Conflict of interest situation of which members are not aware

(4) A person contravenes this subsection if:

(a) an audit firm engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at the time; and

(c) the person is a member of the audit firm at that time; and

(d) at that time none of the members of the audit firm is aware that the conflict of interest situation exists; and

(e) a member of the audit firm would have been aware of the existence of the conflict of interest situation if the audit firm had in place a quality control system reasonably capable of making the audit firm aware of the existence of such a conflict of interest situation.

Note: For ***conflict of interest situation***, see section 324CD.

(5) For the purposes of an offence based on subsection (4), strict liability applies to the physical elements of the offence specified in paragraphs (4)(a), (b), (d) and (e).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (6) provides a defence.

Defence

(6) A person does not commit an offence because of a contravention of subsection (2) or (4) in relation to audit activity engaged in by an audit firm at a particular time if the person has reasonable grounds to believe that the audit firm had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit firm) that the audit firm and its employees complied with the requirements of this Subdivision.

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

Relationship between obligations under this section and other obligations

(7) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

(a) another provision of this Act; or

(b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

324CC General requirement for auditor independence—director of audit company

Contravention by director of audit company

(1) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at that time; and

(c) the defendant is a director of the audit company at that time; and

(d) the defendant is or becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note 1: For ***conflict of interest situation***, see section 324CD.

Note 2: The audit company itself will commit an offence based on the contravention of subsection 324AA(1).

Director of audit company to notify ASIC

(1A) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company is the auditor of an audited body; and

(b) a conflict of interest situation exists in relation to the audited body while the audit company is the auditor of the audited body; and

(c) the defendant is a director of the audit company at a time when the conflict of interest situation exists; and

(d) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) at the end of the period of 7 days from the start day:

(i) the conflict of interest situation remains in existence; and

(ii) ASIC has not been informed in writing by the defendant, by another director of the audit company or by the audit company that the conflict of interest situation exists.

Note 1: For ***conflict of interest situation***, see section 324CD.

Note 2: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2C) (public company) or 331AAA(2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that a conflict of interest situation exists on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However, if the person is a natural person:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty,

other than proceedings for an offence based on the information given being false or misleading.

(1D) If ASIC is given a notice under paragraph (1A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Conflict of interest situation of which another director of audit company aware

(2) A person contravenes this subsection if:

(a) an audit company engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at the time; and

(c) the person is a director of the audit company at that time; and

(d) at that time, another director of the audit company is aware that the conflict of interest situation exists; and

(e) the audit company does not, as soon as possible after the director referred to in paragraph (d) becomes aware that the conflict of interest situation exists, take all reasonable steps to ensure that the conflict of interest situation ceases to exist.

Note 1: For ***conflict of interest situation***, see section 324CD.

Note 2: The company itself will commit an offence based on the contravention of subsection 324AA(1).

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical elements of the offence specified in paragraphs (2)(a), (b), (d) and (e).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (6) provides a defence.

Conflict of interest situation of which directors of audit company not aware

(4) A person contravenes this subsection if:

(a) an audit company engages in audit activity in relation to an audited body at a particular time; and

(b) a conflict of interest situation exists in relation to the audited body at the time; and

(c) the person is a director of the audit company at that time; and

(d) at that time none of the directors of the audit company is aware that the conflict of interest situation exists; and

(e) a director of the audit company would have been aware of the existence of the conflict of interest situation if the audit company had in place a quality control system reasonably capable of making the audit company aware of the existence of such a conflict of interest situation.

Note 1: For ***conflict of interest situation***, see section 324CD.

Note 2: The company itself will commit an offence based on the contravention of subsection 324AA(2).

(5) For the purposes of an offence based on subsection (4), strict liability applies to the physical elements of the offence specified in paragraphs (4)(a), (b), (d) and (e).

Note 1: For ***strict liability,*** see section 6.1 of the *Criminal Code*.

Note 2: Subsection (6) provides a defence.

Defence

(6) A person does not commit an offence because of a contravention of subsection (2) or (4) in relation to audit activity engaged in by an audit company at a particular time if the person has reasonable grounds to believe that the audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and its employees complied with the requirements of this Subdivision.

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

Relationship between obligations under this section and other obligations

(7) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

(a) another provision of this Act; or

(b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

324CD Conflict of interest situation

(1) For the purposes of sections 324CA, 324CB and 324CC, a ***conflict of interest situation*** exists in relation to an audited body at a particular time if, because of circumstances that exist at that time:

(a) the auditor, or a professional member of the audit team, is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the audited body; or

(b) a reasonable person, with full knowledge of all relevant facts and circumstances, would conclude that the auditor, or a professional member of the audit team, is not capable of exercising objective and impartial judgment in relation to the conduct of the audit of the audited body.

(2) Without limiting subsection (1), have regard to circumstances arising from any relationship that exists, has existed, or is likely to exist, between:

(a) the individual auditor; or

(b) the audit firm or any current or former member of the firm; or

(c) the audit company, any current or former director of the audit company or any person currently or formerly involved in the management of the audit company;

and any of the persons and bodies set out in the following table:

Relevant relationships

Item	If the audited body is…	have regard to any relationship with…
1	a company	the company; or a current or former director of the company; or a person currently or formerly involved in the management of the company.
2	a disclosing entity	the entity; or a current or former director of the entity; or a person currently or formerly involved in the management of the entity.

Relevant relationships		
Item	**If the audited body is…**	**have regard to any relationship with…**
3	a registered scheme	the responsible entity for the registered scheme; or a current or former director of the responsible entity; or a person currently or formerly involved in the management of the scheme; or a person currently or formerly involved in the management of the responsible entity.

Subdivision B—Specific requirements

324CE Auditor independence—specific requirements for individual auditor

Specific independence requirements for individual auditor

(1) An individual auditor contravenes this subsection if:

(a) the individual auditor engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (5) of this section; and

(c) the individual auditor is or becomes aware of the circumstances referred to in paragraph (b); and

(d) the individual auditor does not, as soon as possible after the individual auditor becomes aware of those circumstances, take all reasonable steps to ensure that the individual auditor does not continue to engage in audit activity in those circumstances.

Individual auditor to notify ASIC

(1A) An individual auditor contravenes this subsection if:

(a) the individual auditor is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (5) of this section while the individual auditor is the auditor of the audited body; and

(c) on a particular day (the ***start day***), the individual auditor becomes aware of the circumstances referred to in paragraph (b); and

(d) at the end of the period of 7 days from the start day:

(i) those circumstances remain in existence; and

(ii) the individual auditor has not informed ASIC in writing of those circumstances.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2A) (public company) or 331AAA(2A) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that the circumstances referred to in paragraph (1A)(b) exist on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If the individual auditor gives ASIC a notice under paragraph (1A)(d), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the audited body.

Strict liability contravention of specific independence requirements by individual auditor

(2) An individual auditor contravenes this subsection if:

(a) the individual auditor engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (5) of this section.

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

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (4) provides a defence.

(4) An individual auditor does not commit an offence because of a contravention of subsection (2) in relation to audit activity engaged in by the individual auditor at a particular time if the individual auditor has reasonable grounds to believe that the individual auditor had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the individual auditor) that the individual auditor and the individual auditor's employees complied with the requirements of this Subdivision.

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

People and entities covered

(5) The following table sets out:

(a) the persons and entities covered by this subsection in relation to audit activity engaged in by an individual auditor; and

(b) the items of the table in subsection 324CH(1) that are the relevant items for each of those persons and entities:

Individual auditor

Item	For this person or entity...	the relevant items of the table in subsection 324CH(1) are...
1	the individual auditor	1 to 19
2	a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function	1 to 19

Individual auditor		
Item	**For this person or entity...**	**the relevant items of the table in subsection 324CH(1) are...**
3	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 12 16 to 19
4	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 12 16 to 19
5	a person who is a non-audit services provider and who does not satisfy the maximum hours test in subsection (6)	10 to 12
6	an immediate family member of a person who is a non-audit services provider and who does not satisfy the maximum hours test in subsection (6)	10 to 12
7	an entity that the auditor (or a service company or trust acting for, or on behalf of, the individual auditor, or another entity performing a similar function) controls	15
8	a body corporate in which the auditor (or a service company or trust acting for, or on behalf of, the individual auditor, or another entity performing a similar function) has a substantial holding	15
9	a person who: (a) is a former professional employee of the auditor; and (b) does not satisfy the independence test in subsection (7)	1 and 2
10	an individual who: (a) is the former owner of the individual auditor's business; and (b) does not satisfy the independence test in subsection (7)	1 and 2

Maximum hours test

(6) A non-audit services provider satisfies the maximum hours test in this subsection if:

(a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

(b) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1) or (2), the prosecution must prove that the non-audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

(7) A person satisfies the independence test in this subsection in relation to an individual auditor if the person:

(a) does not influence the operations or financial policies of the accounting and audit practice conducted by the auditor; and

(b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the auditor; and

(c) does not have any rights against the auditor in relation to the accounting and audit practice conducted by the auditor in relation to the termination of the person's former employment by the auditor; and

(d) has no financial arrangements with the auditor in relation to the accounting and audit practice conducted by the auditor, other than:

(i) an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the auditor; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or

indirectly, on the revenues, profits or earnings of the auditor; and

(e) without limiting paragraph (d), has no financial arrangement with the auditor to receive a commission or similar payment in relation to business generated by the person for the accounting and audit practice conducted by the auditor.

In a prosecution for an offence based on subsection (1) or (2), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the individual auditor.

(8) In applying subsection (7), disregard any rights that the person has against the auditor by way of an indemnity for, or contribution in relation to, liabilities incurred by the person when the person was an employee of the auditor or the owner of the auditor's business.

324CF Auditor independence—specific requirements for audit firm

Contraventions by members of audit firm

(1) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (5) of this section; and

(c) the defendant is a member of the audit firm at that time; and

(d) the defendant is or becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take all reasonable steps to ensure that the audit firm does not continue to engage in audit activity in those circumstances.

Member of audit firm to notify ASIC

(1A) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (5) of this section while the audit firm is the auditor of the audited body; and

(c) the defendant is a member of the audit firm at a time when the circumstances referred to in paragraph (b) exist; and

(d) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) at the end of the period of 7 days from the start day:

(i) the circumstances referred to in paragraph (b) remain in existence; and

(ii) ASIC has not been informed in writing of those circumstances by the defendant, by another member of the audit firm or by someone else on behalf of the audit firm.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2B) (public company) or 331AAA(2B) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) A person is not excused from informing ASIC under subsection (1A) that the circumstances referred to in paragraph (1A)(b) exist on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(1C) However:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(1D) If ASIC is given a notice under paragraph (1A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Contravention of independence requirements by members of audit firm

(2) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (5) of this section; and

(c) the defendant is a member of the audit firm at that time.

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical elements of the offence specified in paragraphs (2)(a) and (b).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (4) provides a defence.

(4) A person does not commit an offence because of a contravention of subsection (2) in relation to audit activity engaged in by an audit firm at a particular time if the person has reasonable grounds to believe that the audit firm had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit firm) that the audit firm and its employees complied with the requirements of this Subdivision.

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

People and entities covered

(5) The following table sets out:

(a) the persons and entities covered by this subsection in relation to audit activity engaged in by an audit firm; and

(b) the items of the table in subsection 324CH(1) that are the relevant items for each of those persons and entities:

Audit firm

Item	For this person or entity...	the relevant items of the table in subsection 324CH(1) are...
1	the firm	4 7 10 to 19
2	a service company or trust acting for, or on behalf of, the firm, or another entity	4 7

Audit firm		
Item	**For this person or entity...**	**the relevant items of the table in subsection 324CH(1) are...**
	performing a similar function	10 to 19
3	a member of the firm	1 to 7 9 to 15
4	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 12 16 to 19
5	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 12 16 to 19
6	a person who: (a) is a non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (6)	10 to 12
7	an immediate family member of a person who: (a) is a non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (6)	10 to 12
8	an entity that the firm (or a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function) controls	15
9	a body corporate in which the firm (or a service company or trust acting for, or on behalf of, the firm, or another entity performing a similar function) has a substantial holding	15
10	an entity that a member of the firm controls or a body corporate in which a member of the firm has a substantial holding	15
11	a person who: (a) is a former member of the firm; and	1 and 2

Audit firm		
Item	**For this person or entity...**	**the relevant items of the table in subsection 324CH(1) are...**
	(b) does not satisfy the independence test in subsection (7)	
12	a person who: (a) is a former professional employee of the firm; and (b) does not satisfy the independence test in subsection (7)	1 and 2

Maximum hours test

(6) A non-audit services provider satisfies the maximum hours test in this subsection if:

(a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

(b) the number of hours for which the person provided services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1) or (2), the prosecution must prove that the non-audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

(7) A person satisfies the independence test in this subsection in relation to a firm if the person:

(a) does not influence the operations or financial policies of the accounting and audit practice conducted by the firm; and

(b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the firm; and

(c) does not have any rights against the firm, or the members of the firm, in relation to the accounting and audit practice conducted by the firm in relation to the termination of, or the value of, the person's former partnership interest in the firm; and

(d) has no financial arrangements with the firm in relation to the accounting and audit practice conducted by the firm, other than:

(i) an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the firm; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the firm; and

(e) without limiting paragraph (d), has no financial arrangement with the firm to receive a commission or similar payment in relation to business generated by the person for the accounting and audit practice conducted by the firm.

In a prosecution for an offence based on subsection (1) or (2), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the firm.

(8) In applying subsection (7), disregard any rights that the person has against the firm, or the members of the firm, by way of an indemnity for, or contribution in relation to, liabilities incurred by the person when the person was a member or employee of the firm.

Meaning of holding by firm in body corporate

(9) For the purposes of item 9 in the table in subsection (5), a firm is taken to have a holding in a body corporate if the holding is one of the firm's partnership assets.

324CG Auditor independence—specific requirements for audit company

Specific independence requirements for audit company

(1) An audit company contravenes this subsection if:

(a) the audit company engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (9) of this section; and

(c) the audit company is or becomes aware of the circumstances referred to in paragraph (b); and

(d) the audit company does not, as soon as possible after the audit company becomes aware of those circumstances, take all reasonable steps to ensure that the audit company does not continue to engage in audit activity in those circumstances.

Audit company to notify ASIC

(1A) An audit company contravenes this subsection if:

(a) the audit company is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (9) of this section while the audit company is the auditor of the audited body; and

(c) on a particular day (the ***start day***), the audit company becomes aware of the circumstances referred to in paragraph (b); and

(d) at the end of the period of 7 days from the start day:

(i) those circumstances remain in existence; and

(ii) the audit company has not informed ASIC in writing of those circumstances.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2C) (public company) or 331AAA(2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(1B) If the audit company gives ASIC a notice under paragraph (1A)(d), ASIC must, as soon as practicable after the notice has been received, give a copy of the notice to the audited body.

Strict liability contravention of specific independence requirements by audit company

(2) An audit company contravenes this subsection if:

(a) the audit company engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (9) of this section.

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

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (4) provides a defence.

(4) An audit company does not commit an offence because of a contravention of subsection (2) in relation to audit activity engaged in by the audit company at a particular time if the audit company has reasonable grounds to believe that the audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and the audit company's employees complied with the requirements of this Subdivision.

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

Contraventions by directors of audit company

(5) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (9) of this section; and

(c) the defendant is a director of the audit company at that time; and

(d) the defendant is or becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) the defendant does not, as soon as possible after the defendant becomes aware of those circumstances, take all reasonable steps to ensure that the audit company does not continue to engage in audit activity in those circumstances.

Director of audit company to notify ASIC

(5A) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company is the auditor of an audited body; and

(b) a relevant item of the table in subsection 324CH(1) applies to a person or entity covered by subsection (9) of this section while the audit company is the auditor of the audited body; and

(c) the defendant is a director of the audit company at a time when the circumstances referred to in paragraph (b) exist; and

(d) on a particular day (the ***start day***), the defendant becomes aware of the circumstances referred to in paragraphs (a) and (b); and

(e) at the end of the period of 7 days from the start day:

(i) the circumstances referred to in paragraph (b) remain in existence; and

(ii) ASIC has not been informed in writing of those circumstances by the defendant, by another director of the company or by the audit company.

Note: If the audited body is a public company or a registered scheme and the notice under this subsection is not followed up by a notice under subsection 327B(2C) (public company) or 331AAA(2C) (registered scheme) within the period of 21 days from the day the notice under this subsection is given, the audit appointment will be terminated at the end of that period.

(5B) A person is not excused from informing ASIC under subsection (5A) that the circumstances referred to in paragraph (5A)(b) exist on the ground that the information might tend to incriminate the person or expose the person to a penalty.

(5C) However, if the person is a natural person:

(a) the information; and

(b) the giving of the information;

are not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than proceedings for an offence based on the information given being false or misleading.

(5D) If ASIC is given a notice under paragraph (5A)(e), ASIC must, as soon as practicable after the notice is received, give a copy of the notice to the audited body.

Strict liability contravention of specific independence requirements by director of audit company

(6) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company engages in audit activity at a particular time; and

(b) a relevant item of the table in subsection 324CH(1) applies at that time to a person or entity covered by subsection (9) of this section; and

(c) the defendant is a director of the audit company at that time.

(7) For the purposes of an offence based on subsection (6), strict liability applies to the physical elements of the offence specified in paragraphs (6)(a) and (b).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (8) provides a defence.

(8) A person does not commit an offence because of a contravention of subsection (6) in relation to audit activity engaged in by an audit company at a particular time if the person has reasonable grounds to believe that the audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and its employees complied with the requirements of this Subdivision.

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

People and entities covered

(9) The following table sets out:

(a) the persons and entities covered by this subsection in relation to audit activity engaged in by an audit company; and

(b) the items of the table in subsection 324CH(1) that are the relevant items for each of those persons and entities:

Audit company

Item	For this person or entity...	the relevant items of the table in subsection 324CH(1) are...
1	the audit company	4 7 10 to 19
2	a service company or trust acting for, or on behalf of, the audit company, or another entity performing a similar function	4 7 10 to 19
3	a director or senior manager of the audit company	1 to 15
4	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 12 16 to 19
5	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 12 16 to 19
6	a person who: (a) is a non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (10)	10 to 12
7	an immediate family member of a person who: (a) is a non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (10)	10 to 12
8	an entity that the audit company (or a service company or trust acting for, or on behalf of, the audit company, or another entity performing a similar function) controls	15
9	a body corporate in which the audit company (or a service company or trust acting for, or on behalf of, the audit company, or another entity performing a similar function) has a substantial holding	15

Audit company		
Item	**For this person or entity...**	**the relevant items of the table in subsection 324CH(1) are...**
10	an entity that an officer of the audit company controls or a body corporate in which an officer of the audit company has a substantial holding	16
11	a person who: (a) is a former officer of the audit company; and (b) does not satisfy the independence test in subsection (11)	1 and 2
12	a person who: (a) is a former professional employee of the audit company; and (b) does not satisfy the independence test in subsection (11)	1 and 2

Maximum hours test

(10) A non-audit services provider satisfies the maximum hours test in this subsection if:

(a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

(b) the number of hours for which the person provided services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1), (2), (5) or (6), the prosecution must prove that the non-audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

(11) A person satisfies the independence test in this subsection in relation to an audit company if the person:

(a) does not influence the operations or financial policies of the accounting and audit practice conducted by the audit company; and

(b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the audit company; and

(c) does not have any rights against the audit company in relation to the accounting and audit practice conducted by the audit company in relation to the termination of the person's former position as an officer of the audit company; and

(d) has no financial arrangements with the audit company in relation to the accounting and audit practice conducted by the audit company, other than:

(i) an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent, directly or indirectly, on the revenues, profits or earnings of the audit company; or

(ii) an arrangement providing for regular payments of a dollar amount where the method of calculating the dollar amount is fixed and is not dependent, directly or indirectly, on the revenues, profits or earnings of the audit company; and

(e) without limiting paragraph (d), has no financial arrangement with the audit company to receive a commission or similar payment in relation to business generated by the person for the accounting and audit practice conducted by the audit company.

In a prosecution for an offence based on subsection (1), (2), (5) or (6), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the audit company.

(12) In applying subsection (11), disregard any rights that the person has against the audit company by way of an indemnity for, or contribution in relation to, liabilities incurred by the person when the person was an officer or employee of the audit company.

324CH Relevant relationships

Table of relevant relationships

(1) The following table lists the relationships between:

(a) a person or a firm; and

(b) the audited body for an audit;

that are relevant for the purposes of sections 324CE, 324CF and 324CG:

Relevant relationships

Item	This item applies to a person (or, if applicable, to a firm) at a particular time if at that time the person (or firm)...
1	is an officer of the audited body This item does not apply if the audited body is a small proprietary company for the relevant financial year.
2	is an audit-critical employee of the audited body This item does not apply if the audited body is a small proprietary company for the relevant financial year.
3	is a partner of: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body This item does not apply if the audited body is a small proprietary company for the relevant financial year.
4	is an employer of: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body This item does not apply if the audited body is a small proprietary company for the relevant financial year.
5	is an employee of: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body This item does not apply if the audited body is a small proprietary company for the relevant financial year.
6	is a partner or employee of an employee of: (a) an officer of the company; or (b) an audit-critical employee of the company

Relevant relationships	
Item	**This item applies to a person (or, if applicable, to a firm) at a particular time if at that time the person (or firm)...**
	This item does not apply if the audited body is a small proprietary company for the relevant financial year.
7	provides remuneration to: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body; for acting as a consultant to the person This item does not apply if the audited body is a small proprietary company for the relevant financial year.
8	was an officer of the audited body at any time during: (a) the period to which the audit relates; or (b) the 12 months immediately preceding the beginning of the period to which the audit relates; or (c) the period during which the audit is being conducted or the audit report is being prepared This item does not apply if the audited body is a small proprietary company for the relevant financial year.
9	was an audit-critical employee of the audited body at any time during: (a) the period to which the audit relates; or (b) the 12 months immediately preceding the beginning of the period to which the audit relates; or (c) the period during which the audit is being conducted or the audit report is being prepared This item does not apply if the audited body is a small proprietary company for the relevant financial year.
10	has an asset that is an investment in the audited body
11	has an asset that is a beneficial interest in an investment in the audited body and has control over that asset
12	has an asset that is a beneficial interest in an investment in the audited body that is a material interest
13	has an asset that is a material investment in an entity that has a controlling interest in the audited body
14	has an asset that is a material beneficial interest in an investment in an entity that has a controlling interest in the audited body

Relevant relationships	
Item	**This item applies to a person (or, if applicable, to a firm) at a particular time if at that time the person (or firm)...**
15	owes an amount of more than $5,000 (or such higher amount as may be prescribed for the purposes of this item) to: (a) the audited body; or (b) a related body corporate; or (c) an entity that the audited body controls; unless the debt is one which is disregarded under subsection (5) This item does not apply to an amount if item 18 would apply to the amount but for subsection (7).
16	is owed an amount by: (a) the audited body; or (b) a related body corporate; or (c) an entity that the audited body controls; under a loan that is not disregarded under subsection (6)
17	is liable under a guarantee of a loan made to: (a) the audited body; or (b) a related body corporate; or (c) an entity that the audited body controls
18	owes an amount to: (a) the audited body; or (b) a related body corporate; or (c) an entity that the audited body controls under a loan that is not disregarded under subsection (7)
19	is entitled to the benefit of a guarantee given by: (a) the audited body; or (b) a related body corporate; or (c) an entity that the audited body controls in relation to a loan unless the guarantee is disregarded under subsection (8)

Applying table if audited body is registered scheme

(2) If the audited body is a registered scheme, apply the table in subsection (1) as if:

(a) references to the audited body in items 1 to 9, and items 15 to 19, in the table were references to the responsible entity for the registered scheme; and

(b) references to an interest in the audited body in items 10 to 12 in the table were references to an interest in either:

(i) the registered scheme; or

(ii) the responsible entity for the registered scheme; and

(c) references to an investment in an entity that has a controlling interest in the audited body in items 13 and 14 of the table were references to an investment in an entity that has a controlling interest in the responsible entity for the registered scheme.

Applying table if audited body is listed entity (other than registered scheme)

(3) If the audited body is a listed entity (other than a registered scheme), apply the table in subsection (1) as if references in the table to the audited body included references to an associated entity of the audited body.

Note: See section 50AAA for the definition of ***associated entity***.

Firm assets

(4) For the purpose of applying items 10 to 14 in the table in subsection (1) to an audit firm, the firm is taken to have a particular asset if the asset is one of the firm's partnership assets.

Housing loan exception

(5) For the purposes of item 15 of the table in subsection (1), disregard a debt owed by an individual to a body corporate or entity if:

(a) the body corporate or entity is:

(i) an Australian ADI; 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.

Loans by immediate family members in ordinary business dealing with client

(6) For the purposes of item 16 of the table in subsection (1), disregard a debt owed to a person by a body corporate or entity if:

(a) the item applies to the person because the person is an immediate family member of:

(i) a professional member of the audit team conducting the audit of the audited body; or

(ii) a non-audit services provider; and

(b) the debt is incurred in the ordinary course of business of the body corporate or entity.

Ordinary commercial loan exception

(7) For the purposes of item 18 of the table in subsection (1), disregard any loan that:

(a) is made or given in the ordinary course of the business of:

(i) the audited body; or

(ii) the related body corporate; or

(iii) the controlled entity; and

(b) is made or given on the terms and conditions that would normally apply to a loan made or given by the audited body, the related body corporate or the controlled entity.

Ordinary commercial guarantee exception

(8) For the purposes of item 19 of the table in subsection (1), disregard any guarantee that:

(a) is made or given in the ordinary course of the business of:

(i) the audited body; or

(ii) the related body corporate; or

(iii) the controlled entity; and

(b) is made or given on the terms and conditions that would normally apply to a guarantee made or given by the audited body, the related body corporate or the controlled entity.

Relevant financial year

(9) In this section:

relevant financial year, in relation to audit activities undertaken in relation to an audit of a financial report for a financial year or an audit or review of a financial report for a half-year in a financial year, means the financial year immediately before that financial year.

324CI Special rule for retiring partners of audit firms and retiring directors of authorised audit companies

A person contravenes this section if:

(a) the person ceases to be:
  (i) a member of an audit firm; or
  (ii) a director of an audit company;
  at a particular time (the ***departure time)***; and

(b) at any time before the departure time, the audit firm or audit company has engaged in an audit of an audited body; and

(c) the person was a professional member of the audit team for the audit; and

(d) within the period of 2 years starting at the departure time, the person becomes, or continues to be, an officer of the audited body; and

(e) the audited body is not a small proprietary company for the most recently ended financial year.

