

# EXPOSURE DRAFT

## EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment (Measures  
for consultation) Bill 2022: ALRC  
Financial Services Interim Report  
Tranche 2**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedules 1 and 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

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*Telstra Corporation Act 1991*

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## Schedule 1—Unfreezing the Acts Interpretation Act 1901

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

#### **1 Section 5A**

Repeal the section.

#### **2 Subsection 12GNA(4) (definition of *modifications*)**

Repeal the definition.

#### **3 Paragraph 19(2)(b)**

After “oath”, insert “or affirmation”.

#### **4 Subsection 58(5)**

After “oath”, insert “or affirmation”.

#### **5 At the end of sections 116, 117, 118 and 182**

Add:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

#### **6 Subsection 208(4)**

Repeal the subsection, substitute:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

#### **7 Subsection 208A(1)**

Omit “(1)”.

#### **8 Subsection 208A(2)**

Repeal the subsection, substitute:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

#### **9 Subsection 218(5)**

After “oath”, insert “or affirmation”.

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## 10 Subsections 236D(4) and 236H(4)

Repeal the subsections, substitute:

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

## 11 Section 245

Repeal the section.

## *Corporations Act 2001*

## 12 Subsection 3(2)

Omit “subsection 22(3)”, substitute “section 2H”.

## 13 Section 5C

Repeal the section.

## 14 Section 9

Repeal the following definitions:

- (a) definition of *affidavit*;
- (b) definition of *document*;
- (c) definition of *Judge*;
- (d) definition of *territorial sea*.

## 15 Section 105

Repeal the section, substitute:

## 105 Calculation of time

- (1) A period of time referred to in the Corporations legislation, or an instrument made under the Corporations legislation, dating from a given day, act or event, is to be calculated exclusive of such day or of the day of such act or event.
- (2) Without limiting subsection (1), in calculating how many days a particular day, act or event is before or after another day, act or event:
  - (a) the first-mentioned day, or the day of the first-mentioned act or event, is to be counted; and
  - (b) the other day, or the day of the other act or event, is not to be counted.

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- 1 (3) If:  
2 (a) the Corporations legislation, or an instrument made under the  
3 Corporations legislation, requires or allows a thing to be done  
4 within a specified period; and  
5 (b) the last day of the period is not a business day in the place  
6 where the thing must or may be done;  
7 then the thing may instead be done on the next day that is a  
8 business day in that place.

9 **16 Subsection 581(1)**

10 Omit “Judges”, substitute “judges”.

11 **17 Paragraph 596D(1)(b)**

12 After “oath”, insert “or affirmation”.

13 **18 Section 1020AE (note 2)**

14 Repeal the note, substitute:

15 Note 2: For the definition of *writing*, see section 2B of the *Acts Interpretation*  
16 *Act 1901*.

17 **19 Subsection 1044B(4) (definition of *modifications*)**

18 Repeal the definition.

19 **20 Subsections 1057A(2) and (3)**

20 Omit “Judge”, substitute “judge”.

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## Schedule 2—Single glossary of defined terms

### Part 1—Amendments

#### Division 1—Interpretation generally

#### *Corporations Act 2001*

##### 1 Before section 6

Insert:

##### 6A Simplified outline of this Part

This Part sets out the main interpretative provisions for this Act. Particular provisions of this Act may have different or additional interpretative provisions.

The Dictionary in section 9 contains a definition for each term that is defined in this Act (other than terms that are defined for the purposes of a single section, for the purposes of Chapter 10 (transitional provisions) or for the purposes of Schedule 2 or 4). Terms may be defined only for a particular purpose or have a different definition for different purposes.

If a term does not have a definition in section 9, that term has its ordinary meaning in this Act. If a term is defined in section 9 only for particular purposes, that term has its ordinary meaning in this Act for all other purposes.

##### 2 Section 7

Repeal the section.

##### 3 Section 9 (definition of ASIC)

Repeal the definition, substitute:

*ASIC*:

- (a) means the Australian Securities and Investments Commission; and
- (b) has a meaning affected by section 106 (about ASIC delegates).



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## 4 Section 9 (at the end of the definition of *body corporate*)

Add:

; and (c) for the purposes of Chapter 5 and Part 9.2—has a meaning affected by subsection 6(1) (about Part 5.7 bodies).

## 5 Section 9

Insert:

*doing* an act or thing has a meaning affected by section 52.