If the audited body is a listed entity (other than a registered scheme), apply paragraph (d) as if references in that paragraph to the audited body included references to a related body corporate of the audited body.

324CJ Special rule for retiring professional member of audit company

A person contravenes this section if:

(a) the person who is not a director of an audit company ceases to be a professional employee of the audit company at a particular time (the ***departure time***); and

(b) at any time before the departure time, the audit company has engaged in an audit of an audited body; and

(c) the person was a lead auditor or review auditor for the audit; and

(d) within the period of 2 years starting at the departure time, the person becomes, or continues to be, an officer of the audited body; and

(e) the audited body is not a small proprietary company for the most recently ended financial year.

If the audited body is a listed entity (other than a registered scheme), apply paragraph (d) as if references in that paragraph to the audited body included references to a related body corporate of the audited body.

324CK Multiple former audit firm partners or audit company directors

A person contravenes this section if:

(a) an audit firm, or audit company, is an auditor of an audited body for a financial year; and

(b) the person has at any time been a member of the audit firm or a director of the audit company; and

(c) the person becomes an officer of the audited body; and

(d) at the time when paragraph (c) is satisfied another person who is or who also has at any time been a member of the audit firm, or a director of the audit company, at a time when the audit firm, or audit company, undertook an audit of the audited body is also an officer of the audited body; and

(e) the audited body is not a small proprietary company for the most recently ended financial year.

If the audited body is a listed entity (other than a registered scheme), apply paragraphs (c) and (d) as if references in those paragraphs to the audited body included references to a related body corporate of the audited body.

Subdivision C—Common provisions

324CL People who are regarded as officers of a company for the purposes of this Division

(1) For the purposes of this Division, a person is taken to be an officer of a company if:

(a) the person is an officer of:

(i) a related body corporate; or

(ii) an entity that the company controls; or

(b) the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of:

(i) the company; or

(ii) a related body corporate; or

(iii) an entity that the company controlled at that time.

(2) Paragraph (b) does not apply if ASIC directs that it does not apply in relation to the person in relation to the company. ASIC may give the direction only if ASIC thinks that it is appropriate to do so in the circumstances of the case.

(3) For the purposes of this Division, a person is not taken to be an officer of a company by reason only of being, or having been, the liquidator of:

(a) the company; or

(b) a related body corporate; or

(c) an entity that the company controls or has controlled.

(4) For the purposes of this Division, a person is not taken to be an officer of a company merely because of one or more of the following:

(a) having been appointed as auditor of:

(i) the company; or

(ii) a related body corporate; or

(iii) an entity that the company controls or has controlled;

(b) having been appointed, for any purpose relating to taxation, as public officer of:

(i) a body corporate; or

(ii) an unincorporated body; or

(iii) a trust estate;

(c) being or having been authorised to accept service of process or notices on behalf of:

(i) the company; or

(ii) a related body corporate; or

(iii) an entity that the company controls or has controlled.

Division 4—Deliberately disqualifying auditor

324CM Deliberately disqualifying auditor

Individual auditor

(1) An individual contravenes this subsection if:

(a) the individual is appointed auditor of a company or registered scheme; and

(b) while the appointment continues, the individual brings about a state of affairs; and

(c) the individual cannot, while that state of affairs continues, act as auditor of the company or scheme without contravening Division 2 or 3.

Audit firm

(2) A member of a firm contravenes this subsection if:

(a) the firm is appointed auditor of a company or a registered scheme; and

(b) while the appointment continues, the member brings about a state of affairs; and

(c) the firm cannot, while that state of affairs continues, act as auditor of the company or scheme without a person contravening Division 2 or 3.

Audit company

(3) A person who is:

(a) a member of a company; or

(b) a director of a company; or

(c) a lead auditor in relation to an audit conducted by a company;

contravenes this subsection if:

(d) the company is appointed auditor of a company or a registered scheme; and

(e) while the appointment continues, the person brings about a state of affairs; and

(f) the company cannot, while that state of affairs continues, act as auditor of the company or scheme without contravening Division 2 or 3.

Division 5—Auditor rotation for listed companies

324DA Limited term for eligibility to play significant role in audit of a listed company or listed registered scheme

(1) If an individual plays a significant role in the audit of a listed company or listed registered scheme for 5 successive financial years (the ***extended audit involvement period***), the individual is not eligible to play a significant role in the audit of the company or the scheme for a later financial year (the ***subsequent financial year***) unless:

(a) the individual has not played a significant role in the audit of the company or the scheme for at least 2 successive financial years (the ***intervening financial years***); and

(b) the intervening financial years:

(i) commence after the end of the extended audit involvement period; and

(ii) end before the beginning of the subsequent financial year.

Note: ***Play a significant role*** in an audit is defined in section 9.

(2) An individual is not eligible to play a significant role in the audit of a listed company or listed registered scheme for a financial year if, were the individual to do so, the individual would play a significant role in the audit of the company or scheme for more than 5 out of 7 successive financial years.

(3) For the purposes of subsection (2), disregard an individual's playing of a significant role in the audit of a company or scheme for a financial year if:

(a) ASIC makes a declaration under paragraph 342A(1)(a) in relation to the individual; and

(b) because of the declaration, subsection (1) of this section does not operate to make the individual not eligible to play a significant role in the audit of the company or scheme for that financial year.

324DB Individual's rotation obligation

An individual contravenes this section if the individual:

(a) plays a significant role in the audit of a listed company or listed registered scheme for a financial year; and

(b) is not eligible to play that role.

324DC Audit firm's rotation obligation

Contraventions by members of audit firm

(1) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm consents to act as a listed company's or listed registered scheme's auditor for a financial year; and

(b) an individual acts, on behalf of the firm, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and

(c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and

(d) the defendant is a member of the firm; and

(e) the defendant is not the individual and is or becomes aware that the individual is not eligible to play that role; and

(f) the defendant fails to take the necessary steps, as soon as possible after the defendant becomes aware that the individual is not eligible to play that role, either:

(i) to ensure that the audit firm resigns as auditor of the company or scheme; or

(ii) to ensure that the individual ceases to act, on behalf of the audit firm, as a lead or review auditor in relation to the audit of the company or scheme for that financial year.

(2) A person (the ***defendant***) contravenes this subsection if:

(a) an audit firm consents to act as a listed company's or listed registered scheme's auditor for a financial year; and

(b) an individual acts, on behalf of the firm, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and

(c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and

(d) the defendant is a member of the firm.

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical elements of the offence specified in paragraphs (2)(a), (b) and (c).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (4) provides a defence.

(4) A person does not commit an offence because of a contravention of subsection (2) in relation to an individual acting as lead or review auditor on behalf of an audit firm at a particular time if the person has reasonable grounds to believe that the audit firm had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit firm) that the audit firm and its employees complied with the requirements of this Division.

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

324DD Audit company's rotation obligation

Contravention by audit company

(1) An audit company contravenes this subsection if:

(a) the audit company consents to act as a listed company's or listed registered scheme's auditor for a financial year; and

(b) an individual acts, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and

(c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and

(d) a director of the audit company (other than the individual) is aware that the individual is not eligible to play that role; and

(e) the audit company fails to take the necessary steps, as soon as possible after the director becomes aware that the individual is not eligible to play that role, either:

(i) to resign as auditor of the company or scheme; or

(ii) to ensure that the individual ceases to act, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company or scheme for that financial year.

Contraventions by directors of audit company

(2) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company consents to act as a listed company's or listed registered scheme's auditor for a financial year; and

(b) an individual acts, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and

(c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and

(d) the defendant is a director of the audit company; and

(e) the defendant is not the individual and is or becomes aware that the individual is not eligible to play that role; and

(f) the defendant fails to take the necessary steps, as soon as possible after the defendant becomes aware that the individual is not eligible to play that role, either:

(i) to ensure that the audit company resigns as auditor of the company or scheme; or

(ii) to ensure that the individual ceases to act, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company or scheme for that financial year.

(3) A person (the ***defendant***) contravenes this subsection if:

(a) an audit company consents to act as a listed company's or listed registered scheme's auditor for a financial year; and

(b) an individual acts, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and

(c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and

(d) the defendant is a director of the audit company.

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical elements of the offence specified in paragraphs (3)(a), (b) and (c).

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Note 2: Subsection (5) provides a defence.

(5) A person does not commit an offence because of a contravention of subsection (3) in relation to an individual acting as lead or review auditor on behalf of an audit company at a particular time if the person has reasonable grounds to believe that the audit company had in place at that time a quality control system that provided reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and its employees complied with the requirements of this Division.

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

Division 6—Appointment, removal and fees of auditors for companies

Subdivision A—Appointment of company auditors

96 Sections 327 and 328

Repeal the sections, substitute:

327A Public company auditor (initial appointment of auditor)

(1) The directors of a public company must appoint an auditor of the company within 1 month after the day on which a company is registered as a company unless the company at a general meeting has appointed an auditor.

(2) Subject to this Part, an auditor appointed under subsection (1) holds office until the company's first AGM.

(3) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

327B Public company auditor (annual appointments at AGMs to fill vacancies)

(1) A public company must:

(a) appoint an auditor of the company at its first AGM; and

(b) appoint an auditor of the company to fill any vacancy in the office of auditor at each subsequent AGM.

(2) An auditor appointed under subsection (1) holds office until the auditor:

(a) dies; or

(b) is removed, or resigns, from office in accordance with section 329; or

(c) ceases to be capable of acting as auditor because of Division 2 of this Part; or

(d) ceases to be auditor under subsection (2A), (2B) or (2C).

(2A) An individual auditor ceases to be auditor of a company under this subsection if:

(a) on a particular day (the ***start day***), the individual auditor:

(i) informs ASIC of a conflict of interest situation in relation to the company under subsection 324CA(1A); or

(ii) informs ASIC of particular circumstances in relation to the company under subsection 324CE(1A); and

(b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days from the start day.

(2B) An audit firm ceases to be auditor of a company under this subsection if:

(a) on a particular day (the ***start day***), ASIC is:

(i) informed of a conflict of interest situation in relation to the company under subsection 324CB(1A); or

(ii) informed of particular circumstances in relation to the company under subsection 324CF(1A); and

(b) ASIC has not been given a notice on behalf of the audit firm, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have,

ceased to exist before the end of the period (the ***remedial period***) of 21 days from the start day.

(2C) An audit company ceases to be auditor of a company under this subsection if:

(a) on a particular day (the ***start day***), ASIC is:

(i) informed of a conflict of interest situation in relation to the company under subsection 324CB(1A) or 324CC(1A); or

(ii) informed of particular circumstances in relation to the company under subsection 324CF(1A) or 324CG(1A) or (5A); and

(b) ASIC has not been given a notice on behalf of the audit company, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days from the start day.

(2D) The ***notification day*** is:

(a) the last day of the remedial period; or

(b) such later day as ASIC approves in writing (whether before or after the remedial period ends).

(3) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

(4) If an audit firm ceases to be the auditor of a company under subsection (2) at a particular time, each member of the firm who:

(a) is taken to have been appointed as an auditor of the company under subsection 324AB(1) or 324AC(4); and

(b) is an auditor of the company immediately before that time;

ceases to be an auditor of the company at that time.

327C Public company auditor (appointment to fill casual vacancy)

(1) If:

(a) a vacancy occurs in the office of auditor of a public company; and

(b) the vacancy is not caused by the removal of an auditor from office; and

(c) there is no surviving or continuing auditor of the company;

the directors must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy unless the company at a general meeting has appointed an auditor to fill the vacancy.

(2) An auditor appointed under subsection (1) holds office, subject to this Part, until the company's next AGM.

(3) A director of a public company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

327D Appointment to replace auditor removed from office

(1) This section deals with the situation in which an auditor of a company is removed from office at a general meeting in accordance with section 329.

(2) The company may at that general meeting (without adjournment), by special resolution immediately appoint an individual, firm or company as auditor of the company if a copy of the notice of nomination has been sent to the individual, firm or company under subsection 328B(3).

(3) If a special resolution under subsection (2):

(a) is not passed; or

(b) could not be passed merely because a copy of the notice of nomination has not been sent to an individual, firm or company under subsection 328B(3);

the general meeting may be adjourned and the company may, at the adjourned meeting, by ordinary resolution appoint an individual, firm or company as auditor of the company if:

(c) a member of the company gives the company notice of the nomination of the individual, firm or company for appointment as auditor; and

(d) the company receives the notice at least 14 clear days before the day to which the meeting is adjourned.

(4) The day to which the meeting is adjourned must be:

(a) not earlier than 20 days after the day of the meeting; and

(b) not later than 30 days after the day of the meeting.

(5) Subject to this Part, an auditor appointed under subsection (2) or (3) holds office until the company's next AGM.

327E ASIC may appoint public company auditor if auditor removed but not replaced

(1) This section deals with the situation in which a public company fails to appoint an auditor under subsection 327D(2) or (3). The failure is referred to as the ***auditor replacement failure***.

(2) The company must give ASIC written notice of the auditor replacement failure within the period of 7 days commencing on the day of the auditor replacement failure (the ***notification period***).

(3) If the company gives ASIC the notice required by subsection (2), ASIC must appoint an auditor of the company as soon as practicable after receiving the notice. This subsection has effect subject to section 327G.

(4) If the company does not give ASIC the notice required by subsection (2), ASIC may appoint an auditor of the company at any time:

(a) after the end of the notification period; and

(b) before ASIC receives notice of the auditor replacement failure from the company.

This subsection has effect subject to section 327G.

(5) If the company:

(a) does not give ASIC the notice required by subsection (2); and

(b) gives ASIC notice of the auditor replacement failure after the end of the notification period;

ASIC must appoint an auditor of the company as soon as practicable after receiving the notice. This subsection has effect subject to section 327G.

(6) Subject to this Part, an auditor appointed under this section holds office until the company's next AGM.

327F ASIC's general power to appoint public company auditor

(1) ASIC may appoint an auditor of a public company if:

(a) the company does not appoint an auditor when required by this Act to do so; and

(b) a member of the company applies to ASIC in writing for the appointment of an auditor under this section.

This subsection has effect subject to section 327G.

(2) An individual, firm or company appointed as auditor of a company under subsection (1) holds office, subject to this Part, until the next AGM of the company.

327G Restrictions on ASIC's powers to appoint public company auditor

(1) ASIC may appoint an individual, firm or company as auditor of a company under section 327E or 327F only if the individual, firm or company consents to being appointed.

(2) ASIC must not appoint an auditor of a company under section 327E or 327F if:

(a) there is another auditor of the company (the ***continuing auditor***); and

(b) ASIC is satisfied that the continuing auditor is able to carry out the responsibilities of auditor alone; and

(c) the continuing auditor agrees to continue as auditor.

(3) ASIC must not appoint an auditor of a company under section 327E or 327F if:

(a) the company does not give ASIC the notice required by subsection 327E(2) before the end of the notification period; and

(b) ASIC has already appointed an auditor of the company under section 327E after the end of the notification period.

327H Effect on appointment of public company auditor of company beginning to be controlled by a corporation

An auditor of a public company that begins to be controlled by a corporation:

(a) must retire at the AGM of the company next held after the company begins to be controlled by the corporation unless the auditor vacates that office before then; and

(b) is, subject to this Part, eligible for re-appointment.

This section has effect notwithstanding subsection 327B(2).

327I Remaining auditors may act during vacancy

While a vacancy in the office of auditor of a company continues, the surviving or continuing auditor or auditors (if any) may act as auditors of the company.

328A Auditor's consent to appointment

(1) A company, the directors of a company or the responsible entity of a registered scheme must not appoint an individual, firm or company as auditor of the company unless that individual, firm or company:

(a) has consented, before the appointment, to act as auditor; and

(b) has not withdrawn that consent before the appointment is made.

For the purposes of this section, a consent, or the withdrawal of a consent, must be given by written notice to the company, the directors or the responsible entity of the scheme.

(2) A notice under subsection (1) given by a firm must be signed by a member of the firm who is a registered company auditor both:

(a) in the firm name; and

(b) in his or her own name.

(3) A notice under subsection (1) given by a company must be signed by a director or senior manager of the company both:

(a) in the company's name; and

(b) in his or her own name.

(4) If a company, the directors of a company or the responsible entity of a registered scheme appoints an individual, firm or company as auditor of a company in contravention of subsection (1):

(a) the purported appointment does not have any effect; and

(b) the company or responsible entity, and any officer of the company or responsible entity who is in default, are each guilty of an offence.

328B Nomination of auditor

(1) Subject to this section, a company may appoint an individual, firm or company as auditor of the company at its AGM only if a member of the company gives the company written notice of the

nomination of the individual, firm or company for appointment as auditor:

(a) before the meeting was convened; or

(b) not less than 21 days before the meeting.

This subsection does not apply if an auditor is removed from office at the AGM.

(2) If a company purports to appoint an individual, firm or company as auditor of the company in contravention of subsection (1):

(a) the purported appointment is of no effect; and

(b) the company and any officer of the company who is in default are each guilty of an offence.

(3) If a member gives a company notice of the nomination of an individual, firm or company for appointment as auditor of the company, the company must send a copy of the notice to:

(a) each individual, firm or company nominated; and

(b) each auditor of the company; and

(c) each person entitled to receive notice of general meetings of the company.

This is so whether the appointment is to be made at a meeting or an adjourned meeting referred to in section 327D or at an AGM.

(4) The copy of the notice of nomination must be sent:

(a) not less than 7 days before the meeting; or

(b) at the time notice of the meeting is given.

Subdivision B—Removal and resignation of company auditors

97 Subsection 329(10)

Omit "paragraph 324(2)(d)", substitute "subparagraph 324BB(1)(b)(i) or (2)(b)(i)".

98 After section 330

Insert:

Subdivision C—Company auditors' fees and expenses

99 Division 2 of Part 2M.4 (heading)

Repeal the heading, substitute:

Division 7—Appointment, removal and fees of auditors for registered schemes

Subdivision A—Appointment of registered scheme auditors

100 Sections 331AA and 331AB

Repeal the sections, substitute:

331AAA Registered scheme auditor (initial appointment of auditor)

(1) The responsible entity of a registered scheme must appoint an auditor of the registered scheme within 1 month after the day on which the scheme is registered.

(2) An auditor appointed under subsection (1) holds office until the auditor:

(a) dies; or

(b) is removed, or resigns, from office in accordance with section 331AC; or

(c) ceases to be capable of acting as an auditor because of Division 2 of this Part; or

(d) ceases to be auditor under subsection (2A), (2B) or (2C).

(2A) An individual auditor ceases to be auditor of a registered scheme under this subsection if:

(a) on a particular day (the ***start day***), the individual auditor:

(i) informs ASIC of a conflict of interest situation in relation to the scheme under subsection 324CA(1A); or

(ii) informs ASIC of particular circumstances in relation to the scheme under subsection 324CE(1A); and

(b) the individual auditor does not give ASIC a notice, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days from the start day.

(2B) An audit firm ceases to be auditor of a registered scheme under this subsection if:

(a) on a particular day (the ***start day***), ASIC is:

(i) informed of a conflict of interest situation in relation to the scheme under subsection 324CB(1A); or

(ii) informed of particular circumstances in relation to the scheme under subsection 324CF(1A); and

(b) ASIC has not been given a notice on behalf of the audit firm, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days from the start day.

(2C) An audit company ceases to be auditor of a registered scheme under this subsection if:

(a) on a particular day (the ***start day***), ASIC is:

(i) informed of a conflict of interest situation in relation to the scheme under subsection 324CB(1A) or 324CC(1A); or

(ii) informed of particular circumstances in relation to the scheme under subsection 324CF(1A) or 324CG(1A) or (5A); and

(b) ASIC has not been given a notice on behalf of the audit company, before the notification day (see subsection (2D)), that that conflict of interest situation has, or those circumstances have, ceased to exist before the end of the period (the ***remedial period***) of 21 days from the start day.

(2D) The ***notification day*** is:

(a) the last day of the remedial period; or

(b) such later day as ASIC approves in writing (whether before or after the remedial period ends).

(3) A director of the responsible entity of a registered scheme must take all reasonable steps to secure compliance with subsection (1).

(4) If an audit firm ceases to be the auditor of a registered scheme under subsection (2) at a particular time, each member of the firm who:

(a) is taken to have been appointed as an auditor of the scheme under subsection 324AB(1) or 324AC(4); and

(b) is an auditor of the scheme immediately before that time;

ceases to be an auditor of the scheme at that time.

331AAB Registered scheme auditor (appointment to fill vacancy)

(1) If:

(a) a vacancy occurs in the office of auditor of a registered scheme; and

(b) there is no surviving or continuing auditor of the scheme;

the responsible entity must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy.

(2) A director of the responsible entity of a registered scheme must take all reasonable steps to secure compliance with subsection (1).

331AAC ASIC's power to appoint registered scheme auditor

(1) ASIC may appoint an auditor of a registered scheme if:

(a) the responsible entity of the scheme does not appoint an auditor when required by this Act to do so; and

(b) a member of the scheme applies to ASIC in writing for the appointment of an auditor under this section.

(2) ASIC may only appoint an individual, firm or company as auditor under subsection (1) if the individual, firm or company consents to being appointed.

331AAD Remaining auditors may act during vacancy

While a vacancy in the office of auditor of a registered scheme continues, the surviving or continuing auditor or auditors (if any) may act as auditors of the company.

Subdivision B—Removal and resignation of registered scheme auditors

101 Subsection 331AC(6)

Omit "paragraph 331AA(2)(d)", substitute "subparagraph 324BB(1)(b)(i) or (2)(b)(i)".

102 After section 331AD

Insert:

Subdivision C—Fees and expenses of auditors

103 Subsection 340(1)

After "and 2M.4", insert "(other than Division 4)".

104 Subsection 341(1)

After "and 2M.4", insert "(other than Division 4)".

105 After section 342

Insert:

342A ASIC's power to modify the operation of section 324DA

(1) On an application made in accordance with this section, ASIC may:

(a) declare that subsection 324DA(1) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies, as if the references in that subsection to 5 successive financial years were references to:

(i) 6 successive financial years; or

(ii) 7 successive financial years; or

(b) declare that subsection 324DA(2) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies during a particular period of 7 successive financial years, as if the reference in that subsection to 5 out of 7 successive financial years were a reference to 6 out of 7 successive financial years.

(2) The following persons may apply for the declaration:

(a) the registered company auditor;

(b) a firm or company on whose behalf the registered company auditor acts or would act in relation to the audit or audits.

If the application is made by a firm or company, the declaration has effect only in relation to activities undertaken by the registered company auditor on behalf of that firm or company.

(3) The application must be:

(a) in writing; and

(b) signed by the applicant; and

(c) lodged with ASIC.

(4) If the application is made by a registered company auditor who engages, or is to engage, in audit activities on behalf of a firm or company, the application must include the firm's or company's written consent to the application.

(5) If the application is made by a firm or company in relation to a registered company auditor, the application must include the registered company auditor's written consent to the application.

(6) To make a declaration under subsection (1), ASIC must be satisfied that, without the modification, Division 4 of Part 2M.4 would impose an unreasonable burden on:

(a) a registered company auditor; or

(b) a firm or company that is applying for the declaration; or

(c) the audited body or bodies in relation to which the application was made.

(7) In deciding for the purposes of subsection (6) whether, without the modification, Division 4 of Part 2M.4 would impose an unreasonable burden on a person referred to in that subsection, ASIC is to have regard to:

(a) the nature of the audited body or bodies, including whether the activity in which the audited body or bodies engage is such that specialist knowledge about that activity is necessary to carry out the audit properly; and

(b) the availability of other registered company auditors capable of providing satisfactory audit services for the audited body or bodies; and

(c) any other matters which ASIC considers relevant.

(8) ASIC must give the applicant written notice of the making, revocation or suspension of the declaration.

342B Auditor to notify company or registered scheme of section 342A declaration

(1) If a registered company auditor plays a significant role in the audit of a company or registered scheme in reliance on a declaration by ASIC under section 342A, the auditor must give the company or the responsible entity for the registered scheme written notice of the declaration.

(2) The notice must specify:

(a) the name of the registered company auditor; and

(b) the additional financial years for which the registered company auditor is, because of the declaration under section 342A, eligible to play a significant role in the audit of the company or registered scheme.

(3) The notice must be given:

(a) as soon as practicable after the declaration is made if the auditor has been appointed before the declaration is made; or

(b) before the auditor is appointed if the declaration is made before the auditor is appointed.

106 Subsection 892H(3)

After "A registered company auditor", insert ", or authorised audit company,".

107 Paragraph 892H(3)(a)

After "registered company auditor", insert ", or authorised audit company,".

108 Subparagraph 892H(3)(b)(i)

After "registered company auditor", insert ", or authorised audit company,".

109 Before subparagraph 1292(1)(a)(i)

Insert:

(ia) contravened section 324DB; or

110 Schedule 3 (after table item 103)

Insert:

103A	Subsections 307C(1) and (2)	10 penalty units.

111 Schedule 3 (before table item 117)

Insert:

116BA	Section 324BA	25 penalty units or imprisonment for 6 months, or both.

116BB	Subsection 324BB(1)	25 penalty units or imprisonment for 6 months, or both.
116BC	Subsection 324BB(2)	10 penalty units.
116BD	Subsections 324BC(1) and (2)	25 penalty units or imprisonment for 6 months, or both.
116BE	Subsection 324BC(3)	10 penalty units.
116CA	Subsection 324CA(1)	25 penalty units or imprisonment for 6 months, or both.
116CB	Subsections 324CA(1A) and (2)	10 penalty units.
116CC	Subsection 324CB(1)	25 penalty units or imprisonment for 6 months, or both.
116CD	Subsections 324CB(1A), (2) and (4)	10 penalty units.
116CE	Subsection 324CC(1)	25 penalty units or imprisonment for 6 months, or both.
116CF	Subsections 324CC(1A), (2) and (4)	10 penalty units.
116DA	Subsection 324CE(1)	25 penalty units or imprisonment for 6 months, or both.
116DB	Subsections 324CE(1A) and (2)	10 penalty units.
116EA	Subsection 324CF(1)	25 penalty units or imprisonment for 6 months, or both.
116EB	Subsections 324CF(1A) and (2)	10 penalty units.
116FA	Subsection 324CG(1)	25 penalty units or imprisonment for 6 months, or both.
116FB	Subsections 324CG(1A) and (2)	10 penalty units.
116FC	Subsection 324CG(5)	25 penalty units or imprisonment for 6 months, or both.
116FD	Subsections 324CG(5A) and (6)	10 penalty units.
116GA	Section 324CI	25 penalty units or imprisonment for 6 months, or both.

116GB	Section 324CJ	25 penalty units or imprisonment for 6 months, or both.
116GC	Section 324CK	25 penalty units or imprisonment for 6 months, or both.
116H	Subsections 324CM(1), (2) and (3)	25 penalty units or imprisonment for 6 months, or both.
116I	Section 324DB	25 penalty units or imprisonment for 6 months, or both.
116JA	Subsection 324DC(1)	25 penalty units or imprisonment for 6 months, or both.
116JB	Subsection 324DC(2)	10 penalty units.
116KA	Subsections 324DD(1) and (2)	25 penalty units or imprisonment for 6 months, or both.
116KB	Subsection 324DD(3)	10 penalty units.
116LA	Subsection 327A(3)	25 penalty units or imprisonment for 6 months, or both.
116LB	Subsections 327B(1) and (3)	25 penalty units or imprisonment for 6 months, or both.
116LC	Subsection 327C(3)	25 penalty units or imprisonment for 6 months, or both.
116MA	Subsection 328A(4)	25 penalty units or imprisonment for 6 months, or both.
116MB	Subsection 328B(2)	25 penalty units or imprisonment for 6 months, or both.
116NA	Subsections 331AAA(1) and (3)	25 penalty units or imprisonment for 6 months, or both.
116NB	Subsections 331AAB(1) and (2)	25 penalty units or imprisonment for 6 months, or both.
116O	Subsection 342B(1)	5 penalty units.

Part 4—Registration of authorised audit companies

Corporations Act 2001

112 After Part 9.2

Insert:

Part 9.2A—Authorised audit companies

Division 1—Registration

1299A Application for registration as authorised audit company

(1) A company may apply to ASIC for registration as an authorised audit company.

(2) An application under this section:
  (a) must contain such information as is prescribed in the regulations; and
  (b) must be in the prescribed form.

1299B Eligibility for registration as an authorised audit company

A company is eligible to be registered as an authorised audit company if and only if:
  (a) each of the directors of the company:
    (i) is a registered company auditor; and
    (ii) is not disqualified from managing a corporation under Part 2D.6; and
  (b) each share in the company is held and beneficially owned by a person who is:
    (i) an individual; or
    (ii) the legal personal representatives of an individual; and
  (c) a majority of the votes that may be cast at a general meeting of the company attach to shares in the company that are held and beneficially owned by individuals who are registered company auditors; and

(d) ASIC is satisfied that the company has adequate and appropriate professional indemnity insurance for claims that may be made against the company in relation to the audit of companies and registered schemes for the purposes of this Act; and

(e) the company is not an externally-administered body corporate.

1299C Registration as authorised audit company

(1) ASIC must grant the application and register the company as an authorised audit company if the company is eligible to be registered as an authorised audit company. Otherwise ASIC must refuse the application.

(2) If ASIC grants the company's application, ASIC must issue to the company a certificate by ASIC stating that the company has been registered as an authorised audit company and specifying the day on which the application was granted.

(3) The company's registration under this section takes effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:

(a) the registration is cancelled by ASIC; or

(b) the company is wound up.

(4) ASIC must not refuse to register the company as an authorised audit company unless ASIC has given the company an opportunity to be represented at a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter.

(5) If ASIC refuses the company's application, ASIC must, not later than 14 days after the decision, give to the company a notice in writing setting out the decision and the reasons for it.

1299D Registration may be subject to conditions

(1) The company's registration as an authorised audit company is subject to:

(a) the provisions of this Part; and

(b) the conditions or restrictions specified in the regulations; and

(c) any other conditions or restrictions determined by ASIC.

(2) ASIC may determine conditions or restrictions for the purposes of paragraph (1)(c) either at the time when the company is registered as an authorised audit company or subsequently.

(3) ASIC determines a condition or restriction by written notice to the company.

1299E Register of authorised audit companies

(1) ASIC must keep a Register of Authorised Audit Companies for the purposes of this Act.

(2) In relation to each authorised audit company, ASIC must enter in the Register:

(a) the name of the company; and

(b) the company's ACN or ABN; and

(c) the day on which the company's registration under section 1299C took effect; and

(d) the address of the company's registered office; and

(e) the address of the principal place where the company practises as an auditor and the address of the other places (if any) at which the company so practises; and

(f) the name and address of:

(i) each director of the company; and

(ii) each person who performs a chief executive officer function (within the meaning of section 295A) in relation to the company; and

(g) the details of any conditions or restrictions determined under paragraph 1299D(1)(c) in relation to the registration; and

(h) details of any suspension of the registration.

(3) ASIC may enter in the Register in relation to the company any other details that ASIC considers appropriate.

(4) If a company ceases to be registered as an authorised audit company, ASIC must remove the entry in relation to the company from the Register.

(5) A person may inspect and make copies of, or take extracts from, the Register.

1299F Notification of certain matters

(1) An authorised audit company must notify ASIC if a condition or restriction to which the company's registration is subject is contravened.

(2) The notice under subsection (1) must:
  (a) set out details of the contravention; and
  (b) be given within 14 days after the company becomes aware of the contravention; and
  (c) be lodged with ASIC in the prescribed form.

(3) An authorised audit company must notify ASIC if:
  (a) details of a matter are required by subsection 1299E(2) to be entered in the Register of Authorised Audit Companies in relation to the company; and
  (b) a change occurs in that matter while the company is registered as an authorised audit company.

(4) The notice under subsection (3) must:
  (a) set out details of the change; and
  (b) be given within 28 days after the change occurs; and
  (c) be lodged with ASIC in the prescribed form.

(5) A company that applies for registration as an authorised audit company must notify ASIC if:
  (a) details of a matter would be required by subsection 1299E(2) to be entered in the Register of Authorised Audit Companies in relation to the company if it were to be registered; and
  (b) a change occurs in that matter before the application is granted or rejected.

(6) The notice under subsection (5) must:
  (a) set out details of the change; and
  (b) be given within 28 days after the change occurs; and
  (c) be lodged with ASIC in the prescribed form.

1299G Annual statements by authorised audit company

(1) A company that is an authorised audit company must, within one month after the end of:

(a) the period of 12 months beginning on the day on which the company became registered as an authorised audit company; and

(b) each subsequent period of 12 months;

lodge with ASIC a statement in respect of that period.

(1A) A statement under subsection (1):

(a) must contain such information as is prescribed in the regulations; and

(b) must be in the prescribed form.

(2) ASIC may, on the application of an authorised audit company made before the end of the period for lodging a statement under subsection (1), extend, or further extend, that period.

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

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(4) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

Division 2—Cancellation or suspension of registration

1299H Cancellation at request of registered person

(1) ASIC may cancel a company's registration as an authorised audit company if the company requests ASIC to cancel the registration.

(2) ASIC must take the steps necessary to cancel the registration as soon as practicable after the request is made.

1299I Cancellation or suspension in other cases

ASIC may cancel or suspend a company's registration as an authorised audit company if:

(a) the company ceases to be eligible to be registered as an authorised audit company; or

(b) the company fails to meet conditions or observe restrictions imposed on the company's registration as an authorised audit company.

Note: See section 1299K for when the cancellation takes effect.

1299J Notice of cancellation or suspension

(1) If ASIC decides to cancel or suspend a company's registration as an authorised audit company under section 1299I, ASIC must, within 14 days after the decision:

(a) give to the company written notice setting out the decision and the reasons for it; and

(b) publish written notice of the decision in the *Gazette*.

(2) The validity of a decision by ASIC is not affected by a failure by ASIC to comply with subsection (1) in relation to the decision.

1299K Time when ASIC's decision comes into effect

(1) A decision by ASIC to cancel or suspend a company's registration as an authorised audit company comes into effect at the end of the day on which the company is given notice of the decision under paragraph 1299J(1)(a). This subsection has effect subject to subsection (2) and to sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*.

(2) ASIC may, in order to enable an application to be made to the Tribunal for review of the decision to cancel or suspend the registration, determine that the decision to cancel or suspend the company's registration as an authorised audit company is not to come into effect until:

(a) a specified time; or

(b) the happening of a specified event.

(3) ASIC may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.

(4) A determination in force under subsection (2) has effect accordingly.

1299L Effect of suspension

A company whose registration as an authorised audit company is suspended is, except for the purposes of subsection 1299E(4), sections 1299F and 1299G and this Division, taken not to be registered as an authorised audit company so long as the registration is suspended.

1299M Effect of cancellation

If a company's registration as an authorised audit company is cancelled (whether under section 1299H or 1299I), each appointment of the company as auditor for a company or registered scheme for the purposes of this Act that is in force on the day on which the cancellation decision takes effect is terminated at the end of that day.

Note: This means that the authorised audit company ceases to be auditor without resigning and that the position of auditor for the company or scheme will immediately become vacant unless there is another auditor who has been appointed, and who can continue to act, as auditor for the company or registered scheme.

113 Schedule 3 (after table item 332)

Insert:

332A	Subsections 1299F(1), (3) and (5)	5 penalty units
332B	Subsection 1299G(1)	5 penalty units
332C	Subsection 1299G(4)	5 penalty units

Part 5—Auditors and AGMs

Corporations Act 2001

114 At the end of subsection 249V(1)

Add:

Note: Section 250RA imposes on the auditor of a listed public company an obligation to attend or be represented at the AGM.

115 After section 250P

Insert:

250PA Written questions to auditor submitted by members of listed company before AGM

Member may submit question

(1) A member of a listed company who is entitled to cast a vote at the AGM may submit a written question to the auditor under this section if the question is relevant to:

(a) the content of the auditor's report to be considered at the AGM; or

(b) the conduct of the audit of the annual financial report to be considered at the AGM.

The member submits the question to the auditor under this subsection by giving the question to the listed company no later than the fifth business day before the day on which the AGM is held.

(2) Despite the question being one that is addressed to the auditor, the listed company may:

(a) examine the contents of the question; and

(b) make a copy of the question.

Company to pass question on to auditor

(3) The listed company must, as soon as practicable after the question is received by the company, pass the question on to the auditor. The company must pass the question on to the auditor even if the

company believes the question is not relevant to the matters specified in paragraph (1)(a) and (b).

Contravention by individual auditor

(4) If the auditor is an individual auditor, the auditor contravenes this subsection if the auditor does not prepare, and give to the listed company, a document (the ***question list***) that sets out the questions that:

(a) the listed company has passed on to the auditor; and

(b) the auditor considers to be relevant to the matters specified in paragraphs (1)(a) and (b);

as soon as practicable after the end of the time for submitting questions under subsection (1) and a reasonable time before the AGM.

(5) An offence based on subsection (4) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Contravention by lead auditor

(6) A person contravenes this subsection if:

(a) the auditor is an audit firm or audit company; and

(b) the person is the lead auditor for the audit; and

(c) the person does not prepare, and give to the listed company, a document (the ***question list***) that sets out the questions that:

(i) the listed company has passed on to the auditor; and

(ii) the person considers to be relevant to the matters specified in paragraphs (1)(a) or (b);

as soon as practicable after the end of the time for submitting questions under subsection (1) and a reasonable time before the AGM.

(7) An offence based on subsection (6) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Certain questions do not need to be included in question list

(8) A question need not be included in the question list under subsection (4) or (6) if:

(a) the question list includes a question that is the same in substance as that question (even if it is differently expressed); or

(b) it is not practicable to include the question in the question list, or to decide whether to include the question in the question list, because of the time when the question is passed on to the auditor.

Listed company to make question list available at AGM

(9) The listed company must, at or before the start of the AGM, make copies of the question list reasonably available to the members attending the AGM.

116 After section 250R

Insert:

250RA Auditor required to attend listed company's AGM

Contravention by individual auditor

(1) If a listed company's auditor for a financial year is an individual auditor, the auditor contravenes this subsection if:

(a) the auditor does not attend the company's AGM at which the audit report for that financial year is considered; and

(b) the auditor does not arrange to be represented, at that AGM, by a person who:

(i) is a suitably qualified member of the audit team that conducted the audit; and

(ii) is in a position to answer questions about the audit.

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

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Contravention by lead auditor

(3) A person contravenes this subsection if:

(a) a listed company's auditor for a financial year is an audit firm or an audit company; and

(b) the person is the lead auditor for the audit; and

(c) the person is not represented, at the AGM at which the audit report for that financial year is considered, by a person who:

(i) is a suitably qualified member of the audit team that conducted the audit; and

(ii) is in a position to answer questions about the audit.

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

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

117 Subsections 250T(1) and (2)

Repeal the subsections, substitute:

(1) If the company's auditor or their representative is at the meeting, the chair of an AGM must:

(a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:

(i) the conduct of the audit; and

(ii) the preparation and content of the auditor's report; and

(iii) the accounting policies adopted by the company in relation to the preparation of the financial statements; and

(iv) the independence of the auditor in relation to the conduct of the audit; and

(b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA.

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

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) If :

(a) the company's auditor or their representative is at the meeting; and

(b) the auditor has prepared a written answer to a written question submitted to the auditor under section 250PA;

the Chair of the AGM may permit the auditor or their representative to table the written answer to the written question.

(4) The listed company must make the written answer tabled under subsection (3) reasonably available to members as soon as practicable after the AGM.

118 At the end of subsection 317(1)

Add:

Note 3: Section 250RA imposes on the auditor of a listed public company an obligation to attend or be represented at the AGM.

119 Schedule 3 (after table item 68)

Insert:

68A	Subsections 250PA(3), (4), (6) and (9)	5 penalty units.
68B	Subsections 250RA(1) and (3)	10 penalty units.

120 Schedule 3 (table item 70)

Repeal the item, substitute:

70	Subsections 250T(1) and (4)	5 penalty units.

Part 6—Qualified Privilege

Corporations Act 2001

121 Section 990L

Repeal the section, substitute:

990L Qualified privilege for auditor etc.

Qualified privilege for auditor

(1) An auditor of the licensee has qualified privilege in respect of:
  (a) a statement that the auditor makes, orally or in writing, in the course of the auditor's duties as auditor; or
  (b) the lodging of a report under subsection 990K(1); or
  (c) the sending of a report to:
    (i) the licensee; or
    (ii) a licensed market or a licensed CS facility;
  under subsection 990K(1); or
  (d) a disclosure made by the auditor in response to a notice given to the auditor under subsection 225A(5) of the ASIC Act.

Note: If the auditor is an audit company, the company has qualified privilege under this subsection in respect of statements made, and reports lodged or sent, by individuals on behalf of the company if those statements and notices can be properly attributed to the company.

Qualified privilege for registered company auditor acting on behalf of audit company

(2) If the auditor of the licensee is an audit company, a registered company auditor acting on behalf of the company has qualified privilege in respect of:
  (a) a statement that the registered company auditor makes (orally or in writing) in the course of the performance, on behalf of the company, of the company's duties as auditor; or
  (b) the lodging by the registered company auditor, on behalf of the company, of a report under subsection 990K(1); or
  (c) the sending by the registered company auditor, on behalf of the company, of a report to:

(i) the licensee; or

(ii) a licensed market or a licensed CS facility;

under subsection 990K(1); or

(d) a disclosure made by the registered company auditor in response to a notice given to the audit company under subsection 225A(5) of the ASIC Act.

Qualified privilege for subsequent publication

(3) A person has qualified privilege in respect of the publishing of a document:

(a) prepared by an auditor of the licensee in the course of the auditor's duties as auditor; or

(b) required by or under this Chapter to be lodged with ASIC (whether or not the document has been so lodged).

(4) A person has qualified privilege in respect of the publishing of a statement:

(a) made by an auditor of the licensee as mentioned in subsection (1); or

(b) a statement made by a registered company auditor as mentioned in subsection (2).

122 Section 1289

Repeal the section, substitute:

1289 Auditors and other persons to enjoy qualified privilege in certain circumstances

Qualified privilege for auditor

(1) An auditor has qualified privilege in respect of:

(a) a statement that the auditor makes (orally or in writing) in the course of the auditor's duties as auditor; or

(b) a statement that the auditor makes (orally or in writing) on:

(i) a directors' report under section 298 or 306; or

(ii) a statement, report or other document that is taken, for any purpose, to be part of that report; or

(c) notifying ASIC of a matter under section 311; or

(d) a disclosure made by the auditor in response to a notice given to the auditor under subsection 225A(5) of the ASIC Act.

Note: If the auditor is an audit company, the company has qualified privilege under this subsection in respect of statements made, and notices given, by individuals on behalf of the company if those statements and notices can be properly attributed to the company.

Qualified privilege for registered company auditor acting on behalf of audit company

(2) If the auditor is an audit company, a registered company auditor acting on behalf of the company has qualified privilege in respect of:

(a) a statement that the registered company auditor makes (orally or in writing) in the course of the performance, on the behalf of the company, of the company's duties as auditor; or

(b) a statement that the registered company auditor makes (orally or in writing), on behalf of the company, on:

(i) a directors' report under section 298 or 306; or

(ii) any statement, report or other document that is taken, for any purpose, to be part of that report; or

(c) a notification of a matter that the registered company auditor gives ASIC, on behalf of the company, under section 311; or

(d) a disclosure made by the registered company auditor in response to a notice given to the audit company under subsection 225A(5) of the ASIC Act.

Extent of auditor's duties—answering questions put to auditor by members

(3) For the purposes of this section, an auditor's duties as auditor include:

(a) answering questions put to the auditor (or the auditor's representative) at an AGM; and

(b) providing answers to questions that are submitted to the auditor under section 250PA.

Qualified privilege for person representing auditor at AGM

(4) A person who represents an auditor at an AGM has qualified privilege in respect of any statement that the person makes in the course of representing the auditor at that AGM.

Qualified privilege for subsequent publication

(5) A person has qualified privilege in respect of the publishing of a document that:

(a) is prepared by an auditor in the course of the auditor's duties; or

(b) required by or under this Act to be lodged (whether or not the document has been lodged).

(6) A person has qualified privilege in respect of the publishing of any statement:

(a) made by an auditor as mentioned in subsection (1); or

(b) made by a registered company auditor as mentioned in subsection (2); or

(c) made by a person as mentioned in subsection (4).

Part 7—Expansion of auditors' duties

Corporations Act 2001

123 Section 311

Repeal the section, substitute:

311 Reporting to ASIC

Contravention by individual auditor

(1) An individual auditor conducting an audit contravenes this subsection if:

(a) the auditor is aware of circumstances that:

(i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or

(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(b) if subparagraph (a)(i) applies:

(i) the contravention is a significant one; or

(ii) the contravention is not a significant one and the auditor 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; and

(c) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

Contravention by audit company

(2) An audit company conducting an audit contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that:
(i) the lead auditor has reasonable grounds to suspect amount to a contravention of this Act; or
(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
(b) if subparagraph (a)(i) applies:
(i) the contravention is a significant one; or
(ii) the contravention is not a significant one and the lead auditor 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; and
(c) the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

Contravention by lead auditor

(3) A person contravenes this subsection if:
(a) the person is the lead auditor for an audit; and
(b) the person is aware of circumstances that:
(i) the person has reasonable grounds to suspect amount to a contravention of this Act; or
(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (6)); or
(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and
(c) if subparagraph (b)(i) applies:
(i) the contravention is a significant one; or
(ii) the contravention is not a significant one and the person 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; and

(d) the person does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances.

Significant contraventions

(4) In determining for the purposes of this section whether a contravention of this Act is a significant one, have regard to:

(a) the level of penalty provided for in relation to the contravention; and

(b) the effect that the contravention has, or may have, on:

(i) the overall financial position of the company, registered scheme or disclosing entity; or

(ii) the adequacy of the information available about the overall financial position of the company, registered scheme or disclosing entity; and

(c) any other relevant matter.

(5) Without limiting paragraph (4)(a), a penalty provided for in relation to a contravention of a provision of Part 2M.2 or 2M.3 includes a penalty imposed on a director, because of the operation of section 344, for failing to take reasonable steps to comply with, or to secure compliance with, that provision.

Person involved in an audit

(6) In this section:

person involved in the conduct of an audit means:

(a) the auditor; or

(b) the lead auditor for the audit; or

(c) the review auditor for the audit; or

(d) a professional member of the audit team for the audit; or

(e) any other person involved in the conduct of the audit.

124 Subsection 601HG(4)

Repeal the subsection, substitute:

Contravention by individual auditor

(4) An individual auditor conducting an audit of a compliance plan contravenes this subsection if:

(a) the auditor is aware of circumstances that:

(i) the auditor has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (12)); or

(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(b) if subparagraph (a)(i) applies:

(i) the contravention is a significant one; or

(ii) the contravention is not a significant one and the auditor 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; and

(c) the auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

Contravention by audit company

(4A) An audit company conducting an audit of a compliance plan contravenes this subsection if:

(a) the lead auditor for the audit is aware of circumstances that:

(i) the lead auditor has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (12)); or

(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(b) if subparagraph (a)(i) applies:

(i) the contravention is a significant one; or

(ii) the contravention is not a significant one and the lead auditor 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; and

(c) the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances.

Contravention by lead auditor

(4B) A person contravenes this subsection if:

(a) the person is the lead auditor for an audit of a compliance plan; and

(b) the person is aware of circumstances that:

(i) the person has reasonable grounds to suspect amount to a contravention of this Act; or

(ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (see subsection (12)); or

(iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit; and

(c) if subparagraph (b)(i) applies:

(i) the contravention is a significant one; or

(ii) the contravention is not a significant one and the person 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; and

(d) the person does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the person becomes aware of those circumstances.

125 Subsection 601HG(7A)

Omit "(4),".

126 At the end of section 601HG

Add:

Significant contraventions

(10) In determining for the purposes of this section whether a contravention of this Act is a significant one, have regard to:

(a) the level of penalty provided for in relation to the contravention; and

(b) the effect that the contravention has, or may have, on:

(i) the overall financial position of the company, registered scheme or disclosing entity; or

(ii) the adequacy of the information available about the overall financial position of the company, registered scheme or disclosing entity; and

(c) any other relevant matter.

(11) Without limiting paragraph (10)(a), a penalty provided for in relation to a contravention of a provision of Part 2M.2 or 2M.3 includes a penalty imposed on a director, because of the operation of section 344, for failing to take reasonable steps to comply with, or to secure compliance with, that provision.

Person involved in audit

(12) In this section:

person involved in the conduct of an audit means:

(a) the auditor; or

(b) the lead auditor for the audit; or

(c) the review auditor for the audit; or

(d) a professional member of the audit team for the audit; or

(e) any other person involved in the conduct of the audit.

127 At the end of subsection 990K(2)

Add:

; or (c) constitutes an attempt to unduly influence, coerce, manipulate or mislead the auditor in the conduct of the audit.

128 Schedule 3 (table item 105)

Repeal the item, substitute:

105	Subsection 311(1), (2) or (3)	50 penalty units or imprisonment for 1 year, or both.

129 Schedule 3 (after table item 168)

Insert:

168A	Subsection 601HG(4), (4A) or (4B)	50 penalty units or imprisonment for 1 year, or both.

Part 8—Companies Auditors and Liquidators Disciplinary Board

Australian Securities and Investments Commission Act 2001

130 Subsection 5(1)

Insert:

accounting member of the Disciplinary Board has the meaning given by subsection 203(1A).

131 Subsection 5(1)

Insert:

business member of the Disciplinary Board has the meaning given by subsection 203(1A).

132 Subsection 5(1)

Insert:

CPAA member of the Disciplinary Board has the meaning given by subsection 203(1A).

133 Subsection 5(1)

Insert:

ICAA member of the Disciplinary Board has the meaning given by subsection 203(1A).

134 Subsection 5(1)

Insert:

Panel of the Disciplinary Board means a Panel constituted by the Chairperson of the Disciplinary Board under section 210A to hear a particular matter.

135 Subsection 203(1)

Repeal the subsection, substitute:

(1) The Disciplinary Board consists of:

(a) a Chairperson; and

(b) a Deputy Chairperson; and

(c) 3 members that the Minister selects from a panel of 7 persons nominated by the Board of the Institute of Chartered Accountants in Australia; and

(d) 3 members that the Minister selects from a panel of 7 persons nominated by the Board of Directors of CPA Australia; and

(e) 6 members that the Minister selects who are eligible under subsection (2A) for appointment as a member.

(1A) The ***accounting members*** are the members appointed under paragraphs (1)(c) and (d). Of the accounting members, the ***ICAA members*** are the members appointed under paragraph (1)(c) and the ***CPAA members*** are the members appointed under paragraph (1)(d). The ***business members*** are the members appointed under paragraph (1)(e).

(1B) A person must not be nominated under paragraph (1)(c) or (d) unless the person is resident in Australia.

136 Subsection 203(2)

After "Chairperson", insert "or Deputy Chairperson".

137 After subsection 203(2)

Insert:

(2A) A person is eligible under this subsection for appointment as a business member if:

(a) the person is resident in Australia; and

(b) the Minister is satisfied that the person is suitable for the appointment as a representative of the business community because of the person's qualifications in, knowledge of or experience in one or more of the following fields:

(i) business or commerce;

(ii) the administration of companies;

(iii) financial markets;

(iv) financial products and financial services;

(v) economics;

(vi) law.

138 Subsection 203(3)

After "Chairperson", insert ", the Deputy Chairperson".

139 Section 205

Omit "each other member and each deputy of a member", substitute "the Deputy Chairperson and each other member".

140 Section 206

Omit "member or deputy of a member", substitute "Deputy Chairperson or member".

141 Subsection 207(1)

Omit "any other member or a deputy of a member", substitute "the Deputy Chairperson or any other member".

142 Subsection 207(2)

Omit "any other member or a deputy of a member", substitute "the Deputy Chairperson or any other member".

143 Paragraph 207(2)(a)

Omit "(being, in the case of a deputy of a member, meetings that the deputy is required to attend)".

144 Section 208

Repeal the section, substitute:

208 Acting Chairperson

(1) The Deputy Chairperson is to act as Chairperson:

(a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); and

(b) during all periods when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

This subsection does not, however, operate to substitute the Deputy Chairperson for the Chairperson as a member of a particular Panel of the Disciplinary Board.