## 6 Section 9 (definition of *circulating security interest*)

Repeal the definition, substitute:

*circulating security interest* means a security interest that is:

(a) a PPSA security interest, if:

(i) the security interest has attached to a circulating asset within the meaning of the *Personal Property Securities Act 2009*; and

(ii) the grantor (within the meaning of that Act) has title to the asset; or

(b) a floating charge.

Note: Security interests are either PPSA security interests, or charges, liens or pledges (see the definition of *security interest*).

## 7 Section 9

Insert:

*disclosing entity provisions* has the meaning given by section 111AR.

*in default*, in relation to a contravention, has a meaning affected by section 83.

*in this jurisdiction or elsewhere* has a meaning affected by subsection 102B(1).

## 8 Section 9 (note to the definition of *lease*)

Omit “in section 51 of this Act”, substitute “in this section”.

## 9 Section 9 (definition of *listed disclosing entity*)

Omit “subsection 111AL(1)”, substitute “section 111AL”.

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## 10 Section 9 (definition of *lodge*)

Repeal the definition substitute:

*lodge*:

- (a) means lodge with ASIC in this jurisdiction; and
- (b) in relation to a document lodged with ASIC—has a meaning affected by section 350.

## 11 Section 9

Insert:

*number of shares*, in relation to a body corporate, has a meaning affected by section 101.

## 12 Section 9

Insert:

*possessory security interest*, in relation to property, means a security interest that is:

- (a) a PPSA security interest in the property that is perfected by possession or control, within the meaning of the *Personal Property Securities Act 2009*; or
- (b) a lien or a pledge in relation to the property.

Note: Security interests are either PPSA security interests, or charges, liens or pledges (see the definition of *security interest*).

## 13 Section 9 (definition of *PPSA security interest*)

Repeal the definition, substitute:

*PPSA security interest* (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of *security interest*);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of *transitional security interest*, see section 308 of the *Personal Property Securities Act 2009*.

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## 14 Section 9

Insert:

*register*: a *register* that is kept by ASIC under this Act has a meaning affected by subsection 1214(4) (about the Register of Passport Funds).

## 15 Section 9 (definition of *Registrar*)

Repeal the definition, substitute:

*Registrar* means:

- (a) if only one Commonwealth body is appointed as Registrar under section 1270—that body; or
- (b) if more than one Commonwealth body is appointed under that section:
  - (i) for a reference in a provision that relates to one or more particular functions or powers—any Commonwealth body so appointed with any of those particular functions or powers; or
  - (ii) otherwise—any of the Commonwealth bodies appointed under that section.

## 16 Section 9 (note to the definition of *retention of title clause*)

Omit “section 51”, substitute “this section”.

## 17 Section 9 (definition of *security interest*)

Repeal the definition, substitute:

*security interest* means:

- (a) a PPSA security interest; or
- (b) a charge, lien or pledge.

## 18 Section 9 (definition of *secured creditor*)

Repeal the definition, substitute:

*secured creditor*:

- (a) of a corporation means a creditor of the corporation, if the debt owing to the creditor is secured by a security interest; and
- (b) of a sub-fund of a CCIV means a secured creditor of the CCIV, if the debt owing to the creditor is, to any extent, a liability of the sub-fund.

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## 19 Section 9 (definition of *secured party*)

Repeal the definition, substitute:

*secured party*, in relation to a security interest, means:

- (a) if the security interest is a PPSA security interest—a secured party within the meaning of the *Personal Property Securities Act 2009*; or
- (b) if the security interest is not a PPSA security interest, but consists of a charge, lien or pledge in relation to the property—a chargee (including a person in whose favour a charge is to be given or executed, whether on demand or otherwise, under an agreement), lienee or pledgee in relation to the charge, lien or pledge.

Note: Security interests are either PPSA security interests, or charges, liens or pledges (see the definition of *security interest*).

## 20 Section 9 (definition of *unlisted disclosing entity*)

Repeal the definition.

## 21 Section 9C

Repeal the section.

## 22 Division 6A of Part 1.2 (heading)

Repeal the heading, substitute:

### Division 6A—PPSA retention of title property

## 23 Sections 51 to 51E

Repeal the sections.