(2) The Minister may appoint a person who is eligible for appointment as Chairperson to act as Chairperson:

(a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(3) A person appointed under subsection (2) may only act as the Chairperson during a period if:

(a) there is a vacancy in the office of Deputy Chairperson during that period; or

(b) the Deputy Chairperson is, for any reason, unable to perform the duties of the office of Chairperson during that period.

(4) Anything done by, or in relation to, a person purporting to act under subsection (1) or under an appointment under subsection (2) is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

208A Acting Deputy Chairperson

(1) The Minister may appoint a person who is eligible for appointment as Deputy Chairperson to act as Deputy Chairperson:

(a) during a vacancy in the office of Deputy Chairperson (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office; or

(c) during any period during which the Deputy Chairperson is acting as Chairperson under subsection 208(1).

(2) Anything done by, or in relation to, a person purporting to act under an appointment under subsection (1) is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

145 Section 209

Repeal the section.

146 Before subsection 210(1)

Insert:

(1A) This section has effect subject to section 210B (meetings of Panel of the Disciplinary Board).

Note: The heading to section 210 is altered by adding at the end "**of the Disciplinary Board**".

147 Subsection 210(3)

Omit "one member", substitute "any 5 other members (of which the Deputy Chairperson may be one)".

148 After section 210

Insert:

210A Panel to be constituted to deal with application

(1) The Disciplinary Board's functions and powers in relation to the following matters:

(a) an application to the Disciplinary Board by ASIC or APRA for a person to be dealt with under section 1292 of the Corporations Act;

(b) an application by a person to the Disciplinary Board under section 1295 of the Corporations Act for the termination of the suspension of the person's registration as an auditor or liquidator;

(c) determining whether the Disciplinary Board should, of its own motion, terminate the suspension of a person's registration as an auditor or liquidator under section 1295 of the Corporations Act;

are to be performed and exercised by a Panel of the Disciplinary Board constituted under subsection (2).

(2) The Chairperson is to determine, in writing, the members of the Disciplinary Board who are to constitute the Panel of the Disciplinary Board that is to hear the matter.

(3) Without limiting subsection (2), the Chairperson may determine that a Panel of the Disciplinary Board constituted in a particular manner is to hear matters of a particular kind, or that satisfy particular criteria, specified in the determination.

(4) The Panel is to be constituted as either:

(a) a 5 person Panel consisting of:

(i) the Chairperson or Deputy Chairperson; and

(ii) 2 accounting members; and

(iii) 2 business members; or

(b) a 3 person Panel consisting of:

(i) the Chairperson or Deputy Chairperson; and

(ii) 1 accounting member; and

(iii) 1 business member.

In relation to the Panel, the Chairperson or the Deputy Chairperson is the ***Panel Chairperson***.

(5) If the Chairperson is satisfied that it is practicable, and appropriate, to do so, the Chairperson is to constitute the Panel so that:

(a) it is a 5 person Panel; and

(b) if it is a 5 person Panel, it has 1 ICAA member and 1 CPAA member.

(6) This subsection applies if:

(a) a hearing in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Board; and

(b) before the matter to which the proceeding relates has been determined, one of the members constituting the Panel has:

(i) ceased to be a member; or

(ii) ceased to be available as a member of the Panel.

(7) If subsection (6) applies:

(a) the hearing and determination, or the determination, of the proceedings may be completed by the Panel constituted by the remaining member or members of the Panel if the parties to the proceedings agree; and

(b) otherwise the matter must be reheard by a new Panel constituted by the Chairperson under subsection (2).

(8) If a matter is reheard under paragraph (7)(b), the new Panel may, for the purposes of performing or exercising the Disciplinary Board's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

210B Meetings of Panel of the Disciplinary Board

(1) The Panel Chairperson of a Panel of the Disciplinary Board must:
   (a) convene such meetings of the Panel as the Panel Chairperson considers necessary for the performance of the Panel's functions; and
   (b) preside at all meetings of the Panel.

(2) At a meeting of a 5 person Panel of the Board, a quorum is constituted by:
   (a) the Panel Chairperson; and
   (b) an accounting member; and
   (c) a business member.

   This subsection has effect subject to subsection 210A(7).

(3) At a meeting of a 3 person Panel of the Board, a quorum is constituted by:
   (a) the Panel Chairperson; and
   (b) the accounting member.

   This subsection has effect subject to subsection 210A(7).

(4) A question arising at a meeting of a Panel of the Disciplinary Board must be determined by a majority of the votes of the members of the Panel present and voting.

(5) At a meeting of a Panel of the Disciplinary Board, the Panel Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(6) Subject to this Part, the procedures for convening meetings of a Panel of the Disciplinary Board and for the conduct of business by a Panel of the Disciplinary Board must be as the Disciplinary Board determines.

149 Subsection 211(1)

Repeal the subsection.

150 Subsection 211(2)

After "Disciplinary Board" (first occurring), insert "or a Panel of the Disciplinary Board".

151 Subsection 211(2)

After "Disciplinary Board" (second occurring), insert "or the Panel".

152 Subsections 211(3) and (4)

After "Disciplinary Board" (wherever occurring), insert "or the Panel".

153 Subsection 212(1)

Repeal the subsection.

154 After subsection 213(1)

Insert:

(1A) For the purposes of this section, information given to a Panel of the Disciplinary Board is taken to be given to the Disciplinary Board.

155 Before paragraph 213(2)(b)

Insert:

(ab) in order to enable or assist:

(i) a professional accounting body; or

(ii) another body prescribed by the regulations for the purposes of this paragraph;

to perform its disciplinary function in relation to its members; or

156 Section 215 (definition of *hearing*)

After "held by", insert "a Panel of".

157 Subsection 216(1)

Repeal the subsection, substitute:

(1) A Panel of the Disciplinary Board constituted to hear a matter may, at a meeting of the Panel, hold a hearing for the purpose of

performing or exercising the Disciplinary Board's functions or powers in relation to that matter.

158 Subsections 216(3), (4), (5) and (6)

Omit "Disciplinary Board" (wherever occurring), substitute "Panel".

159 Subsection 216(7)

Omit "Disciplinary Board" (first occurring), substitute "Panel".

160 Subsection 216(7)

Omit "(other than the Chairperson, a member, or a member of the staff of the Disciplinary Board approved by the Disciplinary Board)", substitute "(other than the Panel Chairperson, a member of the Panel or a member of the staff of the Disciplinary Board approved by the Panel)".

161 Subsection 216(8)

Omit "Disciplinary Board" (wherever occurring), substitute "Panel".

162 Subsection 216(9)

Omit "Disciplinary Board" (second occurring), substitute "Panel".

163 Subsection 216(10)

Repeal the subsection, substitute:

(10) The Panel must take into account:

(a) a submission made to or evidence adduced before the Panel; and

(b) a submission lodged with the Disciplinary Board in relation to the matter to which the hearing relates;

when making any decision on the matter to which the submission or evidence relates.

164 Subsection 217(1)

Omit "Chairperson or a member", substitute "Panel Chairperson or a member of the Panel".

165 Subsection 217(2)

Omit "Disciplinary Board", substitute "Panel".

166 Subsection 217(2)

Omit "Chairperson", substitute "Panel Chairperson".

167 Subsections 218(1), (2), (3) and (5)

Omit "Disciplinary Board" (wherever occurring), substitute "Panel".

168 Paragraph 219(1)(b)

Omit "Chairperson", substitute "Panel Chairperson".

169 Paragraph 219(2)(b)

Omit "Chairperson", substitute "Panel Chairperson".

170 Subsection 219(6)

Omit "Disciplinary Board", substitute "Panel".

171 Subparagraph 219(6)(b)(ii)

Omit "Chairperson", substitute "Panel Chairperson".

172 Subsection 219(6)

Omit "Chairperson" (last occurring), substitute "Panel Chairperson".

173 Paragraph 220(1)(a)

Repeal the paragraph, substitute:

(a) engage in conduct that results in the obstruction or hindering of a Panel of the Disciplinary Board, or a member of the Panel, in the performance or exercise of any of the Disciplinary Board's functions or powers; or

174 Subsection 221(1)

Omit "Chairperson or a member" (wherever occurring), substitute "Panel Chairperson or a member of the Panel".

175 Subsections 223(1), (2), (3), (4) and (5)

Omit "Disciplinary Board" (wherever occurring), substitute "Panel".

Corporations Act 2001

176 Subsection 1292(10)

Repeal the subsection, substitute:

(10) The Board's powers under subsection (9) may be exercised in addition to, or in substitution for, the exercise of the Board's powers to cancel or suspend a registration under subsections (1) to (6).

177 After subsection 1296(1)

Insert:

(1A) If:

(a) the Board decides to exercise the power, or makes the order, on the basis of particular conduct engaged in by the person; and

(b) the person engaged in that conduct in the course of participating in the conduct of an audit on behalf of an audit firm or audit company;

the notice under paragraph (1)(c) may identify the audit firm or audit company.

178 Subsection 1317B(2)

Omit "ASIC is taken to be a person", substitute "ASIC and APRA are taken to be persons".

Schedule 2—Financial reporting

Part 1—CEO and CFO declarations in relation to listed entity's financial report

Corporations Act 2001

1 At the end of subsection 295(4) (before the note)

Add:

; and (e) if the company, disclosing entity or registered scheme is listed—that the directors have been given the declarations required by section 295A.

2 After section 295

Insert:

295A Declaration in relation to listed entity's financial statements by chief executive officer and chief financial officer

(1) If the company, disclosing entity or registered scheme is listed, the directors' declaration under subsection 295(4) must be made only after each person who performs:

(a) a chief executive function; or

(b) a chief financial officer function;

in relation to the company, disclosing entity or registered scheme has given the directors a declaration under subsection (2) of this section.

(2) The declaration is a declaration whether, in the person's opinion:

(a) the financial records of the company, disclosing entity or registered scheme for the financial year have been properly maintained in accordance with section 286; and

(b) the financial statements, and the notes referred to in paragraph 295(3)(b), for the financial year comply with the accounting standards; and

(c) the financial statements and notes for the financial year give a true and fair view (see section 297); and

(d) any other matters that are prescribed by the regulations for the purposes of this paragraph in relation to the financial statements and the notes for the financial year are satisfied.

(3) The declaration must:

(a) be made in writing; and

(b) specify the date on which the declaration is made; and

(c) specify the capacity in which the person is making the declaration; and

(d) be signed by the person making the declaration.

A person who performs both a chief executive function and a chief financial officer function may make a single declaration in both capacities.

(4) A person performs a ***chief executive function*** in relation to the company, disclosing entity or registered scheme if the person is the person who is primarily and directly responsible to the directors for the general and overall management of the company, disclosing entity or registered scheme.

(5) If there is no one person who performs a chief executive function in relation to the company, disclosing entity or registered scheme under subsection (4), a person performs a ***chief executive function*** in relation to the company, disclosing entity or registered scheme if the person is one of a number of people who together are primarily and directly responsible to the directors for the general and overall management of the company, disclosing entity or registered scheme.

(6) A person performs a ***chief financial officer function*** in relation to the company, disclosing entity or registered scheme if that person is the person who is:

(a) primarily responsible for financial matters in relation to the company, disclosing entity or registered scheme; and

(b) directly responsible for those matters to either:

(i) the directors; or

(ii) the person or persons who perform the chief executive function in relation to the company.

(7) If there is no one person who performs a chief financial officer function in relation to the company, disclosing entity or registered scheme under subsection (6), a person performs a ***chief financial***

officer function in relation to the company, disclosing entity or registered scheme if the person is one of a number of people who together are:

(a) primarily responsible for financial matters in relation to the company, disclosing entity or registered scheme; and

(b) directly responsible for those matters to either:

(i) the directors; or

(ii) the person or persons who perform the chief executive function in relation to the company.

(8) Nothing in this section derogates from the responsibility that a director has for ensuring that financial statements comply with this Act.

Part 2—Content of directors' report for listed public companies

Corporations Act 2001

3 Subsection 285(1) (table item 2, column 3)

Omit "The report has both a general component (s. 299) and a specific component (s. 300).", substitute "The report has a general component (sections 299 and 299A), a specific component (section 300) and a special component for listed companies (section 300A).".

4 Paragraph 298(1)(a)

Omit "section 299", substitute "sections 299 (all entities) and 299A (additional requirements for listed public companies)".

5 Paragraph 298(1)(b)

Omit "section 300", substitute "sections 300 and 300A".

6 After section 299

Insert:

299A Annual directors' report—additional general requirements for listed public companies

(1) The directors' report for a financial year for a company or disclosing entity that is a listed public company must also contain information that members of the company would reasonably require to make an informed assessment of:

(a) the operations of the entity reported on; and

(b) the financial position of the entity; and

(c) the entity's business strategies and its prospects for future financial years.

(2) The entity reported on is:

(a) the company or disclosing entity that is a listed public company (if consolidated financial statements are not required); or

(b) the consolidated entity (if consolidated financial statements are required).

(3) The report may omit material that would otherwise be included under paragraph (1)(c) if it is likely to result in unreasonable prejudice to:

(a) the company or disclosing entity; or

(b) if consolidated financial statements are required—the consolidated entity or any entity (including the company or disclosing entity) that is part of the consolidated entity.

If material is omitted, the report must say so.

7 Subsection 300(1)

After "(13)", insert "of this section and section 300A".

8 Subparagraph 314(1)(a)(ii)

Omit "300", substitute "300A".

9 Paragraph 314(2)(b)

Omit "300", substitute "300A".

Part 3—Financial Reporting Panel

Australian Securities and Investments Commission Act 2001

10 Paragraph 1(1)(d)

Before "and a Parliamentary", insert ", a Financial Reporting Panel".

11 After Part 12

Insert:

Part 13—Financial Reporting Panel

Division 1—General

239AA Financial Reporting Panel

A Financial Reporting Panel is established.

239AB Membership

(1) The Financial Reporting Panel consists of such members, not fewer than 5, as hold office in accordance with this Part.

(2) The Minister is to appoint the members of the Financial Reporting Panel.

(3) Each of the members may be appointed as a full-time member or as a part-time member.

(4) The Minister must not appoint a person as a member unless the Minister is satisfied that the person is qualified for appointment because of his or her knowledge of, or experience in, one or more of the following fields:

(a) accounting;
(b) auditing;
(c) business;
(d) the administration of companies;
(e) law.

(5) The performance of the functions or the exercise of the powers of the Financial Reporting Panel is not affected merely because its membership is not as prescribed by subsection (1), unless a continuous period of 3 months has elapsed since its membership ceased to be as so prescribed.

239AC Chairperson

The Minister is to appoint as Chairperson of the Financial Reporting Panel a person who is, or is to be, a member.

239AD Functions and powers of Financial Reporting Panel

The Financial Reporting Panel has the functions and powers conferred on it by or under the Corporations legislation.

239AE Term of office as member

(1) Subject to this Act, a person appointed as a member holds office for the term specified in the instrument of appointment, but is eligible for re-appointment.

(2) The term specified must not exceed 5 years.

239AF Term of office as Chairperson

(1) Subject to this Act, a person appointed as Chairperson holds office as such until:

(a) the end of his or her current term as a member; or

(b) he or she otherwise stops being a member;

whichever happens first.

(2) A person is not ineligible to be appointed under section 239AC merely because he or she has been so appointed before.

239AG Resignation

A person may resign as a member or Chairperson by writing signed and delivered to the Minister.

239AH Termination of appointment

The Minister may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or

(b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or

(c) is a full-time member and is absent from duty, except on leave granted in accordance with section 239AJ, for 14 consecutive days, or for 28 days in any period of 12 months; or

(d) without reasonable excuse, contravenes section 239BB.

239AI Remuneration and allowances

(1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.

(2) A member must be paid such allowances as the Minister determines in writing.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

239AJ Leave of absence

(1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

239AK Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines in writing.

239AL Acting Chairperson

(1) The Minister may appoint a member to act as Chairperson:
   (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
   (b) during all periods when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

(2) Anything done by, or in relation to, a person purporting to act under an appointment under subsection (1) is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

239AM Annual report

(1) The Financial Reporting Panel must, as soon as practicable after 30 June, and in any event before 31 October, in each year:
   (a) prepare a report describing the operations of the Panel during the year that ended on 30 June in that year; and
   (b) give to the Minister a copy of the report.

(2) If a copy of a report is given to the Minister under subsection (1), he or she must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he or she receives the first-mentioned copy.

Division 2—Conduct of Financial Reporting Panel's business

239BA Constitution of Financial Reporting Panel in relation to particular matters

(1) The Financial Reporting Panel must, for the purposes of the performance or exercise of its functions or powers in relation to a particular matter, be constituted by 3 members in respect of whom a direction is in force under this section in relation to that matter.

(2) The Chairperson may give directions about the members (the ***sitting members***) who are to constitute the Financial Reporting Panel for the purposes of performing or exercising its functions or powers in relation to particular matters.

(3) A direction under subsection (2) must:

(a) unless the sitting members include the Chairperson—designate one of them as Chairperson; and

(b) in any case—designate one of the sitting members as Deputy Chairperson;

of the Financial Reporting Panel as constituted in relation to the matter concerned.

(4) If the Chairperson gives a direction as to the sitting members, he or she may:

(a) revoke the direction and give a new direction under subsection (2) as to the sitting members; or

(b) vary the direction to replace one or more of the sitting members;

at any time after the giving of the direction and before the commencement of proceedings in relation to the matter.

(5) If:

(a) the Chairperson gives a direction as to the sitting members; and

(b) one of those persons:

(i) ceases to be a member; or

(ii) ceases to be available for the purposes of proceedings in relation to a matter;

during the proceedings or after the completion of the proceedings but before the report on the matter to which the proceedings relate is finalised;

the Chairperson may vary the direction to replace that person at any time after the person so ceases to be a member or to be available.

239BB Disclosure of interests by members

(1) If:

(a) a member is, or is to be, a member of the Financial Reporting Panel as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter; and

(b) the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter;

the member:

(c) must disclose the interest to the Chairperson and to the parties involved in the matter; and

(d) except with the Chairperson's consent, must not take part in the performance or exercise of the Financial Reporting Panel's functions or powers in relation to the matter.

(2) The Chairperson must not, under paragraph (1)(d), consent to a member taking part in the performance or exercise of the Financial Reporting Panel's functions or powers in relation to a matter unless the Chairperson believes, on reasonable grounds, that the member's interest:

(a) is immaterial or indirect; and

(b) will not prevent the member from acting impartially in relation to the matter.

(3) If the Chairperson becomes aware that a member who is, or is to be, a member of the Financial Reporting Panel (as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter) has, in relation to that matter, an interest of the kind referred to in subsection (1):

(a) the Chairperson must revoke the direction given under subsection 239BA(2) in relation to the matter unless the

Chairperson believes, on reasonable grounds, that the member's interest:

(i) is immaterial or indirect; and

(ii) will not prevent the member from acting impartially in relation to the matter; or

(b) if the Chairperson is not required to revoke that direction under paragraph (a), the Chairperson must cause the member's interest to be disclosed to the parties involved in the matter.

239BC Application of Division 2 of Part 7

Division 2 of Part 7 applies in relation to the Financial Reporting Panel as if a reference in section 127 to ASIC included a reference to the Financial Reporting Panel.

Division 3—Financial Reporting Panel proceedings

239CA Interpretation

(1) For the purposes of the performance or exercise, in relation to a particular matter, of any of the Financial Reporting Panel's functions and powers, this Division has effect as if:

(a) a reference to the Financial Reporting Panel were a reference to the Financial Reporting Panel as constituted in relation to that matter; and

(b) a reference to a member were a reference to a member of the Financial Reporting Panel as so constituted; and

(c) if the Chairperson is not a member of the Financial Reporting Panel as so constituted—a reference to the Chairperson were a reference to the member designated, in a direction in force under subsection 239BA(2), as the Chairperson of the Financial Reporting Panel as so constituted; and

(d) a reference to the Deputy Chairperson were a reference to the member designated, in a direction in force under subsection 239BA(2), as Deputy Chairperson of the Financial Reporting Panel as so constituted.

(2) A reference in this Division to Financial Reporting Panel proceedings includes a reference to a part of the Financial Reporting Panel proceedings.

239CB Power to conduct proceedings

(1) The Financial Reporting Panel may conduct proceedings for the purposes of the performance or exercise of any of its functions and powers.

(2) The Chairperson may convene proceedings to be held at a place and time he or she determines.

239CC Financial Reporting Panel proceedings

Proceedings in private

(1) Subject to subsection (2), the Financial Reporting Panel's proceedings must take place in private.

Proceedings in public

(2) The proceedings must take place in public if the lodging entity requests the Panel, in writing, that the proceedings take place in public. This subsection has effect subject to any directions under subsection (3).

Part of proceedings in private or publication restrictions

(3) The Financial Reporting Panel may give directions under subsection (4) if:

(a) the proceedings are taking place in public at the request of the lodging entity under subsection (2); and

(b) the Financial Reporting Panel is satisfied that it is desirable to do so:

(i) because of the confidential nature of any evidence or matter; or

(ii) in order to protect the interests of any other person.

(4) The Financial Reporting Panel may:

(a) direct that a part of the proceedings take place in private; and

(b) give directions as to the persons who may be present at that part of the proceedings if it is to take place in private.

A reference in this section to proceedings that take place in private includes a reference to that part of the proceedings that takes place in private because of a direction under paragraph (a).

Who may be present at proceedings taking place in private

(5) The Financial Reporting Panel may give directions as to the persons who may be present at proceedings that take place in private.

(6) A person must not be present at proceedings that take place in private unless the person is:

(a) the Chairperson; or

(b) a member of the Financial Reporting Panel; or

(c) a person representing the lodging entity; or

(d) another person who is entitled to be given an opportunity to appear at the proceedings; or

(e) a person representing ASIC; or

(f) a member of the staff of the Financial Reporting Panel approved by the Panel; or

(g) entitled to be present because of a direction under subsection (4).

Penalty: 10 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

ASIC and person entitled to appear

(8) Nothing in a direction given by the Financial Reporting Panel under paragraph (3)(a) or subsection (6) prevents the presence at the proceedings of:

(a) a person representing ASIC; or

(b) a person who is entitled to be given an opportunity to appear at the proceedings.

Note: Although ASIC is entitled to have a representative at the proceedings, it is not entitled to be legally represented (see section 239CG).

(9) The Financial Reporting Panel may revoke or vary a direction given under subsection (4).

239CD Financial Reporting Panel may restrict publication of certain material

(1) If, during Financial Reporting Panel proceedings, the Panel is satisfied that it is desirable to do so, the Panel may give directions preventing or restricting the publication of:

(a) submissions or evidence made or given to the Panel; or

(b) matters contained in documents lodged with the Panel.

(2) In determining whether or not to give a direction under subsection (1), the Financial Reporting Panel must have regard to:

(a) whether:

(i) submissions or evidence made or given, or that may be made or given; or

(ii) a matter that has arisen or may arise;

during the proceedings is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and

(b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Panel exercises its powers under this section; and

(c) whether it is in the public interest that the Panel exercises its powers under this section; and

(d) any other relevant matter.

(3) A person must not contravene a direction given under subsection (1).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

(4) An offence constituted by a contravention of subsection (3) is punishable on summary conviction.

(5) The Financial Reporting Panel may revoke or vary a direction given under subsection (1).

239CE Power to summon witnesses and take evidence

(1) A member may, by written summons in the prescribed form given to a person to whom subsection (2) applies:

(a) require the person to appear before the Financial Reporting Panel at Financial Reporting Panel proceedings to give evidence, to produce specified documents, or to do both; and

(b) require the person to attend from day to day unless excused, or released from further attendance, by a member.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 239CJ).

(2) This subsection applies to:

(a) a staff member of ASIC; or

(b) an officer of the lodging entity; or

(c) the auditor, or a professional member of the audit team, for the audit of the relevant financial report; or

(d) any other person involved in preparing, or auditing, the relevant financial report for or on behalf of the lodging entity.

(3) In Financial Reporting Panel proceedings, the Financial Reporting Panel may take evidence on oath or affirmation, and for that purpose a member may:

(a) require a witness in the proceedings to either take an oath or make an affirmation; and

(b) administer an oath or affirmation to a witness in the proceedings.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 239CJ).

(4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

(5) The member presiding at Financial Reporting Panel proceedings:

(a) may require a witness in the proceedings to answer a question put to the witness; and

(b) may require a person appearing in the proceedings pursuant to a summons issued under this section to produce a document specified in the summons.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 239CJ).

(6) The Financial Reporting Panel may pay such amount as it thinks reasonable on account of the costs and expenses (if any) that a

person (other than a staff member of ASIC) incurs in complying with a requirement made under this section.

239CF Quorum

In Financial Reporting Panel proceedings, 2 members form a quorum.

239CG No legal representation in proceedings before the Financial Reporting Panel

(1) Unless the Financial Reporting Panel otherwise determines, a party to Financial Reporting Panel proceedings is not to be legally represented in the proceedings.

(2) For the purposes of this section, ASIC is taken to be a party to the proceedings.

(3) The Financial Reporting Panel may revoke or vary a determination made under subsection (1).

239CH Procedure

(1) Subject to subsections (2) to (4), the Financial Reporting Panel may determine the procedural rules to be followed in Financial Reporting Panel proceedings.

(2) Financial Reporting Panel proceedings are to be conducted in accordance with (in order of priority):
  (a) the requirements of this Division and the Corporations Act; and
  (b) the requirements of the regulations.

(3) Without limiting paragraph (2)(b), the regulations may deal with:
  (a) the people who are entitled to be given the opportunity to appear in Financial Reporting Panel proceedings; and
  (b) making submissions or giving evidence in Financial Reporting Panel proceedings; and
  (c) the matters that the Financial Reporting Panel is to take into account when making a decision in the course of Financial Reporting Panel proceedings.

(4) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations made under it, apply to Financial Reporting Panel proceedings.

239CI Protection of members etc.

(1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to Financial Reporting Panel proceedings, the same protection and immunity as a Justice of the High Court.

(2) Subject to this Act:

(a) a person who is required by a summons under section 239CE to appear in Financial Reporting Panel proceedings; or

(b) a witness in Financial Reporting Panel proceedings;

has the same protection as a witness in a proceeding in the High Court.

239CJ Non-compliance with requirements made under section 239CE

(1) A person must not fail to comply with a requirement made under subsection 239CE(1), (3) or (5).