## 24 Section 53 (heading)

Repeal the heading, substitute:

### 53 Meaning of *affairs*—body corporate other than a CCIV

## 25 Section 53AAA (heading)

Repeal the heading, substitute:

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1 **53AAA Meaning of *affairs*—CCIV**

2 **26 Section 53AA (heading)**

3 Repeal the heading, substitute:

4 **53AA Meaning of *business affairs*—body corporate**

5 **27 Section 53AB (heading)**

6 Repeal the heading, substitute:

7 **53AB Meaning of *business affairs*—natural person**

8 **28 Section 53AC (heading)**

9 Repeal the heading, substitute:

10 **53AC Meaning of *business affairs*—partnership**

11 **29 Section 53AD (heading)**

12 Repeal the heading, substitute:

13 **53AD Meaning of *business affairs*—trust**

14 **30 Division 2 of Part 1.2A (heading)**

15 Repeal the heading, substitute:

16 **Division 2—Meaning of disclosing entity and related terms**

17 **31 Section 111AB**

18 Repeal the section.

19 **32 Section 111AL**

20 Repeal the section, substitute:

21 **111AL Meaning of *listed disclosing entity***

22 A disclosing entity is a *listed disclosing entity* if all or any ED  
23 securities of the entity are quoted ED securities.

24 **33 Subsection 111AR(1)**

25 Omit “For the purposes of this Division, the”, substitute “The”.

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## 34 Subsection 442B(1) (note 1)

Repeal the note, substitute:

Note 1: A circulating security interest can be either a PPSA security interest to which a circulating asset has attached or a floating charge: see the definition of *circulating security interest* in section 9.

## 35 Subsections 910B(1) and (2)

Omit “*Control*”, substitute “In this Part, *control*”.

## Division 2—Terms relating to companies

### *Corporations Act 2001*

## 36 Section 9 (definition of *annual transparency report*)

Repeal the definition, substitute:

*annual transparency report* means a report required by section 332A.

## 37 Section 9

Insert:

*auditor’s report* means:

- (a) an auditor’s report on an annual financial report required by section 308; or
- (b) an auditor’s report on a half-year financial report required by section 309.

*chief executive function* has the meaning given by section 295A.

*chief financial officer function* has the meaning given by section 295A.

*conflict of interest situation* has the meaning given by section 324CD.

*corporate responsibility provision* has the meaning given by section 188.

*directors’ report* means:

- (a) an annual directors’ report required by section 292; or
- (b) a half-year directors’ report required by section 302.

*equal reduction* has the meaning given by subsection 256B(2).

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## 38 Section 9 (definition of *financial benefit*)

Repeal the definition.

## 39 Section 9 (definition of *financial report*)

Repeal the definition, substitute:

*financial report* means:

- (a) an annual financial report required by or under section 292, 293, 294, 294A or 294B; or
- (b) a half-year financial report required by section 302.

## 40 Section 9

Insert:

*giving a financial benefit* has a meaning that is affected by section 229.

## 41 Section 9

Insert:

*independent person*, in Part 2G.7 (independent reports on polls), has a meaning affected by section 253UA.

## 42 Section 9 (subparagraph (a)(ii) of the definition of *play a significant role*)

Omit “audit report”, substitute “auditor’s report”.

## 43 Section 9

Insert:

*replaceable rule*: see section 135.

*selective reduction* has the meaning given by subsection 256B(2).

*shareholder*:

- (a) in Part 2J.1 (share capital reductions and share buy-backs)—has a meaning affected by section 258G (about MCI mutual entities); and
- (b) in Part 2J.3 (transactions affecting share capital)—has a meaning affected by section 260DA (about MCI mutual entities).

*spill meeting* has the meaning given by subsection 250V(1).

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1 *spill resolution* has the meaning given by subsection 250V(1).

2 **44 Section 179**

3 Repeal the section, substitute:

4 **179 Simplified outline of this Part**

5 This Part sets out some of the most significant duties of directors,  
6 secretaries, other officers and employees of corporations. Other  
7 duties are imposed by other provisions of this Act and other laws  
8 (including the general law).

9 Note: For a CCIV there are additional duties: see Divisions 2 and 3 of  
10 Part 8B.3.

11 The officers of a corporation include, as well as its directors and  
12 secretaries, some other people who manage the corporation or its  
13 property (such as receivers and liquidators).