Penalty: 10 penalty units.

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

239CK Contempt of Financial Reporting Panel

(1) A person must not:

(a) engage in conduct that results in the obstruction or hindering of the Financial Reporting Panel or a member in the performance or exercise of any of the Financial Reporting Panel's functions and powers; or

(b) engage in conduct that results in the disruption of Financial Reporting Panel proceedings.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

(2) An offence constituted by a contravention of subsection (1) is punishable on summary conviction.

239CL Powers of Court where non-compliance with section 239CE

(1) This section applies if the Financial Reporting Panel, as constituted for the purposes of particular Financial Reporting Panel proceedings, is satisfied that a person has failed to comply with a requirement made under section 239CE in, or in relation to, those proceedings.

(2) A member of the Financial Reporting Panel as so constituted may by writing certify the failure to the Court.

(3) If a member of the Financial Reporting Panel does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Corporations Act 2001

12 Section 9

Insert:

financial reporting requirements for a financial report means the requirements imposed under:

(a) section 296 or 297 if the financial report is an annual financial report; or

(b) section 304 or 305 if the financial report is a half-year financial report.

13 Section 9

Insert:

lodging entity has the meaning given by subsection 323EA(2).

14 At the end of Part 2M.3

Add:

Division 9—Reference of financial report to the Financial Reporting Panel

Subdivision A—Preliminary

323EA Financial reports to which Division applies

(1) This Division applies to a financial report of a company, disclosing entity or registered scheme if the financial report has been lodged with ASIC.

(2) The company, the disclosing entity or the responsible entity of the registered scheme is the ***lodging entity*** for the financial report for the purposes of this Act.

323EB Referral of financial report to Financial Reporting Panel

(1) ASIC may refer the financial report to the Financial Reporting Panel under Subdivision B.

(2) The lodging entity may refer the financial report to the Financial Reporting Panel under Subdivision C.

Note: The lodging entity may refer the report to the Financial Reporting Panel only with ASIC's consent.

(3) If the financial report is referred to the Financial Reporting Panel under Subdivision B or C, the Panel must deal with the referral under Subdivision D.

(4) To avoid doubt, the referral of the financial report to the Financial Reporting Panel does not prevent ASIC from initiating, or taking any further steps in relation to, proceedings against the lodging entity, or the lodging entity's directors, in relation to the financial report.

Subdivision B—Referral by ASIC

323EC ASIC may refer financial report to the Financial Reporting Panel

(1) ASIC may refer the financial report to the Financial Reporting Panel if ASIC is of the opinion that the financial report does not comply with one or more of the financial reporting requirements.

(2) In referring the financial report to the Financial Reporting Panel, ASIC must follow the procedures set out in sections 323ED and 323EF.

323ED ASIC to notify lodging entity of proposed referral

(1) If ASIC proposes to refer the financial report to the Financial Reporting Panel, ASIC must give the lodging entity written notice of the proposed referral.

(2) The notice must:
  (a) identify the financial reporting requirement or requirements that, in ASIC's opinion, the financial report does not comply with; and
  (b) set out, in relation to each of those financial reporting requirements:
    (i) the reasons for ASIC's opinion that the financial report does not comply with that requirement; and
    (ii) the changes that, in ASIC's opinion, would need to be made to the financial report to ensure that it does comply with that requirement; and
  (c) include a statement setting out the effect of section 323EE; and
  (d) be in the prescribed form.

(3) For the purposes of this Act, the requirements referred to in paragraph (2)(a) are the ***relevant financial reporting requirements*** in relation to the financial report.

323EE Lodging entity to respond to ASIC notice

(1) The lodging entity must, within 14 days after receiving the notice, give ASIC a written response that, in relation to each relevant

financial reporting requirement identified under paragraph 323ED(2)(a), either:

(a) states that the lodging entity proposes to amend the financial report to incorporate the changes referred to in subparagraph 323ED(2)(b)(ii) (the ***ASIC proposed changes***); or

(b) states that the lodging entity:

(i) does not agree that the ASIC proposed changes should be made; and

(ii) proposes instead to amend the financial report to incorporate the changes set out in the response (the ***alternative changes***);

and sets out the lodging entity's reasons for its opinion that the financial report would comply with the relevant financial reporting requirement if the alternative changes were made; or

(c) states that the lodging entity does not agree that the ASIC proposed changes should be made and sets out the lodging entity's reasons for its opinion that the financial report as originally lodged complies with the relevant financial reporting requirement.

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

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

(3) Evidence or information included in a response under subsection (1) is not admissible in evidence against:

(a) the lodging entity; or

(b) a director of the lodging entity; or

(c) any other representative of the lodging entity;

in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

323EF Referral to Financial Reporting Panel

(1) The referral of the financial report to the Financial Reporting Panel must:

(a) identify the relevant financial reporting requirement or requirements that, in ASIC's opinion, the financial report does not comply with; and

(b) set out:

(i) the reasons for ASIC's opinion that the financial report does not comply with that requirement or those requirements; and

(ii) the changes that, in ASIC's opinion, would need to be made to the financial report to ensure that it does comply with that requirement or those requirements; and

(c) be accompanied by a copy of:

(i) the notice that ASIC gave the lodging entity under section 323ED; and

(ii) any response that the lodging entity gave ASIC under section 323EE; and

(d) be made within 14 days after:

(i) the lodging entity gives ASIC the response under section 323EE; or

(ii) the time for the lodging entity to give ASIC that response ends without the lodging entity having given that response.

(2) The referral must be made in the prescribed form.

(3) ASIC must give the lodging entity a copy of the referral on the day on which the referral is made.

(4) For the purposes of this Act, the requirements referred to in paragraph (1)(a) are the ***disputed financial reporting requirements*** in relation to the financial report.

Subdivision C—Referral by lodging entity

323EG Lodging entity may refer financial report to the Financial Reporting Panel with ASIC's consent

(1) The lodging entity may refer the financial report to the Financial Reporting Panel if:

(a) ASIC has informed the lodging entity that, in ASIC's opinion, the financial report does not comply with one or more financial reporting requirements (the ***relevant financial reporting requirements***); and

(b) the lodging entity is of the opinion that the financial report does comply with one or more of the relevant financial reporting requirements; and

(c) ASIC consents to the referral of the financial report to the Financial Reporting Panel.

(2) In referring the financial report to the Financial Reporting Panel, the lodging entity must follow the procedure set out in sections 323EH and 323EI.

(3) For the purposes of this Act, the requirements referred to in paragraph (1)(b) are the ***disputed financial reporting requirements*** in relation to the financial report.

323EH Lodging entity to apply to ASIC for consent to proposed referral

(1) The lodging entity must apply to ASIC in writing for ASIC's consent to the referral.

(2) The application must:

(a) identify the disputed financial reporting requirements; and

(b) set out, in relation to each of the disputed financial reporting requirements, the reasons for the lodging entity's opinion that the financial report does comply with that requirement.

(3) If ASIC consents to the referral, ASIC must:

(a) prepare a statement that sets out, in relation to each of the disputed financial reporting requirements, the reasons for ASIC's opinion that the financial report does not comply with that requirement; and

(b) give the statement to the lodging entity.

(4) Evidence or information that the lodging entity includes in the application under paragraph (2)(b) is not admissible in evidence against:

(a) the lodging entity; or

(b) a director of the lodging entity; or

(c) any other representative of the lodging entity;

in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

323EI Referral to Financial Reporting Panel

(1) The referral of the financial report to the Financial Reporting Panel must:
  (a) identify the disputed financial reporting requirement or requirements; and
  (b) set out the reasons for the lodging entity's opinion that the financial report complies with that requirement or those requirements; and
  (c) be accompanied by a copy of the statement that ASIC gives the lodging entity under subsection 323EH(3).

(2) The referral must be made in the prescribed form.

(3) The lodging entity must give ASIC a copy of the referral on the day on which the referral is made.

(4) Evidence or information that the lodging entity includes in the referral under paragraph (1)(b) is not admissible in evidence against:
  (a) the lodging entity; or
  (b) a director of the lodging entity; or
  (c) any other representative of the lodging entity;
in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

Subdivision D—Financial Reporting Panel dealing with reference

323EJ Financial Reporting Panel to obtain submissions from ASIC and lodging entity

(1) The Financial Reporting Panel must, within 7 days after the financial report is referred to the Panel under section 323EC or 323EG, give both the lodging entity and ASIC a written notice of the day by which they may make written submissions to the Panel on whether the financial report complies with the disputed financial reporting requirement or requirements specified in the referral under paragraph 323EF(1)(a) or 323EI(1)(a).

(2) The day specified in the notice must be not less than 14 days after the day on which the notice is given.

323EK Financial Reporting Panel to consider and report on financial report referred to it under section 323EC or 323EG

(1) The Financial Reporting Panel must:

(a) consider the financial report; and

(b) prepare a report that states, in relation to each of the referred financial reporting requirements, whether, in the Panel's opinion, the financial report complies with that requirement.

(2) If:

(a) the referral was made under section 323EC; and

(b) the Panel determines that the financial report does not, in the Panel's opinion, comply with a referred financial reporting requirement;

the Financial Reporting Panel's report must also set out the changes that, in the Panel's opinion, would need to be made to the financial report to ensure that it does comply with that requirement.

(3) If:

(a) the referral was made under section 323EG; and

(b) the Panel determines that the financial report does not, in the Panel's opinion, comply with a referred financial reporting requirement;

the Financial Reporting Panel's report may also set out the changes that, in the Panel's opinion, would need to be made to the financial report to ensure that it does comply with that requirement.

(4) The Financial Reporting Panel's report must not disclose any confidential commercial information obtained by the Panel in the course of its consideration of the financial report.

(5) The Financial Reporting Panel must give a copy of its report to:

(a) the lodging entity; and

(b) ASIC; and

(c) the relevant market operator if the financial report referred to the Panel was one of a listed company or listed registered scheme.

Subject to subsection (6), the copies must be given within 60 days after the day on which the financial statement is referred to the Panel (the ***referral day***).

(6) The copies may be given more than 60 days after the referral day, but not more than 90 days after the referral day, if the Financial Reporting Panel gives notice to the lodging entity and ASIC of the extension within 60 days after the referral day.

(7) ASIC must take such steps as it considers reasonable and appropriate to publicise:

(a) the Financial Reporting Panel's report; and

(b) if the Financial Reporting Panel's report sets out changes that, in the Panel's opinion, would need to be made to the financial report to ensure that it complies with a financial reporting requirement—whether the lodging entity has amended, or indicated that it intends to amend, the financial report to incorporate those changes.

Without limiting this, ASIC may make the report and the information referred to in paragraph (7)(b) available on the Internet.

(8) If a copy of the Financial Reporting Panel's report is given to the relevant market operator under paragraph (5)(c), the relevant market operator must take such steps as it considers reasonable and appropriate to make the report available to the users of the market.

(9) This section has effect subject to section 323EL.

323EL Power of Financial Reporting Panel to dismiss referral

(1) The Financial Reporting Panel may, at any stage of the proceeding, dismiss the referral.

(2) Without limiting subsection (1), the Financial Reporting Panel may dismiss the referral if it is satisfied that the disputed financial reporting requirement or requirements are being dealt with or are going to be dealt with in proceedings before a court.

323EM Court, or tribunal of fact, may have regard to Financial Reporting Panel report

A Court, or a tribunal of fact, may have regard to the Financial Reporting Panel's report in determining whether the financial report complied with the referred financial reporting requirements.

15 After paragraph 1317C(b)

Insert:

(c) a decision by ASIC not to consent to the referral of a financial report to the Financial Reporting Panel under Subdivision C of Division 9 of Part 2M.3; or

16 Schedule 3 (after table item 116)

Insert:

116A	Section 323EE	25 penalty units.

Part 4—Content of financial reports

Corporations Act 2001

17 Subsection 45A(4)

Omit "(d)", substitute "(b)".

18 Subsection 295(2)

Repeal the subsection, substitute:

(2) The financial statements for the year are:

(a) the financial statements in relation to the entity reported on that are required by the accounting standards; and

(b) if required by the accounting standards—the financial statements in relation to the consolidated entity that are required by the accounting standards.

19 Subsection 303(2)

Repeal the subsection, substitute:

(2) The financial statements for the half-year are:

(a) the financial statements in relation to the entity reported on that are required by the accounting standards; and

(b) if required by the accounting standards—the financial statements in relation to the consolidated entity that are required by the accounting standards.

Schedule 2A—Financial reporting (true and fair view)

Corporations Act 2001

1 After subsection 298(1)

Insert:

(1A) If the financial report for a financial year includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the directors' report for the financial year must also:

(a) set out the directors' reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 297; and

(b) specify where that additional information can be found in the financial report.

2 At the end of section 306

Add:

(2) If the financial report for a half-year includes additional information under paragraph 303(3)(c) (information included to give true and fair view of financial position and performance), the directors' report for the half-year must also:

(a) set out the directors' reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 305; and

(b) specify where that information can be found in the financial report.

3 After paragraph 307(a)

Insert:

(aa) if the financial report includes additional information under paragraph 295(3)(c) or 303(3)(c) (information included to give true and fair view of financial position and performance)—whether the inclusion of that additional

information was necessary to give the true and fair view required by section 297 or 305; and

4 Before subsection 308(4)

Insert:

(3B) If the financial report includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the auditor's report must also include a statement of the auditor's opinion on whether the inclusion of that additional information was necessary to give the true and fair view required by section 297.

5 Before subsection 309(6)

Insert:

(5B) If the financial report includes additional information under paragraph 303(3)(c) (information included to give true and fair view of financial position and performance), the auditor's report must also include a statement of the auditor's opinion on whether the inclusion of that additional information was necessary to give the true and fair view required by section 305.

Schedule 3—Proportionate liability

Australian Securities and Investments Commission Act 2001

1 Before subsection 12GF(2)

Insert:

(1B) Despite subsection (1), if:

(a) a person (the ***claimant***) makes a claim under subsection (1) in relation to:

(i) economic loss; or

(ii) damage to property;

caused by conduct of another person (the ***defendant***) that was done in contravention of section 12DA; and

(b) the claimant suffered the loss or damage:

(i) as a result partly of the claimant's failure to take reasonable care; and

(ii) as a result partly of the conduct referred to in paragraph (a); and

(c) the defendant:

(i) did not intend to cause the loss or damage; and

(ii) did not fraudulently cause the loss or damage;

the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

Note: Subdivision GA also applies proportionate liability to a claim for damages under this section for a contravention of section 12DA.

2 After Subdivision G of Division 2 of Part 2

Insert:

Subdivision GA—Proportionate liability for misleading and deceptive conduct

12GP Application of Subdivision

(1) This Subdivision applies to a claim (an ***apportionable claim***) if the claim is a claim for damages made under section 12GF for:

(a) economic loss; or

(b) damage to property;

caused by conduct that was done in a contravention of section 12DA.

(2) For the purposes of this Subdivision, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

(3) In this Subdivision, a ***concurrent wrongdoer***, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

(4) For the purposes of this Subdivision, apportionable claims are limited to those claims specified in subsection (1).

(5) For the purposes of this Subdivision, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

12GQ Certain concurrent wrongdoers not to have benefit of apportionment

(1) Nothing in this Subdivision operates to exclude the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if:

(a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or

(b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.

(2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules (if any) that (apart from this Subdivision) are relevant.

(3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Subdivision.

12GR Proportionate liability for apportionable claims

(1) In any proceedings involving an apportionable claim:

(a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(b) the court may give judgment against the defendant for not more than that amount.

(2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:

(a) liability for the apportionable claim is to be determined in accordance with the provisions of this Subdivision; and

(b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Subdivision) are relevant.

(3) In apportioning responsibility between defendants in the proceedings:

(a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

(4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

(5) A reference in this Subdivision to a defendant in proceedings includes any person joined as a defendant or other party in the

proceedings (except as a plaintiff) whether joined under this Subdivision, under rules of court or otherwise.

12GS Defendant to notify plaintiff of concurrent wrongdoer of whom defendant is aware

(1) If:

(a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the ***other person*****)** may be a concurrent wrongdoer in relation to the claim; and

(b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about:

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and

(c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim;

the court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.

(2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

12GT Contribution not recoverable from defendant

A defendant against whom judgment is given under this Subdivision as a concurrent wrongdoer in relation to an apportionable claim:

(a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

(b) cannot be required to indemnify any such wrongdoer.

12GU Subsequent actions

(1) In relation to an apportionable claim, nothing in this Subdivision or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

(2) However, in any proceedings in respect of any such action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

12GV Joining non-party concurrent wrongdoer in the action

(1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

12GW Application of Subdivision

Nothing in this Subdivision:

(a) prevents a person being held vicariously liable for a proportion of an apportionable claim for which another person is liable; or

(b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

(c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Corporations Act 2001

3 Before subsection 1041I(2)

Insert:

(1B) Despite subsection (1), if:

(a) a person (the ***claimant***) makes a claim under subsection (1) in relation to:

(i) economic loss; or

(ii) damage to property;

caused by conduct of another person (the ***defendant***) that was done in contravention of section 1041H; and

(b) the claimant suffered the loss or damage:

(i) as a result partly of the claimant's failure to take reasonable care; and

(ii) as a result partly of the conduct referred to in paragraph (a); and

(c) the defendant:

(i) did not intend to cause the loss or damage; and

(ii) did not fraudulently cause the loss or damage;

the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

Note: Division 2A also applies proportionate liability to a claim for damages under this section for a contravention of section 1041H.

4 After Division 2 of Part 7.10

Insert:

Division 2A—Proportionate liability for misleading and deceptive conduct

1041L Application of Division

(1) This Division applies to a claim (an ***apportionable claim***) if the claim is a claim for damages made under section 1041I for:

(a) economic loss; or

(b) damage to property;

caused by conduct that was done in a contravention of section 1041H.

(2) For the purposes of this Division, there is a single apportionable claim in proceedings in respect of the same loss or damage even if

the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

(3) In this Division, a ***concurrent wrongdoer***, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

(4) For the purposes of this Division, apportionable claims are limited to those claims specified in subsection (1).

(5) For the purposes of this Division, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

1041M Certain concurrent wrongdoers not to have benefit of apportionment

(1) Nothing in this Division operates to exclude the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if:

(a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or

(b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.

(2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules (if any) that (apart from this Division) are relevant.

(3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Division.

1041N Proportionate liability for apportionable claims

(1) In any proceedings involving an apportionable claim:

(a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(b) the court may give judgment against the defendant for not more than that amount.

(2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:

(a) liability for the apportionable claim is to be determined in accordance with the provisions of this Division; and

(b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Division) are relevant.

(3) In apportioning responsibility between defendants in the proceedings:

(a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

(4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

(5) A reference in this Division to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Division, under rules of court or otherwise.

1041O Defendant to notify plaintiff of concurrent wrongdoer of whom defendant aware

(1) If:

(a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the ***other person*****)** may be a concurrent wrongdoer in relation to the claim; and

(b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about:

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and

(c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim;

the court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.

(2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

1041P Contribution not recoverable from defendant

A defendant against whom judgment is given under this Division as a concurrent wrongdoer in relation to an apportionable claim:

(a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

(b) cannot be required to indemnify any such wrongdoer.

1041Q Subsequent actions

(1) In relation to an apportionable claim, nothing in this Division or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

(2) However, in any proceedings in respect of any such action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

1041R Joining non-party concurrent wrongdoer in the action

(1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

1041S Application of Division

Nothing in this Division:

(a) prevents a person being held vicariously liable for a proportion of an apportionable claim for which another person is liable; or

(b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

(c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Trade Practices Act 1974

5 Before subsection 82(2)

Insert:

(1B) Despite subsection (1), if:

(a) a person (the ***claimant***) makes a claim under subsection (1) in relation to:

(i) economic loss; or

(ii) damage to property;

caused by conduct of another person (the ***defendant***) that was done in contravention of section 52; and

(b) the claimant suffered the loss or damage:

(i) as a result partly of the claimant's failure to take reasonable care; and

(ii) as a result partly of the conduct referred to in paragraph (a); and

(c) the defendant:

(i) did not intend to cause the loss or damage; and

(ii) did not fraudulently cause the loss or damage;

the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks

just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

Note: Part VIA also applies proportionate liability to a claim for damages under this section for a contravention of section 52.

6 After Part VI

Insert:

Part VIA—Proportionate liability for misleading and deceptive conduct

87CB Application of Part

(1) This Part applies to a claim (an ***apportionable claim***) if the claim is a claim for damages made under section 82 for:

(a) economic loss; or

(b) damage to property;

caused by conduct that was done in a contravention of section 52.

(2) For the purposes of this Part, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

(3) In this Part, a ***concurrent wrongdoer***, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

(4) For the purposes of this Part, apportionable claims are limited to those claims specified in subsection (1).

(5) For the purposes of this Part, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

87CC Certain concurrent wrongdoers not to have benefit of apportionment

(1) Nothing in this Part operates to exclude the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if:

(a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or

(b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.

(2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules (if any) that (apart from this Part) are relevant.

(3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Part.

87CD Proportionate liability for apportionable claims

(1) In any proceedings involving an apportionable claim:

(a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and

(b) the court may give judgment against the defendant for not more than that amount.

(2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:

(a) liability for the apportionable claim is to be determined in accordance with the provisions of this Part; and

(b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Part) are relevant.

(3) In apportioning responsibility between defendants in the proceedings:

(a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and

(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

(4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

(5) A reference in this Part to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Part, under rules of court or otherwise.

87CE Defendant to notify plaintiff of concurrent wrongdoer of whom defendant aware

(1) If:

(a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the ***other person***) may be a concurrent wrongdoer in relation to the claim; and

(b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about:

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and

(c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim;

the court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.

(2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

87CF Contribution not recoverable from defendant

A defendant against whom judgment is given under this Part as a concurrent wrongdoer in relation to an apportionable claim:

(a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

(b) cannot be required to indemnify any such wrongdoer.

87CG Subsequent actions

(1) In relation to an apportionable claim, nothing in this Part or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

(2) However, in any proceedings in respect of any such action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

87CH Joining non-party concurrent wrongdoer in the action

(1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

87CI Application of Part

Nothing in this Part:

(a) prevents a person being held vicariously liable for a proportion of an apportionable claim for which another person is liable; or

(b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

(c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Schedule 4—Enforcement

Part 1—Revision of criminal penalties

Corporations Act 2001

1 Schedule 3 (table items 335, 336 and 337)

Repeal the items, substitute:

335	Subsection 1308(2)	200 penalty units or imprisonment for 5 year, or both.
336	Subsection 1309(1)	200 penalty units or imprisonment for 5 year, or both.
337	Subsection 1309(2)	100 penalty units or imprisonment for 2 year, or both.

Part 2—Protection for employees reporting breaches

Corporations Act 2001

2 After Part 9.4

Insert:

Part 9.4AAA—Protection for whistleblowers

1317AA Disclosures qualifying for protection under this Part

(1) A disclosure of information by a person (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser is:

(i) an officer of a company; or

(ii) an employee of a company; or

(iii) a person who has a contract for the supply of services or goods to a company; or

(iv) an employee of a person who has a contract for the supply of services or goods to a company; and

(b) the disclosure is made to:

(i) ASIC; or

(ii) the company's auditor or a member of an audit team conducting an audit of the company; or

(iii) a director, secretary or senior manager of the company; or

(iv) a person authorised by the company to receive disclosures of that kind; and

(c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and

(d) the discloser has reasonable grounds to suspect that the information indicates that:

(i) the company has, or may have, contravened a provision of the Corporations legislation; or

(ii) an officer or employee of the company has, or may have, contravened a provision of the Corporations legislation; and

(e) the discloser makes the disclosure in good faith.

Note: Under section 1405, the reference to a provision of the Corporations legislation includes a reference to a corresponding provision of the old corporations legislation of the States and Territories.

(2) A reference in subsection (1) to a person contravening a provision of the Corporations legislation includes a reference to a person committing an offence against, or based on, a provision of this Act.

Note: This subsection causes section 11.6 of the *Criminal Code* to operate in relation to such references.

1317AB Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Part:

(a) the person is not subject to any civil or criminal liability for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

(2) Without limiting subsection (1):

(a) the person has qualified privilege in respect of the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

(3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:

(a) a person (the ***employee***) is employed in a particular position under a contract of employment with another person (the ***employer***); and

(b) the employee makes a disclosure that qualifies for protection under this Part; and

(c) the employer purports to terminate the contract of employment on the basis of the disclosure;

the court may order that the employee be reinstated in that position or a position at a comparable level.

1317AC Victimisation prohibited

Actually causing detriment to another person

(1) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes any detriment to another person (the ***second person***); and

(c) the first person intends that his or her conduct cause detriment to the second person; and

(d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

Threatening to cause detriment to another person

(2) A person (the ***first person***) contravenes this subsection if:

(a) the first person makes to another person (the ***second person)*** a threat to cause any detriment to the second person or to a third person; and

(b) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because a person:

(i) makes a disclosure that qualifies for protection under this Part; or

(ii) may make a disclosure that would qualify for protection under this Part.

Officers and employees involved in contravention

(3) If a company contravenes subsection (1) or (2), any officer or employee of the company who is involved in that contravention contravenes this subsection.

Threats

(4) For the purposes of subsection (2), a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(5) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

1317AD Right to compensation

If:

(a) a person (the ***person in contravention***) contravenes subsection 1317AC(1), (2) or (3); and

(b) a person (the ***victim)*** suffers damage because of the contravention;

the person in contravention is liable to compensate the victim for the damage.

1317AE Confidentiality requirements for company, company officers and employees and auditors

(1) A person (the ***offender***) is guilty of an offence against this subsection if:

(a) a person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Part; and

(b) the qualifying disclosure relates to a contravention or possible contravention of a provision of the Corporations legislation by:

(i) a company; or

(ii) an officer or employee of the company; and

(c) the qualifying disclosure is made to:

(i) the company's auditor or a member of an audit team conducting an audit of the company; or

(ii) a director, secretary or senior manager of the company; or

(iii) a person authorised by the company to receive disclosures of that kind; and

(d) the offender is:
  (i) the company's auditor or a member of an audit team conducting an audit of the company; or
  (ii) a director, secretary or senior manager of the company; or
  (iii) a person authorised by the company to receive disclosures of that kind; or
  (iv) the company; or
  (v) any officer or employee of the company; and
(e) the offender discloses one of the following (the ***confidential information***):
  (i) the information disclosed in the qualifying disclosure;
  (ii) the identity of the discloser;
  (iii) information that is likely to lead to the identification of the discloser; and
(f) the confidential information is information that the offender obtained directly or indirectly because of the qualifying disclosure; and
(g) either:
  (i) the offender is the person to whom the qualifying disclosure is made; or
  (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
(h) the disclosure referred to in paragraph (e) is not authorised under subsection (2).

(2) The disclosure referred to in paragraph (1)(e) is authorised under this subsection if it:
(a) is made to ASIC; or
(b) is made to APRA; or
(c) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
(d) is made to someone else with the consent of the discloser.

3 Schedule 3 (after table item 337)

Insert:

338	Subsection 1317AC(1), (2) or (3)	25 penalty units or imprisonment for 6 months, or both.
338A	Subsection 1317AE(1)	25 penalty units.

Part 3—Disqualification of directors

Corporations Act 2001

4 After section 206B

Insert:

206BA Extension of period of automatic disqualification

(1) This section applies if, under subsection 206B(1), a person is disqualified from managing corporations on being convicted of an offence.

(2) On application by ASIC, the Court may extend by up to an additional 15 years the period of disqualification.

(3) ASIC must apply:
  (a) before the period of disqualification begins; or
  (b) before the end of the first year of the disqualification.

(4) ASIC may apply only once in relation to the disqualification.

(5) In determining whether an extension is justified (and if so, for how long), the Court may have regard to any matters that the Court considers appropriate.

5 Subsection 206D(1)

Omit "10 years", substitute "20 years".

6 Section 1274AA

Repeal the section, substitute:

1274AA Register of disqualified company directors and other officers

(1) ASIC must keep a register of persons who have been disqualified from managing corporations under:
  (a) section 206C, 206D, 206E or 206F of this Act; or
  (b) a provision of a law of a State or Territory that:

(i) was in force at any time before the commencement of this Act; and

(ii) corresponds, in whole or in part, to one of the provisions referred to in paragraph (a).

(2) The register must contain a copy of:

(a) every order made by the Court under section 206C, 206D or 206E; and

(b) every notice that was served under subsection 206F(3); and

(c) each permission given under subsection 206F(5); and

(d) every order lodged under subsection 206G(4); and

(e) every order, notice or permission that was made, served, given or lodged under a provision of a law of a State or Territory that:

(i) was in force at any time before the commencement of this Act; and

(ii) corresponds, in whole or in part, to one of the provisions referred to in paragraph (a), (b), (c) or (d).

(3) Subsections 1274(2) and (5) apply to a copy of an order, notice or permission referred to in subsection (2) as if that copy were a document lodged with ASIC.

(4) A reference in this section to a provision of a law of a State or Territory includes a provision as applied as a law of that State or Territory.

Part 4—Civil penalty provisions

Corporations Act 2001

7 Section 9 (paragraph (a) of the definition of *civil penalty order*)

Omit "section 1317F", substitute "section 1317E".

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

After "section 1317H", insert "or 1317HA".

9 Paragraph 199A(2)(b)

After "section 1317H", insert "or 1317HA".

10 Subsection 199A(3) (note 1)

Omit "or 1317H", substitute ", 1317H or 1317HA".

11 Paragraph 1044A(2)(a)

After "section 1317H", insert "or 1317HA".

12 Subsection 1317G(1A)

Omit "up to $200,000", substitute "the relevant maximum amount".

13 After subsection 1317G(1A)

Insert:

(1B) The relevant maximum amount is:

(a) $200,000 for an individual; or

(b) $1 million for a body corporate.

14 At the end of subsection 1317H(1)

Add:

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

15 At the end of subsection 1317HA(1)

Add:

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

16 At the end of subsection 1317J(2)

Add:

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

17 At the end of subsection 1317J(3A)

Add:

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

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

Omit "or 1317H", substitute ", 1317H or 1317HA".

Part 5—Other amendments

Corporations Act 2001

19 Subsection 308(1A)

Repeal the subsection.

20 At the end of section 308

Add:

(5) An offence based on subsection (1), (3), (3A) or (4) is an offence of strict liability.

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

21 At the end of section 309

Add:

(7) An offence based on subsection (1), (3), (4), (5), (5A) or (6) is an offence of strict liability.

Note: For ***strict liability*** see section 6.1 of the *Criminal Code*.

Schedule 5—Remuneration of directors and executives

Corporations Act 2001

1 Section 9

Insert:

group executives for a consolidated entity means:

(a) the directors of the companies or bodies within the consolidated entity; and

(b) the secretaries of the companies or bodies within the consolidated entity; and

(c) the senior managers of any corporation within the consolidated entity; and

(d) the partners, and senior managers, of any partnership within the consolidated entity; and

(e) the trustees, and senior managers, of any trusts within the consolidated entity; and

(f) the senior managers of any joint venture within the consolidated entity.

2 Section 9 (definition of *remuneration*)

Omit "related parties", substitute "directors' remuneration".

3 Section 9

Insert:

remuneration report means the section of the directors' report for a financial year for a listed public company that is included under subsection 300A(1).

4 Subparagraphs 200F(a)(ii) and (iii)

Repeal the subparagraphs.

4A After paragraph 200F(a)

Insert:

(aa) a benefit given under an order of a court; or

5 At the end of section 200F

Add:

(2) Subsection 200B(1) does not apply to a benefit given in connection with a person's retirement from an office in relation to a company if:

(a) the benefit is:

(i) a genuine payment by way of damages for breach of contract; or

(ii) given to the person under an agreement made between the company and the person before the person became the holder of the office as the consideration, or part of the consideration, for the person agreeing to hold the office; and

(b) the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with the person's retirement from board or managerial offices in the company and related bodies corporate, does not exceed the greater of:

(i) the amount worked out under subsection (3); and

(ii) the amount worked out under subsection (4).

(3) The amount worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{Total remuneration} \times \text{Relevant period}}{3}$$

where:

relevant period is the number of years in the relevant period or 7, whichever is the lesser number.

total remuneration is the amount of the total remuneration of the person from the company and related bodies corporate during the last 3 years of the relevant period.

Note: ***Relevant period*** is defined in subsection (5).

(4) The amount worked out under this subsection is:

(a) if the relevant period for the person is less than 12 months—a reasonable estimate of the total remuneration that the person would have received from the company and related bodies

corporate during the relevant period if the relevant period had been 12 months; or

(b) if the relevant period for the person is 12 months—the total remuneration that the person received from the company and related bodies corporate in the relevant period; or

(c) if the relevant period for the person is more than 12 months—the total remuneration that the person received from the company and related bodies corporate in the last 12 months of the relevant period.

(5) For the purposes of this section, if a person has held an office in relation to a company:

(a) throughout a period; or

(b) throughout a number of periods;

the ***relevant period*** for that person is that period or the period consisting of those periods.

6 At the end of section 249L

Add:

(2) The notice of the AGM of a listed company must also inform members that the resolution referred to in subsection 250R(2) (resolution on remuneration report) will be put at the AGM.

7 At the end of section 250R

Add:

(2) At a listed company's AGM, a resolution that the remuneration report be adopted must be put to the vote.

Note: Under subsection 249L(2), the notice of the AGM must inform members that this resolution will be put at the AGM.

(3) The vote on the resolution is advisory only and does not bind the directors or the company.

8 After section 250S

Insert:

250SA Listed company—remuneration report

At a listed company's AGM, the chair must allow a reasonable opportunity for the members as a whole to ask questions about, or make comments on, the remuneration report. This section does not limit section 250S.

9 Subparagraph 300(1)(d)(ii)

After "of the company", insert "(other than the directors)".

10 Subsection 300A(1)

After "include", insert "(in a separate and clearly identified section of the report)".

11 Paragraph 300A(1)(a)

Repeal the paragraph, substitute:

(a) discussion of:

(i) board policy for determining, or in relation to, the nature and amount (or value, as appropriate) of remuneration of directors, secretaries and senior managers of the company; and

(ii) if consolidated financial statements are required—board policy in relation to the nature and amount (or value, as appropriate) of remuneration of other group executives for the consolidated entity; and

11A After paragraph 300A(1)(b)

Insert:

(ba) if an element of the remuneration of a director, secretary or senior manager is dependent on the satisfaction of a performance condition:

(i) a detailed summary of the performance condition; and

(ii) an explanation of why the performance condition was chosen; and

(iii) a summary of the methods used in assessing whether the performance condition is satisfied and an explanation of why those methods were chosen; and

(iv) if the performance condition involves a comparison with factors external to the company:

(A) a summary of the factors to be used in making the comparison; and

(B) if any of the factors relates to the performance of another company, of 2 or more other companies or of an index in which the securities of a company or companies are included—the identity of that company, of each of those companies or of the index; and

12 Paragraph 300A(1)(c)

Repeal the paragraph, substitute:

(c) the prescribed details in relation to the remuneration of:

(i) each director of the company; and

(ii) each of the 5 named company executives who receive the highest remuneration for that year; and

(iii) if consolidated financial statements are required—each of the 5 named relevant group executives who receive the highest remuneration for that year; and

(d) if an element of the remuneration of a person referred to in paragraph (c) consists of securities of a body and that element is not dependent on the satisfaction of a performance condition—an explanation of why that element of the remuneration is not dependent on the satisfaction of a performance condition; and

(e) for each person referred to in paragraph (c):

(i) an explanation of the relative proportions of those elements of the person's remuneration that are related to performance and those elements of the person's remuneration that are not; and

(ii) the value (worked out as at the time they are granted and in accordance with any applicable accounting standards) of options that are granted to the person during the year as part of their remuneration; and

(iii) the value (worked out as at the time they are exercised) of options that were granted to the person as part of their remuneration and that are exercised by the person during the year; and

(iv) the value (worked out as at the time they lapse) of options that were granted to the person as part of their remuneration and that lapse during the year; and

(v) the aggregate of the values referred to in subparagraphs (ii), (iii) and (iv); and

(vi) the percentage of the value of the person's remuneration for the financial year that consists of options; and

(vii) if the person is employed by the company under a contract—the duration of the contract, the periods of notice required to terminate the contract and the termination payments provided for under the contract; and

(f) such other matters related to the policy or policies referred to in paragraph (a) as are prescribed by the regulations.

If a person is covered by both subparagraph (c)(ii) and subparagraph (c)(iii) and details of the person's remuneration are included in the directors' report under subparagraph (c)(ii), details of the person's remuneration do not need to be included in the report under subparagraph (c)(iii).

13 After subsection 300A(1)

Insert:

(1AA) Without limiting paragraph (1)(b), the discussion under that paragraph of the company's performance must specifically deal with:

(a) the company's earnings; and

(b) the consequences of the company's performance on shareholder wealth;

in the financial year to which the report relates and in the previous 4 financial years.

(1AB) In determining, for the purposes of subsection (1AA), the consequences of the company's performance on shareholder wealth in a financial year, have regard to:

(a) dividends paid by the company to its shareholders during that year; and

(b) changes in the price at which shares in the company are traded between the beginning and the end of that year; and

(c) any return of capital by the company to its shareholders during that year that involves:

(i) the cancellation of shares in the company; and

(ii) a payment to the holders of those shares that exceeds the price at which shares in that class are being traded at the time when the shares are cancelled; and

(d) any other relevant matter.

(1A) The material referred to in subsection (1) must be included in the directors' report under the heading "Remuneration report".

(1B) For the purposes of paragraph (1)(c):

(a) a person is a ***company executive*** of the company if the person is a secretary or senior manager of the company; and

(b) a person is a ***relevant group executive*** of the company if the person:

(i) is a group executive of the consolidated entity; and

(ii) is not a director of the company.

(1C) Without limiting paragraph (1)(c), the regulations may:

(a) provide that the value of an element of remuneration is to be determined, for the purposes of this section, in a particular way or by reference to a particular standard; and

(b) provide that details to be given of an element of remuneration must relate to the remuneration provided in:

(i) the financial year to which the directors' report relates; and

(ii) the earlier financial years specified in the regulations.

14 At the end of section 300A

Add:

(4) For the purposes of this section, if:

(a) consolidated financial statements are required; and

(b) a person is a group executive who is a group executive of 2 or more entities within the consolidated entity;

the person's remuneration is taken to include all of the person's remuneration from those entities (regardless of the capacity in which the person received the remuneration).

15 Schedule 3 (after table item 65)

Insert:

65A	Subsection 249L(1) or (2)	5 penalty units.

16 Schedule 3 (after table item 68)

Insert:

68A	Subsection 250R(2)	5 penalty units.

17 Schedule 3 (after table item 69)

Insert:

69A	Section 250SA	5 penalty units.

Schedule 6—Continuous disclosure

Part 1—General

Corporations Act 2001

1 After subsection 674(2)

Insert:

(2A) A person who is involved in a listed disclosing entity's contravention of subsection (2) contravenes this subsection.

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

Note 2: Section 79 defines ***involved***.

1A Before subsection 674(3)

Insert:

(2B) A person does not contravene subsection (2A) if the person proves that they:

(a) took all steps (if any) that were reasonable in the circumstances to ensure that the listed disclosing entity complied with its obligations under subsection (2); and

(b) after doing so, believed on reasonable grounds that the listed disclosing entity was complying with its obligations under that subsection.

2 After subsection 675(2)

Insert:

(2A) A person who is involved in a disclosing entity's contravention of subsection (2) contravenes this subsection.

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

Note 2: Section 79 defines ***involved***.

2A Before subsection 675(3)

Insert:

(2B) A person does not contravene subsection (2A) if the person proves that they:

(a) took all steps (if any) that were reasonable in the circumstances to ensure that the disclosing entity complied with its obligations under subsection (2); and

(b) after doing so, believed on reasonable grounds that the disclosing entity was complying with its obligations under that subsection.

3 Paragraph 1317E(1)(ja)

Omit "or 675(2)", substitute ", 674(2A), 675(2) or 675(2A)".

Part 2—Infringement notices

Corporations Act 2001

4 Section 9

Insert:

compliance period for an infringement notice has the meaning given by section 1317DAA.

5 Section 9

Insert:

infringement notice has the meaning given by section 1317DAA.

6 At the end of subsection 674(2)

Add:

Note 3: An infringement notice may be issued for an alleged contravention of this subsection, see section 1317DAC.

7 At the end of subsection 675(2)

Add:

Note 3: An infringement notice may be issued for an alleged contravention of this subsection, see section 1317DAC.

8 At the end of section 1317C

Add:

; or (i) a decision of ASIC to issue an infringement notice under section 1317DAC; or

(j) a decision of ASIC to withdraw, or not to withdraw, an infringement notice under section 1317DAI.

9 After Part 9.4A of Chapter 9

Insert:

Part 9.4AA—Infringement notices for alleged contraventions of continuous disclosure provisions

1317DAA Definitions

(1) In this Part:

compensation proceedings means:

(a) proceedings under section 1317HA; and

(b) proceedings under section 12GF of the ASIC Act in relation to a contravention of section 12DA of that Act; and

(c) any other proceedings by a person for compensation for loss or damage suffered by the person.

compliance period for an infringement notice has the meaning affected by section 1317DAH.

contravention proceedings means proceedings under section 1101B by a person referred to in paragraph 1101B(1)(b) or (d).

enforcement proceedings means proceedings under section 793C by a person referred to in paragraph 793C(1)(b), (c) or (d).

infringement notice means an infringement notice issued under section 1317DAC.

penalty and disclosure proceedings means the proceedings referred to in column 3 of the table in subsection 1317DAG(2).

public interest proceedings means proceedings under section 50 of the ASIC Act.

(2) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a registered scheme relate:

(a) references to the disclosing entity are taken to be references to the responsible entity for the registered scheme; and

(b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to

such a report being lodged by the responsible entity in relation to the scheme; and

(c) references to securities of a disclosing entity are taken to be references to interests in the registered scheme; and

(d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be references to the responsible entity being convicted of such an offence in relation to the registered scheme; and

(e) references to a civil penalty order under Part 9.4B being made against a disclosing entity in relation to a contravention of subsection 674(2) or 675(2) are taken to be references to such an order being made against the responsible entity in relation to the registered scheme; and

(f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the responsible entity having breached such an undertaking given in relation to the registered scheme.

1317DAB Purpose and effect of this Part

(1) The purpose of this Part is to provide for the issue of an infringement notice to a disclosing entity for an alleged contravention of subsection 674(2) or 675(2) as an alternative to proceedings for civil penalties under Part 9.4B.

(2) This Part does not:

(a) require an infringement notice to be issued to the disclosing entity for the alleged contravention of subsection 674(2) or 675(2); or

(b) affect the liability of the disclosing entity to civil or criminal proceedings in relation to the alleged contravention of subsection 674(2) or 675(2) if:

(i) an infringement notice is not issued to the disclosing entity for the alleged contravention; or

(ii) an infringement notice issued to the disclosing entity for the alleged contravention is withdrawn under section 1317DAI; or

(c) prevent a Court from imposing a higher penalty than the penalty specified in the infringement notice if the disclosing entity does not comply with the infringement notice.

1317DAC Issue of infringement notice

Issue of infringement notice

(1) Subject to section 1317DAD, if ASIC has reasonable grounds to believe that a disclosing entity has contravened subsection 674(2) or 675(2), ASIC may issue an infringement notice to the disclosing entity.

(2) ASIC issues the infringement notice to the disclosing entity by serving it on the disclosing entity.

(3) ASIC must not issue more than one infringement notice to the disclosing entity for the same alleged contravention of subsection 674(2) or 675(2).

ASIC must have regard to certain matters

(4) In determining whether to issue an infringement notice to a listed disclosing entity for an alleged contravention of subsection 674(2), ASIC must have regard to:
  (a) any guidelines issued by the relevant market operator for the listed disclosing entity that relate to the provisions of the listing rules referred to in subsection 674(1); and
  (b) any other relevant matter.

Infringement notice does not have effect

(5) The infringement notice does not have any effect if the infringement notice:
  (a) is issued more than 12 months after the day on which the contravention of subsection 674(2) or 675(2) is alleged to have occurred; or
  (b) relates to more than one alleged contravention of subsection 674(2) or 675(2) by the disclosing entity.

1317DAD Statement of reasons must be given

Statement of reasons

(1) Before issuing the infringement notice, ASIC must:

(a) give the disclosing entity a written statement that sets out ASIC's reasons for believing that the disclosing entity has contravened subsection 674(2) or 675(2); and

(b) give a representative of the disclosing entity an opportunity to:

(i) appear at a private hearing before ASIC; and

(ii) give evidence to ASIC; and

(iii) make submissions to ASIC;

in relation to the alleged contravention of subsection 674(2) or 675(2).

(2) If the disclosing entity is a listed disclosing entity, ASIC must consult with the relevant market operator for the disclosing entity before giving the disclosing entity the statement under this subsection.

(3) ASIC does not need to consult the relevant market operator under subsection (2) if:

(a) the disclosing entity is the relevant market operator; or

(b) the disclosing entity conducts a business in competition with a business conducted by the relevant market operator.

Limit on the use of evidence or information given to ASIC

(4) Evidence or information that a representative of the disclosing entity gives ASIC under paragraph (1)(b) in relation to the alleged contravention of subsection 674(2) or 675(2) is:

(a) not admissible in evidence against the disclosing entity in any proceedings; and

(b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

1317DAE Matters to be included in infringement notice

(1) The infringement notice:

(a) must state the day on which it is issued; and

(b) must state the name and address of the disclosing entity to whom it is issued; and

(c) must state that it is being issued by ASIC; and

(d) must state that ASIC may publish details of the disclosing entity's compliance with the infringement notice under section 1317DAJ if the disclosing entity complies with the notice; and

(e) must give details of the alleged contravention by the disclosing entity, including:

(i) the date of the alleged contravention; and

(ii) the particular provision that was contravened; and

(f) must state the maximum pecuniary penalty that a Court could impose under Part 9.4B in relation to the alleged contravention; and

(g) must specify the penalty that is payable in relation to the alleged contravention; and

(h) must state that the penalty is payable to ASIC on behalf of the Commonwealth; and

(i) if it is alleged that the disclosing entity contravened subsection 674(2)—may specify information that the disclosing entity must notify to the relevant market operator in accordance with the provisions of the listing rules referred to in subsection 674(1); and

(j) if it is alleged that the disclosing entity contravened subsection 675(2)—may require the disclosing entity to lodge a document with ASIC that contains specified information; and

(k) must explain the effect of sections 1317DAF, 1317DAG and 1317DAH; and

(l) must state that the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice; and

(m) must contain any other matters that are prescribed in the regulations.

(2) Subject to subsection (3), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:

(a) $100,000 if the disclosing entity is a Tier 1 entity; or

(b) $66,000 if the disclosing entity is a Tier 2 entity; or

(c) $33,000 if the disclosing entity is a Tier 3 entity.

(3) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:

(a) $100,000 if the disclosing entity is a Tier 2 entity; or

(b) $66,000 if the disclosing entity is a Tier 3 entity;

if:

(c) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or

(d) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2); or

(e) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).

(4) Subject to subsection (5), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is $33,000.

(5) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is $66,000 if:

(a) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or

(b) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2); or

(c) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).

(6) For the purposes of this section:

(a) a disclosing entity is:

(i) a ***Tier 1 entity*** if its market capitalisation on the relevant day exceeds $1,000 million; and

(ii) a ***Tier 2 entity*** if its market capitalisation on the relevant day exceeds $100 million but does not exceed $1,000 million; and

(iii) a ***Tier 3 entity*** if its market capitalisation on the relevant day does not exceed $100 million or it is not possible to work out its market capitalisation on the relevant day because it has not lodged a financial report with ASIC before the relevant day; and

(b) the ***relevant day*** for an infringement notice is the last day of the financial year in relation to which the latest financial report by the disclosing entity has been lodged with ASIC before the infringement notice is issued.

(7) This is how to work out a disclosing entity's ***market capitalisation*** on the relevant day:

(a) for each class of security of the disclosing entity that is a quoted security:

(i) work out the closing price, on the relevant day, for securities in that class on the prescribed financial market on which the securities are quoted; and

(ii) multiply that price by the number of securities in that class on issue on the relevant day (as shown in the financial report lodged with ASIC for the period that ends on the relevant day); and

(b) add up the amounts obtained under paragraph (a): the result is the disclosing entity's market capitalisation on the relevant day.

Disregard quoted securities of the disclosing entity that are options.

1317DAF Effect of issue and compliance with infringement notice

Circumstances in which this section applies

(1) This section applies if subsection (2) or (3) is satisfied.

(2) This subsection is satisfied if:

(a) the compliance period for the infringement notice has not ended; and

(b) the infringement notice is not withdrawn under section 1317DAI; and

(c) subsection (3) has not been satisfied.

(3) This subsection is satisfied if, within the compliance period for the infringement notice, the disclosing entity:

(a) pays the penalty specified in the infringement notice; and

(b) either:

(i) if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)—notifies the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice; or

(ii) if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)—lodges any required document with ASIC that contains the information specified in the infringement notice.

Note: If this subsection is satisfied, ASIC must not withdraw the infringement notice, see section 1317DAI.

No contravention etc. by the disclosing entity

(4) The disclosing entity is not, by reason only of subsection (3) being satisfied, regarded as:

(a) having contravened the provision specified in the infringement notice; or

(b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the provision specified in the infringement notice.

No proceedings may be started etc.

(5) Subject to subsection (6), no proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:

(a) the alleged contravention of the provision specified in the infringement notice; or

(b) an offence constituted by the same conduct that constituted the alleged contravention.

(6) Subsection (5) does not apply to the following proceedings:

(a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that

relate to the alleged contravention of the provision specified in the infringement notice;

(b) proceedings to enforce the following orders of a Court:

(i) an order made in relation to proceedings referred to in paragraph (a);

(ii) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;

(c) any other proceedings in respect of a breach of an order referred to in paragraph (b);

(d) an appeal to a Court against the following decisions or orders of a Court:

(i) a decision or order made in relation to proceedings referred to in paragraph (a);

(ii) a decision or order made under subsection 1335(2) in relation to the proceedings referred to in paragraph (a) other than public interest proceedings.

(7) To avoid doubt, subsection (5) does not prevent ASIC from:

(a) making an order under section 91 of the ASIC Act; or

(b) bringing proceedings to enforce the order.

1317DAG Effect of failure to comply with infringement notice

Circumstances in which this section applies

(1) This section applies if an infringement notice issued to a disclosing entity is not withdrawn under section 1317DAI.

Effect of failure to comply with infringement notice

(2) If the disclosing entity fails to do a thing specified in column 2 of the following table within the compliance period for the infringement notice, the disclosing entity is liable to the proceedings specified in column 3 of the following table:

Effect of failure to comply with infringement notice

Column 1	Column 2	Column 3
Item	**If the disclosing entity fails to:**	**the disclosing entity is liable to:**
1	pay the penalty specified in the	proceedings under Part 9.4B for:

Effect of failure to comply with infringement notice		
Column 1	**Column 2**	**Column 3**
Item	**If the disclosing entity fails to:**	**the disclosing entity is liable to:**
	infringement notice	(a) a declaration of contravention; and (b) a pecuniary penalty order; in relation to the alleged contravention of the provision specified in the infringement notice.
2	notify the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)	proceedings for an order under section 1324B in relation to the alleged contravention of the provision specified in the infringement notice.
3	lodge any required document with ASIC that contains the information specified in the infringement notice if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)	proceedings for an order under section 1324B in relation to the alleged contravention of the provision specified in the infringement notice.

No other proceedings may be started etc.

(3) Subject to subsection (4), no other proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:

(a) the alleged contravention of the provision specified in the infringement notice; or

(b) an offence constituted by the same conduct that constituted the alleged contravention.

(4) Subsection (3) does not apply to the following proceedings:

(a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that

relate to the alleged contravention of the provision specified in the infringement notice;

(b) proceedings to enforce the following orders of a Court:

(i) an order made in relation to penalty and disclosure proceedings;

(ii) an order made in relation to proceedings referred to in paragraph (a);

(iii) an order made under subsection 1335(2) in relation to penalty and disclosure proceedings;

(iv) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;

(c) any other proceedings in respect of a breach of an order referred to in paragraph (b);

(d) an appeal to a Court against the following decisions or orders of a Court:

(i) a decision or order made in relation to penalty and disclosure proceedings;

(ii) a decision or order made in relation to proceedings referred to in paragraph (a);

(iii) a decision or order made under subsection 1335(2) in relation to penalty and disclosure proceedings;

(iv) a decision or order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings.