14 Note: For the definitions of *director* and *officer*: see section 9.

15 **45 Subsection 229(1)**

16 Omit “this Chapter”, substitute “this Act”.

17 **46 Paragraph 250RA(1)(a)**

18 Omit “audit report”, substitute “auditor’s report”.

19 **47 Paragraph 250RA(3)(c)**

20 Omit “audit report”, substitute “auditor’s report”.

21 **48 Subparagraph 307B(1)(c)(i)**

22 Omit “audit report”, substitute “auditor’s report”.

23 **49 Subparagraph 307B(3)(b)(i)**

24 Omit “audit report”, substitute “auditor’s report”.

25 **50 Subparagraph 307C(5)(a)(i)**

26 Omit “audit report”, substitute “auditor’s report”.

27 **51 Subsection 314A(1) (note)**

28 Omit “audit report”, substitute “auditor’s report”.



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1 **52 Subsection 324CH(1) (table items 8 and 9)**

2 Omit “audit report”, substitute “auditor’s report”.

3 **53 Subsection 332A(2)**

4 Omit “*annual transparency report*”, substitute “annual transparency  
5 report”.

6 **54 Subsection 336(4)**

7 Omit “audit report”, substitute “auditor’s report”.

8 **55 Subsection 601SCD(3) (definition of *financial benefit*)**

9 Repeal the definition.

10 **Division 3—Terms relating to external administration and**  
11 **property**

12 ***Corporations Act 2001***

13 **56 Section 9**

14 Insert:

15 ***486B warrant*** means a warrant issued under section 486B.

16 ***appropriate officer***, in Part 5.8, has the meaning given by  
17 subsection 589(5).

18 ***directors***, in Part 5.1 (arrangements and reconstructions), has a  
19 meaning affected by section 410.

20 **57 Section 9 (definition of *eligibility criteria*) (first occurring)**

21 Repeal the definition, substitute:

22 ***eligibility criteria***:

23 (a) for restructuring a company—has the meaning given by  
24 section 453C; and

25 (b) for the simplified liquidation process—has the meaning  
26 given by section 500AA.

27 **58 Section 9 (definition of *eligibility criteria*) (second**  
28 **occurring)**

29 Repeal the definition.

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## 59 Section 9

Insert:

*eligible unsecured creditor* has the meaning given by section 579Q.

*employee*, of a company, in Part 5.8 (employee entitlements) has the meaning given by subsections 596AA(4) and (5).

## 60 Section 9 (before paragraph (a) of the definition of *property*)

Insert:

(aaa) in Part 5.2 (receivers, and other controllers, of property of corporations)—has a meaning affected by section 416; and

## 61 Section 9

Insert:

*section 513CA day* has the meaning given by section 513CA.

## 62 Section 9 (definition of *receiver*)

Repeal the definition, substitute:

*receiver* has a meaning affected by paragraph 434D(b) (which deals with 2 or more persons appointed as receivers) and:

- (a) in Part 5.2 (receivers, and other controllers, of property)—has a meaning affected by section 416;
- (b) in Part 5.3A (deeds of company arrangement)—has a meaning affected by section 435B;
- (c) in Part 8B.6 (external administration and deregistration of CCIVs)—has a meaning affected by section 1236A.

## 63 Section 9

Insert:

*triggering event* has the meaning given by section 500AAA.

## 64 Section 416

Repeal the section, substitute:

### 416 Meaning of *property* and *receiver*

In this Part:

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1 *property*, in relation to a corporation, means property:

- 2 (a) in the case of a company—in Australia or outside Australia;  
3 or  
4 (b) in the case of a registered foreign company—in this  
5 jurisdiction or an external Territory; or  
6 (c) in the case of a registrable Australian body—in this  
7 jurisdiction but outside the body’s place of origin.

8 Note: See section 9 (definition of *property*).

9 *receiver*, in relation to property of a corporation, includes a  
10 receiver and manager.

## 11 **65 After paragraph 422(1)(a)**

12 Insert:

- 13 (aa) if the corporation is a registered foreign company—a past or  
14 present local agent of the corporation may have been guilty  
15 of an offence in relation to the corporation; or

## 16 **66 After paragraph 422(3)(a)**

17 Insert:

- 18 (aa) that a past or present local agent of a corporation:  
19 (i) that is a registered foreign company; and  
20 (ii) in respect of property of which a receiver has been  
21 appointed;  
22 has been guilty of an offence in relation to the corporation; or

## 23 **67 After subparagraph 422(4)(b)(i)**

24 Insert:

- 25 (ia) if the corporation is a registered foreign company—a  
26 past or present local agent of the corporation has been  
27 guilty of an offence in relation to the corporation; or