(5) To avoid doubt, subsection (3) does not prevent ASIC from:

(a) making a determination under subsection 708A(2), 713(6), 1012DA(2) or 1013FA(3) of this Act; or

(b) making an order under section 91 of the ASIC Act; or

(c) accepting an undertaking under section 93AA of the ASIC Act; or

(d) bringing proceedings to enforce the determination, order or undertaking.

1317DAH Compliance period for infringement notice

(1) Subject to this section, the compliance period for an infringement notice is a period of 28 days beginning on the day after the day on which the infringement notice is issued.

(2) ASIC may extend, by notice in writing, the compliance period for the infringement notice if ASIC is satisfied that it is appropriate to do so.

(3) Only one extension may be given and the extension must not be for longer than 28 days.

(4) Notice of the extension must be given to the disclosing entity that was issued with the infringement notice.

(5) A failure to comply with subsection (4) does not affect the validity of the extension.

(6) If ASIC extends the compliance period for an infringement notice, a reference in this Act to the compliance period for an infringement notice is taken to be a reference to the compliance period as so extended.

1317DAI Withdrawal of infringement notice

Disclosing entity may seek withdrawal

(1) If an infringement notice is issued to a disclosing entity, the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice.

(2) Evidence or information that a representative of the disclosing entity gives ASIC in the course of making representations under subsection (1) is:
  (a) not admissible in evidence against the disclosing entity in any proceedings; and
  (b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

Withdrawal

(3) Subject to subsection (4), ASIC may withdraw the infringement notice (whether or not the disclosing entity has made representations seeking the withdrawal) if ASIC is satisfied that it is appropriate to do so.

(4) ASIC must not withdraw the infringement notice if subsection 1317DAF(3) is satisfied.

Withdrawal notice

(5) The withdrawal must be made by notice in writing and must be given to the disclosing entity.

(6) The withdrawal notice must state:
  (a) the name and address of the disclosing entity; and
  (b) the day on which the infringement notice was issued to the disclosing entity; and
  (c) that the infringement notice is withdrawn; and
  (d) that civil proceedings under Part 9.4B may be brought against the disclosing entity for a contravention of the provision specified in the infringement notice; and
  (e) that a prosecution for an offence based on the provision specified in the infringement notice may be brought against the disclosing entity.

Refund of penalty

(7) If:
  (a) the disclosing entity pays the penalty specified in the infringement notice; and
  (b) the infringement notice is withdrawn after the disclosing entity pays the penalty;

ASIC must refund to the disclosing entity an amount equal to the amount paid.

1317DAJ Publication in relation to infringement notices

(1) If:
  (a) ASIC issues an infringement notice to a disclosing entity; and
  (b) subsection 1317DAF(3) (compliance with the infringement notice) is satisfied;

ASIC may publish details of the disclosing entity's compliance with the infringement notice under subsection (2) or (3) or under both of those subsections.

(2) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if it publishes a copy of the infringement notice in the *Gazette* together with the following statements:

(a) a statement that the disclosing entity has complied with the infringement notice;

(b) a statement that compliance with the notice is not an admission of guilt or liability;

(c) a statement that the disclosing entity is not regarded as having contravened the provision specified in the notice.

(3) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if:

(a) ASIC issues a statement (whether written or oral) about the disclosing entity's compliance with the infringement notice; and

(b) the statement is limited to an accurate summary of the infringement notice including:

(i) the name of the disclosing entity; and

(ii) the amount of the penalty payable under the notice in relation to the alleged contravention; and

(iii) the conduct specified in the notice as the conduct in relation to which the infringement notice was issued;

together with the following statements:

(iv) a statement that the disclosing entity has complied with the infringement notice;

(v) a statement that compliance with the notice is not an admission of guilt or liability;

(vi) a statement that the relevant disclosing entity is not regarded as having contravened the provision specified in the notice.

(4) ASIC must not otherwise publish details of:

(a) an infringement notice; or

(b) a disclosing entity's compliance with an infringement notice.

Failure to comply with this subsection is not an offence.

10 Section 1317P

Omit "Criminal proceedings", substitute "Subject to subsection (2), criminal proceedings".

11 At the end of section 1317P

Add:

(2) Subsection (1) does not apply if:

(a) an infringement notice is issued to the person for an alleged contravention of subsection 674(2) or 675(2); and

(b) the infringement notice is not withdrawn under section 1317DAI.

Schedule 7—Disclosure rules

Part 1—Presentation of disclosure documents

Corporations Act 2001

1 After section 715

Insert:

715A Presentation etc. of disclosure documents

(1) The information in a disclosure document must be worded and presented in a clear, concise and effective manner.

Note: If this subsection is contravened, ASIC may make a stop order under section 739.

(2) A contravention of subsection (1) is not an offence.

2 After subsection 719(1)

Insert:

(1A) If the person making the offer becomes aware that information in the disclosure document is not worded and presented in a clear, concise and effective manner, the person may lodge a supplementary or replacement document with ASIC.

3 Subsection 739(1)

Repeal the subsection, substitute:

(1) If ASIC is satisfied that:

(a) information in a disclosure document lodged with ASIC is not worded and presented in a clear, concise and effective manner (see section 715A); or

(b) an offer of securities under a disclosure document lodged with ASIC would contravene section 728;

ASIC may order that no offers, issues, sales or transfers of the securities be made while the order is in force.

Part 2—Product Disclosure Statements for continuously quoted securities

Corporations Act 2001

3A Section 9 (paragraph (a) of the definition of *continuously quoted securities*)

After "prospectus", insert "or Product Disclosure Statement".

4 Section 111AQA

Before "paragraph 1013F(2)(d)", insert "section 1013FA and".

5 Subsection 1013D(1)

Omit "section 1013F", substitute "sections 1013F and 1013FA".

6 Section 1013E

Omit "section 1013F", substitute "sections 1013F and 1013FA".

7 Paragraph 1013F(2)(d)

After "ED security", insert "that is not a continuously quoted security".

8 After section 1013F

Insert:

1013FA Information not required to be included in PDS for continuously quoted securities

(1) This section applies to a Product Disclosure Statement that relates to a continuously quoted security.

(2) Despite anything in section 1013D, 1013E or 1013F, information is not required to be included in the Product Disclosure Statement if:

(a) the information is included in any of the following documents:

(i) the annual financial report most recently lodged with ASIC by the issuer of the product;

(ii) any half-year financial report lodged with ASIC by the issuer of the product after the lodgment of that annual financial report and before the date of the Product Disclosure Statement;

(iii) any continuous disclosure notices given by the issuer of the product after the lodgment of that annual financial report and before the date of the Product Disclosure Statement; and

(b) the Product Disclosure Statement:

(i) states that as a disclosing entity, the issuer of the product is subject to regular reporting and disclosure obligations; and

(ii) informs people of their right to obtain a copy of any of the documents referred to in paragraph (a).

If the Product Disclosure Statement informs people of their right to obtain a copy of the document, the issuer of the product must give a copy of the document free of charge to anyone who asks for it.

(3) ASIC may determine that this section does not apply to Product Disclosure Statements for continuously quoted securities if ASIC is satisfied that in the previous 12 months:

(a) the issuer of the continuously quoted securities contravened:

(i) the provisions of Chapter 2M; or

(ii) subsection 674(2) or 675(2); or

(iii) subsection 1012DA(9); or

(iv) section 1308 as it applies to a notice under subsection 1012DA(5); or

(b) the responsible person for the Product Disclosure Statement contravened section 1016E, 1021D, 1021E or 1021J.

(4) The determination must be made in writing and ASIC must publish a copy of the determination in the *Gazette*.

Part 3—Exemptions from disclosure requirements

Corporations Act 2001

9 Section 9 (definition of *quoted security*)

Repeal the definition, substitute:

> ***quoted security*** means a security that is quoted on a prescribed financial market.

10 Subsection 163(3) (note)

Omit "and 708", substitute ", 708 and 708A".

11 Paragraph 283AA(1)(a)

After "(disclosure document exclusion for debenture roll overs)", insert "or section 708A (sale offers that do not need disclosure)".

12 Subsection 283AA(1) (note)

Omit "and 708", substitute ", 708 and 708A".

13 Section 704

Omit "and 708", substitute ", 708 and 708A".

14 Subsection 707(3)

After "section 708", insert "or 708A".

15 After section 708

Insert:

708A Sale offers that do not need disclosure

Sale offer to which this section applies

(1) This section applies to an offer (the ***sale offer***) of a body's securities (the ***relevant securities***) for sale by a person if:

(a) but for subsection (5), (11) or (12), disclosure to investors under this Part would be required by subsection 707(3) for the sale offer; and

(b) the securities were not issued by the body with the purpose referred to in subparagraph 707(3)(b)(i); and

(c) a determination under subsection (2) was not in force in relation to the body at the time when the relevant securities were issued.

Determination by ASIC

(2) ASIC may make a determination under this subsection if ASIC is satisfied that in the previous 12 months the body contravened any of the following provisions:

(a) subsection 283AA(1), 283AB(1) or 283AC(1);

(b) the provisions of Chapter 2M as they apply to the body;

(c) section 674 or 675;

(d) section 724 or 728;

(e) subsection (9) of this section; or

(f) section 1308 as that section applies to a notice under subsection (5) of this section.

(3) The determination must be made in writing and a copy must be published in the *Gazette* as soon as practicable after the determination is made.

(4) A failure to publish a copy of the determination does not affect the validity of the determination.

Sale offer of quoted securities—case 1

(5) The sale offer does not need disclosure to investors under this Part if:

(a) the relevant securities are in a class of securities that were quoted securities at all times in the 12 months before the day on which the relevant securities were issued; and

(b) trading in that class of securities on a prescribed financial market on which they were quoted was not suspended for more than a total of 5 days in that 12 months; and

(c) no exemption under section 111AS or 111AT covered the body, or any person as director or auditor of the body, at any time in that 12 months; and

(d) no order under section 340 or 341 covered the body, or any person as director or auditor of the body, at any time in that 12 months; and

(e) the body gives the relevant market operator for the body a notice that complies with subsection (6) before the day on which the sale offer is made.

(6) A notice complies with this subsection if the notice:

(a) is given within 5 business days after the day on which the relevant securities were issued by the body; and

(b) states that the body issued the relevant securities without disclosure to investors under this Part; and

(c) states that the notice is being given under paragraph (5)(e); and

(d) states that, as at the date of the notice, the body has complied with:

(i) the provisions of Chapter 2M as they apply to the body; and

(ii) section 674; and

(e) sets out any information that is excluded information as at the date of the notice (see subsections (7) and (8)).

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

Note 2: A notice must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see sections 1308 and 1309. The body has an obligation to correct a defective notice: see subsection (9) of this section.

(7) For the purposes of subsection (6), excluded information is information:

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

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

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

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

(8) The notice given under subsection (5) must contain any excluded information only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in a disclosure document.

Obligation to correct defective notice

(9) The body contravenes this subsection if:
(a) the notice given under subsection (5) is defective; and
(b) the body becomes aware of the defect in the notice within 12 months after the relevant securities are issued; and
(c) the body does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect.

(10) For the purposes of subsection (9), the notice under subsection (5) is ***defective*** if the notice:
(a) does not comply with paragraph (6)(e); or
(b) is false or misleading in a material particular; or
(c) has omitted from it a matter or thing the omission of which renders the notice misleading in a material respect.

Sale offer of quoted securities—case 2

(11) The sale offer does not need disclosure to investors under this Part if:
(a) the relevant securities are in a class of securities that are quoted securities of the body; and
(b) either:
(i) a prospectus is lodged with ASIC on or after the day on which the relevant securities were issued but before the day on which the sale offer is made; or
(ii) a prospectus is lodged with ASIC before the day on which the relevant securities are issued and offers of securities that have been made under the prospectus are still open for acceptance on the day on which the relevant securities were issued; and

(c) the prospectus is for an offer of securities issued by the body that are in the same class of securities as the relevant securities.

Sale offer of quoted securities—case 3

(12) This subsection is satisfied if:

(a) the body offered to issue securities under a prospectus; and

(b) the body issued the relevant securities to:

(i) a person (the ***underwriter***) named in that prospectus as an underwriter of the issue; or

(ii) a person nominated by the underwriter; and

(c) the relevant securities were issued to the underwriter, or the person nominated by the underwriter, at or about the time that persons who applied for securities under the prospectus were issued with those securities; and

(d) the relevant securities are in a class of securities that were quoted securities of the body.

16 After paragraph 713(6)(aa)

Insert:

(ab) subsection 708A(9);

17 After paragraph 713(6)(c)

Insert:

(d) section 1308 as it applies to a notice under subsection 708A(5);

18 Subsection 727(2) (note)

Omit "and 708", substitute ", 708 and 708A".

19 At the end of section 727

Add:

Circumstances in which a person is taken not to contravene this section

(5) If:

(a) a person relies on subsection 708A(5) to make offers of securities for sale without disclosure to investors under Part 6D.2; and

(b) the notice given under that subsection purported to comply with subsection 708A(6) but did not actually comply with subsection 708A(6);

the person is taken not to contravene this section.

20 Subsection 1012A(4)

After "section 1012D,", insert "1012DA,".

21 Subsection 1012C(10)

After "section 1012D,", insert "1012DA,".

22 After section 1012D

Insert:

1012DA Product Disclosure Statement not required for sale amounting to indirect issue

Product Disclosure Statement not required

(1) In a recommendation situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) but for subsection (5), (11) or (12), the regulated person would be required by section 1012A or 1012C to give a Product Disclosure Statement for the relevant product; and

(b) the transfer or sale of the financial product (the ***relevant product***) to the client would take place in circumstances covered by subsection 1012C(6); and

(c) the relevant product was not issued by the issuer with the purpose referred to in subparagraph 1012C(6)(c)(i); and

(d) a determination under subsection (2) was not in force in relation to the issuer of the relevant product at the time when the relevant product was issued.

Determination by ASIC

(2) ASIC may make a determination under this subsection if ASIC is satisfied that in the previous 12 months the issuer of the relevant product contravened any of the following provisions:

(a) the provisions of Chapter 2M as they apply to the issuer (or, if the relevant financial product is an interest in a registered scheme, as those provisions apply to the scheme);

(b) section 674 or 675 as it applies to the issuer (or, if the relevant financial product is an interest in a registered scheme, as that section applies to the scheme);

(c) section 1016E, 1021D, 1021E or 1021J;

(d) subsection (9) of this section;

(e) section 1308 as it applies to a notice under subsection (5) of this section.

(3) The determination must be made in writing and a copy must be published in the *Gazette* as soon as practicable after the determination is made.

(4) A failure to publish a copy of the determination does not affect the validity of the determination.

Transfer or sale of quoted securities—case 1

(5) The regulated person does not have to give the client a Product Disclosure Statement if:

(a) the relevant product is in a class of financial products that were quoted securities at all times in the 12 months before the day on which the relevant product was issued; and

(b) trading in that class of financial products on a prescribed financial market on which they were quoted was not suspended for more than a total of 5 days in that 12 months; and

(c) no exemption under section 111AS or 111AT covered the issue of the relevant product, or any person as director or auditor of the issuer, at any time in that 12 months; and

(d) no order under section 340 or 341 covered the issuer of the relevant product, or any person as director or auditor of the issuer, at any time in that 12 months; and

(e) the issuer of the relevant product gives the relevant market operator for the issuer a written notice that complies with subsection (6) before the day on which the relevant conduct occurs.

(6) A notice complies with this subsection if the notice:

(a) is given within 5 business days after the day on which the relevant product was issued; and

(b) states that the relevant product was issued without a Product Disclosure Statement for the relevant product being prepared; and

(c) states that the notice is being given under paragraph (5)(e); and

(d) states that, as a disclosing entity, the issuer of the relevant product is subject to regular reporting and disclosure obligations; and

(e) states that, as at the date of the notice, the issuer of the relevant product has complied with:

(i) the provisions of Chapter 2M as they apply to the issuer (or, if the relevant financial product is an interest in a registered scheme, as those provisions apply to the scheme); and

(ii) section 674 as it applies to the issuer (or, if the relevant financial product is an interest in a registered scheme, as that section applies to the scheme); and

(f) sets out any information that is excluded information as at the date of the notice (see subsections (7) and (8)).

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

Note 2: A notice must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see sections 1308 and 1309. The issuer has an obligation to correct a defective notice: see subsection (9) of this section.

(7) For the purposes of subsection (6), excluded information is information:

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

(b) that a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the relevant product.

(8) The notice given under subsection (5) must contain any excluded information only to the extent to which it is reasonable for a person considering, as a retail client, whether to acquire the relevant product to expect to find the information in a Product Disclosure Statement.

Obligation to correct defective notice

(9) The issuer of the relevant product contravenes this subsection if:
(a) the notice given under subsection (5) is defective; and
(b) the issuer becomes aware of the defect in the notice within 12 months after the relevant product is issued; and
(c) the issuer does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect.

(10) For the purposes of subsection (9), the notice under subsection (5) is ***defective*** if the notice:
(a) does not comply with paragraph (6)(f); or
(b) is false or misleading in a material particular; or
(c) has omitted from it a matter or thing the omission of which renders the notice misleading in a material respect.

Transfer or sale of quoted securities—case 2

(11) The regulated person does not have to give the client a Product Disclosure Statement if:
(a) the relevant product is in a class of financial products that are quoted securities of the issuer; and
(b) either:
(i) a Product Disclosure Statement required to be given by section 1012B is lodged with ASIC on or after the day on which the relevant product is issued but before the day on which the relevant conduct occurs; or
(ii) a Product Disclosure Statement required to be given by section 1012B is lodged with ASIC before the day on which the relevant product is issued and, on the day on

which the relevant product is issued, the Product Disclosure Statement is still being used by the issuer of the relevant product for offers of financial products in the same class of financial products as the relevant product; and

(c) the Product Disclosure Statement is for a financial product of the issuer of the relevant product that is in the same class of financial products as the relevant product.

Transfer or sale of quoted securities—case 3

(12) The regulated person does not have to give the client a Product Disclosure Statement if:

(a) a Product Disclosure Statement for a financial product was given under section 1012B; and

(b) the relevant product was issued to:

(i) a person (the ***underwriter***) named in that Product Disclosure Statement as an underwriter of the issue of the financial product; or

(ii) a person nominated by the underwriter; and

(c) the relevant product was issued to the underwriter, or the person nominated by the underwriter, at or about the time that persons who applied for the financial product under that Product Disclosure Statement were issued with that product; and

(d) the relevant product is in a class of financial products that were quoted securities of the issuer.

23 Subsection 1021C(1) (note)

After "sections 1012D", insert ", 1012DA".

24 Subsection 1021C(3) (note)

After "sections 1012D", insert ", 1012DA".

25 At the end of section 1021C

Add:

Circumstances in which a person is taken not to contravene this section

(5) If:

(a) a person does not give another person a Product Disclosure Statement for a financial product because of section 1012DA; and

(b) a notice was given under subsection 1012DA(5); and

(c) the notice purported to comply with subsection 1012DA(6) but did not actually comply with that subsection;

the person is taken not to contravene this section.

26 Subsection 1021D(1) (note)

After "sections 1012D", insert ", 1012DA".

27 Subsection 1021E(1) (note)

After "sections 1012D", insert ", 1012DA".

28 Subsection 1021F(1) (note)

After "sections 1012D", insert ", 1012DA".

29 Subsection 1021H(1) (note)

After "sections 1012D", insert ", 1012DA".

30 Subsection 1021I(1) (note)

After "sections 1012D", insert ", 1012DA".

31 At the end of section 1308

Add:

(9) For the purposes of this section:

(a) a notice under subsection 708A(5) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and

(b) a notice under subsection 708A(5) or 1012DA(5) is taken to be misleading in a material respect if it fails to comply with paragraph 708A(6)(e) or 1012DA(6)(f).

32 At the end of section 1309

Add:

(5) For the purposes of this section:

(a) a notice under subsection 708A(5) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and

(b) a notice under subsection 708A(5) or 1012DA(5) is taken to be misleading in a material respect if it omits information that is excluded information for the purposes of section 708A or 1012DA.

33 Schedule 3 (after table item 229C)

Insert:

229D	Subsection 708A(9)	25 penalty units or imprisonment for 6 months, or both.

34 Schedule 3 (after table item 290C)

Insert:

290D	Subsection 1012DA(9)	25 penalty units or imprisonment for 6 months, or both.

Schedule 8—Shareholder participation and information

Corporations Act 2001

1 Section 141 (after table item 22)

Insert:

22A	When notice under paragraph 249J(3)(cb) is given	249J(5)

2 After paragraph 249J(3)(c)

Insert:

(ca) by sending it to the member by other electronic means (if any) nominated by the member; or

(cb) by notifying the member in accordance with subsection (3A); or

3 After subsection 249J(3)

Insert:

(3A) If the member nominates:

(a) an electronic means (the ***nominated notification means***) by which the member may be notified that notices of meeting are available; and

(b) an electronic means (the ***nominated access means***) the member may use to access notices of meeting;

the company may give the member notice of the meeting by notifying the member (using the nominated notification means):

(c) that the notice of meeting is available; and

(d) how the member may use the nominated access means to access the notice of meeting.

This subsection does not limit subsection (3).

4 At the end of section 249J

Add:

When notice under paragraph (3)(cb) is given (replaceable rule—see section 135)

(5) A notice of meeting given to a member under paragraph (3)(cb) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

5 At the end of section 249L

Add:

(3) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

6 After section 249L

Insert:

249LA Notice of meeting not required to contain certain information

(1) The regulations may provide that a notice of a meeting of a company's members is not required by section 249L or otherwise to include information specified in the regulations if any conditions specified in the regulations are satisfied.

(2) Without limiting subsection (1), the regulations may specify different conditions for:

(a) different kinds of information; and

(b) a notice of meeting given by a company or a class of companies.

(3) If:

(a) regulations are made for the purposes of subsection (1); and

(b) a notice of meeting does not include particular information in accordance with those regulations;

the information is taken to be included in the notice of meeting.

7 After subsection 249X(1)

Insert:

(1A) The person appointed as the member's proxy may be an individual or a body corporate.

Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy, see section 250D.

8 Subsection 250A(1)

After "it is signed", insert ", or otherwise authenticated in a manner prescribed by the regulations,".

9 After subsection 250A(1)

Insert:

(1A) The regulations made for the purposes of subsection (1) may prescribe different requirements for the authentication of an appointment given to the company by different means (electronic or otherwise).

10 Paragraph 250B(1)(b)

After "is signed", insert ", or otherwise authenticated in a manner prescribed by regulations made for the purposes of subsection 250A(1),".

11 Paragraph 250B(1)(b)

After "was signed", insert "or authenticated".

12 Subsection 250B(3)

Repeal the subsection, substitute:

(3) A company receives a document referred to in subsection (1):

(a) when the document is received at any of the following:

(i) the company's registered office;

(ii) a fax number at the company's registered office;

(iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and

(b) if the notice of meeting specifies other electronic means by which a member may give the document—when the document given by those means is received by the company as prescribed by the regulations.

13 Subsection 250BA(1)

Repeal the subsection, substitute:

(1) In a notice of meeting for a meeting of the members of the company, the company:

(a) must specify a place and a fax number for the purposes of receipt of proxy appointments and proxy appointment authorities; and

(b) may specify:

(i) an electronic address for the purposes of receipt of proxy appointments and proxy appointment authorities; and

(ii) other electronic means by which a member may give the company a proxy appointment or proxy appointment authority.

14 After paragraph 250D(1)(c)

Insert:

; or (d) in the capacity of a member's proxy appointed under subsection 249X(1).

14A At the end of subsection 300(10)

Add:

; and (d) the qualifications and experience of each person who is a company secretary of the company as at the end of the year.

15 At the end of subsection 300(11)

Add:

; (e) all directorships of other listed companies held by the director at any time in the 3 years immediately before the end of the financial year and the period for which each directorship has been held.

16 At the end of section 314

Add:

Sending full or concise report

(4) A company, registered scheme or disclosing entity may send a report referred to in subsection (1) to a member using an electronic means if the member has nominated that means as one by which the member may be sent reports referred to in that subsection.

(5) If a member of a company, registered scheme or disclosing entity nominates:

(a) an electronic means (the ***nominated notification means***) by which the member may be notified that reports referred to in subsection (1) are available; and

(b) an electronic means (the ***nominated access means***) the member may use to access those reports;

the company, registered scheme or disclosing entity may send a report referred to in that subsection to the member by notifying the member (using the nominated notification means):

(c) that the report is available; and

(d) how the member may make use of the nominated access means to access the report.

(6) Subsections (4) and (5) do not limit subsection (1).

17 After subsection 1322(3)

Insert:

(3AA) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the inability of a person to access the notice of meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

Note: Under paragraph 249J(3)(cb), a company may, in certain circumstances, give a member notice of a meeting by notifying the member that the notice of meeting is available and how the member may access the notice of meeting.

Schedule 9—Officers, senior managers and employees

Australian Securities and Investments Commission Act 2001

1 Subsection 5(1) (definition of *officer*)

Repeal the definition, substitute:

officer means:

(a) an officer within the meaning of the Corporations Act; or

(b) a provisional liquidator.

2 Subsection 43(2)

Omit "executive officer", substitute "senior manager".

3 Subsection 59(6)

After "officer", insert "or employee".

4 Subsection 59(7)

Omit "member or officer", substitute "member, officer or employee".

5 Section 84

After "officer", insert "or employee".

6 Paragraph 218(3)(d)

Omit "member or officer", substitute "member, officer or employee".

Corporations Act 2001

7 Section 9 (definition of *examinable officer*)

Repeal the definition.

8 Section 9 (definition of *executive officer*)

Repeal the definition.

9 Section 9

Insert:

officer of an entity that is neither an individual nor a corporation means:

(a) a partner in the partnership if the entity is a partnership; or

(b) an office holder of the unincorporated association if the entity is an unincorporated association; or

(c) a person:

(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or

(ii) who has the capacity to affect significantly the entity's financial standing.

10 Paragraph 57A(1)(c)

Omit "officer", substitute "office holder".

11 Section 82A

Repeal the section.

12 Paragraph 411(7)(b)

Omit "or an officer".

13 After paragraph 411(7)(b)

Insert:

(ba) is a director, secretary, senior manager or employee of the body; or

14 Paragraph 411(7)(c)

Omit "an officer", substitute "a director, secretary, senior manager or employee".

15 Paragraph 411(7)(e)

Omit "an officer", substitute "a director, secretary, senior manager or employee".

16 Paragraph 418(1)(b)

Omit "an officer", substitute "a director, secretary, senior manager or employee".

17 Paragraph 418(1)(c)

Omit “an officer”, substitute “a director, secretary, senior manager or employee”.

18 Paragraph 418(1)(e)

Omit “an officer”, substitute “a director, secretary, senior manager or employee”.

19 Paragraph 418(1)(f)

Omit “an officer”, substitute “a director, secretary, senior manager, employee”.

20 Subsection 418(2)

Repeal the subsection.

21 Paragraph 422(1)(a)

After “officer”, insert “or employee”.

22 Paragraph 422(3)(a)

After “officer”, insert “or employee”.

23 Subsection 437C(1)

After “officer”, insert “or provisional liquidator”.

24 Subsection 437C(2)

After “officer”, insert “or provisional liquidator”.

25 Subsections 437C(4) and (5)

Repeal the subsections.

26 Subsection 437D(5)

After “officer”, insert “or employee”.

27 Paragraph 438D(1)(a)

After “officer”, insert “or employee”.

28 Paragraph 438D(3)(a)

After “officer”, insert “or employee”.

29 Paragraph 448C(1)(c)

Repeal the paragraph, substitute:

(c) the person is a director, secretary, senior manager or employee of the company; or

30 Paragraph 448C(1)(d)

Omit "an officer", substitute "a director, secretary, senior manager or employee".

31 Subsection 448C(3)

Repeal the subsection, substitute:

(3) For the purposes of this section, a person is taken to be a director, secretary, senior manager, employee or auditor of a company if:

(a) the person is or has, within the last 2 years, been a director, secretary, senior manager, employee, auditor or promoter of the company or a related body corporate; and

(b) ASIC has not directed that the person not be taken to be a director, secretary, senior manager, employee or auditor for the purposes of this section.

ASIC may give a direction under paragraph (b) only if it thinks fit in the circumstances of the case.

32 Subsection 466(3)

After "officer", insert "or employee".

33 Subsection 471A(4)

Repeal the subsection, substitute:

(4) For the purposes of this section, a person is not an officer of a company merely because he or she is a receiver and manager, appointed under a power contained in an instrument, of property of the company.

34 Subsection 483(1)

Omit "or officer", substitute ", officer or employee".

35 Paragraph 486A(1)(a)

After "officer"(wherever occurring), insert ", employee".

36 Subparagraph 486A(1)(b)(i)

After “officer”, insert “or employee”.

37 Paragraph 486A(1)(c)

After “officer”, insert “or employee”.

38 Paragraph 486A(1)(d)

After “officer”, insert “or employee”.

39 Paragraph 486A(2)(b)

After “officer”, insert “, employee”.

40 Paragraph 486A(2)(c)

After “officer”, insert “, employee”.

41 Paragraph 486A(2)(d)

After “officer”, insert “, employee”.

42 Subsection 500(3)

Omit “or officer”, substitute “, officer or employee”.

43 Subsection 530A(7)

Repeal the subsection, substitute:

(7) For the purposes of this section, ***officer*** includes a former officer.

44 Subsection 530A(8)

Repeal the subsection.

45 Subparagraph 532(2)(c)(i)

After “officer”, insert “or employee”.

46 Subparagraph 532(2)(c)(ii)

After “officer”, insert “or employee”.

47 Subsection 532(6)

After “officer” (first and second occurring), insert “, employee”.

48 Paragraph 532(6)(b)

After “officer,”, insert “employee,”.

49 Paragraph 533(1)(a)

After “officer”, insert “or employee”.

50 Paragraph 533(3)(a)

After “officer”, insert “or employee”.

51 Paragraph 585(a)

Omit “executive officer”, substitute “senior manager”.

52 Paragraph 585(b)

Omit “executive officer”, substitute “senior manager”.

53 Subsection 590(1)

After “present officer”, insert “or employee”.

54 Subsection 590(4)

After “present officer”, insert “or employee”.

55 Subsection 590(4A)

After “present officer”, insert “or employee”.

56 Subsection 596(1)

After “officer”, insert “or employee”.

57 Paragraph 596A(b)

Omit “examinable officer”, substitute “officer or provisional liquidator”.

58 Paragraph 596A(b)

Omit “an officer”, substitute “an officer or provisional liquidator”.

59 Paragraph 601JA(2)(b)

Omit “an executive officer”, substitute “a senior manager”.

60 Paragraph 601JB(2)(a)

Omit “an executive officer”, substitute “a senior manager”.

61 Section 628

After “officer”, insert “or employee”.

62 Paragraph 708(12)(a)

Omit “an executive officer”, substitute “a senior manager”.

63 Paragraph 792B(5)(a)

Omit “executive officer”, substitute “senior manager”.

64 Paragraph 821B(4)(a)

Omit “executive officer”, substitute “senior manager”.

65 Paragraph 853B(a)

Omit “executive officer”, substitute “senior manager”.

66 Paragraph 990I(2)(b)

Omit “executive officer”, substitute “senior manager”.

67 Subsection 990I(3)

Omit “an executive officer”, substitute “a senior manager”.

68 Subsection 1012D(9B)

Omit “an executive officer” (wherever occurring), substitute “a senior manager”.

69 Section 1043F

After “officer” (wherever occurring), insert “or employee”.

70 Subsection 1043I(2)

After “officer”, insert “or employee”.

71 Subsection 1043I(3)

After “officer” (wherever occurring), insert “or employee”.

72 Subsection 1043J(2)

After “officer”, insert “or employee”.

73 Subsection 1071G(3)

After “officers”, insert “and employees”.

74 Subsection 1071H(6)

After “officer”, insert “or employee”.

75 Paragraph 1071H(7)(b)

After “officer”, insert “or employee”.

76 Subsection 1302(3)

After “officer”, insert “or employee”.

77 Subsection 1307(1)

After “former officer,”, insert “employee, former employee,”.

78 Subsection 1307(4)

Repeal the subsection.

79 Subsection 1309(1)

After “An officer”, insert “or employee”.

80 Subsection 1309(1)

After “the officer”, insert “or employee”.

81 Subsection 1309(2)

After “An officer”, insert “or employee”.

82 Subparagraph 1314(4)(a)(i)

After “officer”, insert “or employee”.

83 Subparagraph 1314(4)(b)(iii)

After “officer”, insert “or employee”.

84 Subparagraph 1317R(3)(b)(ii)

After “officer”, insert “or employee”.

85 Subparagraph 1317S(2)(b)(ii)

After “officer”, insert “, or employment as an employee,”.

86 Paragraph 1318(4)(a)

After “officer”, insert “or employee”.

87 Paragraph 1318(4)(b)

After “officer”, insert “or employee”.

88 Subsection 1318(5)

Repeal the subsection.

Schedule 10—Management of conflicts of interest by financial services licensees

Corporations Act 2001

1 After paragraph 912A(1)(a)

Insert:

(aa) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative; and

Schedule 11—Miscellaneous amendments

Australian Securities and Investments Commission Act 2001

1 Subsection 5(1) (paragraph (a) of the definition of *international accounting standards*)

Repeal the paragraph, substitute:

(a) the International Accounting Standards Board; or

2 Subsection 236A(3)

Omit "procedure" (wherever occurring), substitute "procedures".

Note: The heading to section 236A is replaced by the heading "**Procedures**".

Corporations Act 2001

3 Section 111AO

After "disclosing entity", insert "incorporated or formed in Australia".

4 Subsection 143(3)

Omit "14 days", substitute "28 days".

5 Paragraph 188(2)(a)

Omit "section 142, 145, 205B or 345", substitute "a provision referred to in subsection (1)".

6 Section 201L

Omit "14 days", substitute "28 days".

7 Section 204D (note 1)

Omit "14 days", substitute "28 days".

8 Paragraph 285(2)(a)

Omit "(whether or not incorporated or formed in this jurisdiction)".

9 Paragraphs 295(4)(a) and (b)

Repeal the paragraphs.

10 Paragraphs 303(4)(a) and (b)

Repeal the paragraphs.

11 At the end of subsection 303(4)

Add:

; and (d) whether, in the directors' opinion, the financial statement and notes are in accordance with this Act, including:

(i) section 304 (compliance with accounting standards); and

(ii) section 305 (true and fair view).

12 At the end of section 306

Add:

(3) 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.

Note: The heading to section 331AD is altered by omitting "**an**" and substituting "**on**".

13 Subsection 348D(4)

Omit "extract", substitute "return".

14 Section 1448

Omit "*2002*", substitute "*2003*".

Note: The heading to section 1448 is altered by omitting "**2002**" and substituting "**2003**".

Schedule 11A—Register of information about relevant interests

Corporations Act 2001

1 Subsection 168(1) (after note 1)

Insert:

Note 1A: See also section 672DA (register of relevant interests in listed company or registered scheme).

2 After section 672D

Insert:

672DA Register of information about relevant interests in listed company or listed managed investment scheme

(1) A listed company, or the responsible entity for a listed managed investment scheme, must keep a register of the following information that it receives under this Part on or after 1 January 2005 (whether the information is received pursuant to a direction the company, or responsible entity, itself gives under section 672A or is received from ASIC under section 672C):

(a) details of the nature and extent of a person's relevant interest in shares in the company or interests in the scheme;

(b) details of the circumstances that give rise to a person's relevant interest in shares in the company or interests in the scheme;

(c) the name and address of a person who has a relevant interest in shares in the company or interests in the scheme;

(d) details of instructions that a person has given about:

(i) the acquisition or disposal of shares in the company or interests in the scheme; or

(ii) the exercise of any voting or other rights attached to shares in the company or interests in the scheme; or

(iii) any other matter relating to shares in the company or interests in the scheme;

(e) the name and address of a person who has given instructions of the kind referred to in paragraph (d).

The register must be kept in accordance with this section.

(2) A register kept under this section by a listed company must be kept at:

(a) the company's registered office; or

(b) the company's principal place of business in this jurisdiction; or

(c) a place in this jurisdiction (whether or not an office of the company) where the work involved in maintaining the register is done; or

(d) another place in this jurisdiction approved by ASIC.

(3) A register kept under this section by the responsible entity of a listed managed investment scheme must be kept at:

(a) the responsible entity's registered office; or

(b) the responsible entity's principal place of business in this jurisdiction; or

(c) a place in this jurisdiction (whether or not an office of the responsible entity) where the work involved in maintaining the register is done; or

(d) another place in this jurisdiction approved by ASIC.

(4) The company, or the responsible entity, must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is:

(a) established at a place that:

(i) is not the registered office of the company or responsible entity; and

(ii) is not at the principal place of business of the company or responsible entity in this jurisdiction; or

(b) moved from one place to another.

Notice is not required for moving the register between the registered office and the principal place of business in this jurisdiction.

Note: The obligation to notify ASIC under this subsection is a continuing obligation and the company or responsible entity is guilty of an offence for each day, after the 7 day period, until ASIC is notified (see section 4K of the *Crimes Act 1914*).

(5) An offence based on subsection (2), (3) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6) The register must either contain:

(a) the name of each holder of shares in the company, or interests in the scheme, to whom the information relates; and

(b) against the name of each such holder:

(i) the name and address of each other person (if any) who, according to information the company, or the responsible entity, has received under this Part on or after 1 January 2005, has a relevant interest in any of the shares or interests (together with details of the relevant interest and of the circumstances because of which the other person has the relevant interest); and

(ii) the name and address of each person who, according to information received by the company, or the responsible entity, under this Part on or after 1 January 2005, has given relevant instructions in relation to any of the shares or interests (together with details of those relevant instructions); and

(c) in relation to each item of information entered in the register, the date on which the item was entered in the register;

or be in such other form as ASIC approves in writing.

(7) The register must be open for inspection:

(a) by any member of the company or scheme—without charge; and

(b) by any other person:

(i) if the company, or the responsible entity, requires the payment of a fee for the inspection—on payment of the fee; or

(ii) if the company, or the responsible entity, does not require the payment of a fee for the inspection—without charge.

The amount of the fee required by the company, or the responsible entity, under subparagraph (b)(i) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

(8) A person may request the company, or the responsible entity, to give to the person a copy of the register (or any part of the register)

and, if such a request is made, the company, or the responsible entity, must give the person the copy:

(a) if the company, or the responsible entity, requires payment of a fee for the copy:

(i) before the end of 21 days after the day on which the payment of the fee is received by the company or the responsible entity; or

(ii) within such longer period as ASIC approves in writing; or

(b) if the company, or the responsible entity, does not require payment of a fee for the copy:

(i) before the end of 21 days after the day on which the request is made; or

(ii) within such longer period as ASIC approves in writing.

The amount of the fee required by the company, or the responsible entity, under paragraph (a) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

Note: The obligation to give the copy under this subsection is a continuing obligation and the company or responsible entity is guilty of an offence for each day, after the period referred to in paragraph (a) or (b), until the copy is given (see section 4K of the *Crimes Act 1914*).

(9) The information that subsection (6) requires to be entered in the register must be entered in the register by the company, or the responsible entity, before the end of 2 business days after the day on which the company, or the responsible entity, receives the information.

Note: The obligation to enter the details in the register under this subsection is a continuing obligation and the company or responsible entity is guilty of an offence for each day, after the 2 business day period, until the details are entered in the register (see section 4K of the *Crimes Act 1914*).

3 Schedule 3 (after table item 229)

Insert:

229AA	Subsections 672DA(1), (2), (3), (4), (6), (7), (8) and (9)	10 penalty units.

Schedule 12—Transitional provisions

Australian Securities and Investments Commission Act 2001

1 At the end of the Act

Add:

Part 17—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

285A Definitions

In this Part:

amending Act means the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

old Act means this Act as in force immediately before the commencement of the amending Act.

Schedule 1 commencement means the day on which Schedule 1 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

286 Application of new subsection 225A(5)

Subsection 225A(5) applies to audits conducted in relation to financial reports for financial years that end on or after 1 July 2004.

287 Application of Part 8 of Schedule 1 to the amending Act

(1) The person holding office as the Chairperson of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(a) of the old Act immediately before the Schedule 1 commencement continues to hold office on and after the

Schedule 1 commencement for the remainder of the term of the person's appointment as if the person had been appointed under paragraph 203(1)(a) of this Act as amended by Part 8 of Schedule 1 to the amending Act.

(2) The person holding office as a member of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(b) of the old Act immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the remainder of the term of the person's appointment as if the person had been appointed under paragraph 203(1)(c) of this Act as amended by Part 8 of Schedule 1 to the amending Act.

(3) The person holding office as a member of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(c) of the old Act immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the remainder of the term of the person's appointment as if the person had been appointed under paragraph 203(1)(d) of this Act as amended by Part 8 of Schedule 1 to the amending Act.

(4) Despite the repeal of section 209 of the old Act by item 146 of Schedule 1 to the amending Act:

(a) a person holding office as a deputy of a member under that section immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the purposes of a hearing in relation to an application made to the Companies Auditors and Liquidators Disciplinary Board before the Schedule 1 commencement; and

(b) continues on and after the Schedule 1 commencement to be entitled to attend meetings of the Board at which the member is not present and, while so attending, to be taken to be a member of the Board.

(5) The amendments made by items 148 and 156 to 175 of Schedule 1 to the amending Act apply to applications made to the Companies Auditors and Liquidators Disciplinary Board on or after the Schedule 1 commencement (regardless of when the circumstances to which the application relates occurred).

288 Application of Schedule 3 to the amending Act

The amendments made to this Act by Schedule 3 to the amending Act apply to causes of action that arise on or after the day on which that Schedule commences.

Corporations Act 2001

2 At the end of Chapter 10

Add:

Part 10.5—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

1453 Definitions

In this Part:

amending Act means the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

old Act means this Act as in force immediately before the commencement day.

Schedule 1 commencement means the day on which Schedule 1 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

Schedule 4 commencement means the day on which Schedule 4 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

Schedule 5 commencement means the day on which Schedule 5 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

Schedule 8 commencement means the day on which Schedule 8 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

1454 Audit reforms in Schedule 1 to the amending Act (auditing standards and audit working papers retention rules)

Sections 307A, 307B and 989CA apply to:

(a) an audit of the financial report for a financial year; or

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

if the financial year begins on or after 1 July 2004.

1455 Audit reforms in Schedule 1 to the amending Act (adoption of auditing standards made by accounting profession before commencement)

(1) The regulations may provide that a standard specified in the regulations (as in force from time to time) is to have effect, for the purposes of this Act, as if it had been made by the AUASB under section 336 on the day specified in the regulations.

(2) The standard must be one made or issued by the Australian Accounting Research Foundation before the Schedule 1 commencement on behalf of CPA Australia and The Institute of Chartered Accountants in Australia.

(3) The regulations may provide that the standard is to have effect as if it specified that it applies to periods ending, or starting, on or after a date specified in the standard.

(4) Standards prescribed under subsection (1) do not have effect as auditing standards:

(a) in relation to financial reports for periods ending after 30 June 2006; or

(b) in relation to financial reports for periods ending after a later date specified by regulations made for the purposes of subsection (1) before 30 June 2006.

(5) A person does not commit an offence based on a contravention of section 307A, subsection 308(3A) or 309(5A) or section 989CA because an audit or review is not conducted in accordance with, or does not include a statement or disclosure required by, an auditing standard prescribed under subsection (1) if the contravention occurs before 1 July 2006.

Note: This subsection does not prevent, however, other action being taken on the basis of the failure to comply with the auditing standard (for example, the person's failure to comply with the standard being referred to the Companies Auditors and Liquidators Disciplinary Board).

1456 Audit reforms in Schedule 1 to the amending Act (new competency standard provisions)

If an application by a person for registration as a registered company auditor:

(a) is lodged with ASIC before the Schedule 1 commencement; and

(b) has not been determined before that day;

section 1280 of the old Act continues to apply to the application despite the amendments made by the amending Act.

1457 Audit reforms in Schedule 1 to the amending Act (new annual statement requirements for auditors)

(1) The requirement under section 1287A for a registered company auditor to lodge an annual statement applies from the first anniversary of the auditor's registration that occurs on or after 1 January 2005.

(2) The first annual statement lodged under section 1287A should cover the period commencing either:

(a) immediately after the period covered by the last triennial statement; or

(b) the day on which the auditor was registered;

whichever is later, and ending on the first anniversary of registration occurring on or after 1 January 2005.

1458 Audit reforms in Schedule 1 to the amending Act (imposition of conditions on existing registration as company auditor)

ASIC may impose conditions on a person's registration as a company auditor under section 1289A even if the registration took effect before the Schedule 1 commencement.

1459 Audit reforms in Schedule 1 to the amending Act (application of items 62 and 63)

The amendments made by items 62 and 63 of Schedule 1 to the amending Act apply to periods that start on or after 1 January 2005.

1460 Audit reforms in Schedule 1 to the amending Act (non-audit services disclosure)

Subsections 300(11B) to (11E) apply to an audit of the financial report for a financial year if the financial year begins on or after 1 July 2004.

1461 Audit reforms in Schedule 1 to the amending Act (auditor appointment)

(1) Section 324AC applies to all appointments of firms as auditor (including an appointment that was made before the Schedule 1 commencement).

(2) The appointment of a person as auditor of a company or registered scheme made before the Schedule 1 commencement under section 327 or 331AB of the old Act remains valid and effective despite the repeal of that section.

(3) An approval by ASIC that is in force under subsection 324(12) of the old Act immediately before the Schedule 1 commencement has effect on and after the Schedule 1 commencement as if it had been given under section 324B.

1462 Audit reforms in Schedule 1 to the amending Act (auditor independence)

(1) Section 307C applies to a financial report for financial years that start on or after 1 July 2004.

(2) Division 3 of Part 2M.4 applies to:

(a) an audit of the financial report for a financial year; or

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

if the financial year begins on or after 1 July 2004.

(3) Division 3 of Part 2M.4 applies to all relationships that exist on or after the Schedule 1 commencement between an auditor and an audited body (including a relationship that exists because of circumstances that came into existence before the Schedule 1 commencement).

(4) Without limiting subsection (3), the items in the table in subsection 324CH(1) apply to circumstances that exist on or after the Schedule 1 commencement (including circumstances that exist because of events that occurred before the Schedule 1 commencement).

(5) Item 9 of the table in subsection 324CE(5) applies to a person who ceases to be a professional employee of the individual auditor concerned on or after the Schedule 1 commencement.

(6) Item 10 of the table in subsection 324CE(5) applies to a person who ceases to own the business of the individual auditor concerned on or after the Schedule 1 commencement.

(7) Item 11 of the table in subsection 324CF(5) applies to a person who ceases to be a member of the audit firm concerned on or after the Schedule 1 commencement.

(8) Item 12 of the table in subsection 324CF(5) applies to a person who ceases to be a professional employee of the auditor firm concerned on or after the Schedule 1 commencement.

(9) Item 11 of the table in subsection 324CG(9) applies to a person who ceases to be an officer of the audit company concerned on or after the Schedule 1 commencement.

(10) Item 12 of the table in subsection 324CG(9) applies to a person who ceases to be a professional employee of the audit company concerned on or after the Schedule 1 commencement.

(11) Section 324CI applies only if the relevant departure time for the purposes of that section occurs on or after the Schedule 1 commencement.

(12) Section 324CJ applies only if the relevant departure time for the purposes of that section occurs on or after the Schedule 1 commencement.

(13) Section 324CK applies to a person only if:

(a) the person is on the Schedule 1 commencement, or becomes after the Schedule 1 commencement, a member of the audit firm concerned or a director of the audit company concerned; and

(b) becomes an officer of the audited body concerned on or after the Schedule 1 commencement.

1463 Audit reforms in Schedule 1 to the amending Act (auditor rotation)

Division 5 of Part 2M.4 applies to:

(a) an audit of the financial report for a financial year; or

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

if the financial year begins on or after 1 July 2006.

1464 Audit reforms in Schedule 1 to the amending Act (listed company AGMs)

The amendments made by Part 5 of Schedule 1 to the amending Act apply to AGMs at which financial reports for financial years that commence on or after 1 July 2004 are considered.

1465 Schedule 2 to the amending Act (financial reporting)

(1) The amendments made by Part 1 of Schedule 2 to the amending Act apply to directors' declarations in relation to financial reports for financial years that start on or after 1 July 2004.

(2) The amendments made by Part 2 of Schedule 2 to the amending Act apply to directors' reports for financial years that start on or after 1 July 2004.

(3) The amendments made by Part 3 of Schedule 2 apply to financial reports lodged with ASIC on or after 1 January 2004.

1466A Schedule 2A to the amending Act (true and fair view)

The amendments made by Schedule 2A to the amending Act apply to directors' reports for periods that start on or after 1 July 2004.

1466 Schedule 3 to the amending Act (proportionate liability)

The amendments made to this Act and the *Trade Practices Act 1974* by Schedule 3 to the amending Act apply to causes of action that arise on or after the day on which that Schedule commences.

1467 Schedule 4 to the amending Act (enforcement)

(1) The amendments made by Part 2 of Schedule 4 apply to all disclosures made on or after the day on which this Act receives the Royal Assent (including a disclosure of information about circumstances that arose before that day).

(2) Section 206BA applies to disqualifications from managing corporations that occur because of convictions on or after the Schedule 4 commencement.

(3) The amendments made by Part 4 of Schedule 4 to the amending Act apply in relation to a contravention of a financial services civil penalty provision that occurs on or after the day on which this Act receives the Royal Assent.

1468 Schedule 5 to the amending Act (remuneration of directors and executives)

(1) Subject to subsections (2) and (3), the amendments made by Schedule 5 to the amending Act apply to financial years commencing on or after 1 July 2004.

(2) The amendments made by items 4, 4A and 5 of Schedule 5 to the amending Act apply to an agreement only if the agreement is entered into on or after the Schedule 5 commencement.

(3) The amendments made by items 6, 7 and 8 of Schedule 5 to the amending Act apply to remuneration reports for financial years that start on or after 1 July 2004.

1469 Schedule 6 to the amending Act (continuous disclosure)

(1) The amendments made by Part 1 of Schedule 6 to the amending Act apply in relation to a contravention of subsection 674(2) or 675(2) that occurs on or after the day on which this Act receives the Royal Assent.

(2) The amendments made by Part 2 of Schedule 6 to the amending Act apply in relation to a failure by a disclosing entity to comply with subsection 674(2) or 675(2) that occurs on or after the day on which this Act receives the Royal Assent.

1470 Schedule 7 to the amending Act (disclosure rules)

(1) The amendments made by Part 1 of Schedule 7 to the amending Act apply to a disclosure document for an offer of securities if the disclosure document is lodged with ASIC on or after the day on which this Act receives the Royal Assent.

(2) The amendments made by Part 2 of Schedule 7 to the amending Act apply to a Product Disclosure Statement that is required to be given on or after the day on which this Act receives the Royal Assent.

(3) The amendment made by items 10 and 11 of Schedule 7 to the amending Act applies to an offer of debentures that is made on or after the day on which this Act receives the Royal Assent.

(4) Section 708A applies to an offer of securities for sale that is made on or after the day on which this Act receives the Royal Assent.

(5) Section 1012DA applies to:

(a) a recommendation situation if the relevant conduct (within the meaning of subsection 1012A(2)); and

(b) a sale situation if the relevant conduct (within the meaning of subsection 1012C(2));

occurs on or after the day on which this Act receives the Royal Assent.

1471 Schedule 8 to the amending Act (shareholder participation and information)

(1) The amendments made by items 1 to 6, 13 and 17 of Schedule 8 to the amending Act apply to a notice of a meeting of a company's members that is given after 30 September 2004.

(2) The amendments made by items 7 to 12 and 14 of Schedule 8 to the amending Act apply to an appointment of a proxy that is made on or after the Schedule 8 commencement.

(2A) The amendment made by item 14A of Schedule 8 to the amending Act applies to reports for financial years that start on or after 1 July 2004.

(3) The amendment made by item 15 of Schedule 8 to the amending Act applies to a directors' report for a financial year that starts on or after 1 July 2004.

(4) The amendment made by item 16 of Schedule 8 to the amending Act applies to a report referred to in subsection 314(1) for a financial year that starts on or after 1 July 2004.

[*Minister's second reading speech made in—*
House of Representatives on 4 December 2003
Senate on 1 March 2004]

(207/03)