## 28 **68 Section 429 (heading)**

29 Omit “**Officers**”, substitute “**Reporting officers**”.

## 30 **69 After paragraph 430(1)(a)**

31 Insert:

- 32 (aa) if the corporation is a registered foreign company—persons  
33 who are past or present local agents of the corporation;

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## 70 At the end of subsection 430(1)

Add:

; (e) if the corporation is a registered foreign company—persons who:

(i) are present local agents of another corporation; or

(ii) have been, within one year before the control day, local agents of another corporation;

and the other corporation is an officer of the corporation or a past or present local agent of the corporation.

## 71 Section 435B

Repeal the section, substitute:

### 435B Meaning of *property* and *receiver*

In this Part:

*property* of a company includes any PPSA retention of title property of the company.

Note: See sections 9 (definition of *property*) and 51F (PPSA retention of title property). An extended definition of *property* applies in subsection 444E(3) (see subsection 444E(4)).

*receiver* includes a receiver and manager.

## 72 Section 452B

Repeal the section, substitute:

### 452B Meaning of *property*

In this Part:

*property* of a company includes any PPSA retention of title property of the company.

Note: See sections 9 (definition of *property*) and 51F (PPSA retention of title property).

## 73 Section 465 (heading)

Repeal the heading, substitute:

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1 **465 Meaning of *property***

2 **74 Section 489F**

3 Repeal the section, substitute:

4 **489F Meaning of *property***

5 In this Part:

6 ***property*** of a company includes PPSA retention of title property, if  
7 the security interest in the property is vested in the company  
8 because of the operation of any of the following provisions:

- 9 (a) section 267 or 267A of the *Personal Property Securities Act*  
10 2009 (property subject to unperfected security interests);  
11 (b) section 588FL of this Act (collateral not registered within  
12 time).

13 Note: See sections 9 (definition of ***property***) and 51F (PPSA retention of  
14 title property).

15 **75 Before section 500A**

16 Insert:

17 **500AAA Meaning of *triggering event***

18 Each of the following is a ***triggering event*** in relation to a  
19 company:

- 20 (a) a special resolution under section 491 that the company be  
21 wound up voluntarily is passed;  
22 (b) if section 446A applies in relation to the company because of  
23 paragraph 446A(1)(a)—the resolution referred to in that  
24 paragraph is passed;  
25 (c) if section 446A applies in relation to the company because of  
26 paragraph 446A(1)(b)—the company first contravenes  
27 subsection 444B(2);  
28 (d) if section 446A applies in relation to the company because of  
29 paragraph 446A(1)(c)—the resolution referred to in  
30 subparagraph 446A(1)(c)(ii) is passed;  
31 (e) if section 446AA applies in relation to the company because  
32 of paragraph 446AA(1)(a)—the Court makes an order under  
33 section 445D terminating a deed of company arrangement in  
34 relation to the company;

# EXPOSURE DRAFT

- 
- 1 (f) if section 446AA applies in relation to the company because  
2 of paragraph 446AA(1)(b)—the circumstances specified in  
3 the deed of company arrangement in which the deed is to  
4 terminate and the company is to be wound up first exist;  
5 (g) if regulations made for the purposes of section 446B have the  
6 effect that the company is taken to have passed a special  
7 resolution under section 491 that the company be wound up  
8 voluntarily—that special resolution is taken to have passed,  
9 under the regulations;  
10 (h) any other event prescribed by the regulations.

11 **76 Paragraph 500A(2)(a)**

12 Omit “(see section 489F)”.

13 **77 Section 513AA (heading)**

14 Repeal the heading, substitute:

15 **513AA Meaning of *property***

16 **78 Section 513CA (heading)**

17 Repeal the heading, substitute:

18 **513CA Meaning of *section 513CA day***

19 **79 Section 580**

20 Repeal the section.

21 **80 Subsection 581(1)**

22 Omit “all external administration matters.”, substitute “all matters  
23 (*external administration matters*) relating to:

- 24 (a) winding up, under this Chapter, a company or a Part 5.7  
25 body; or  
26 (b) winding up, outside Australia, a body corporate or a Part 5.7  
27 body; or  
28 (c) the insolvency of a body corporate or of a Part 5.7 body.”.

29 **81 Subparagraph 581(2)(a)(iii)**

30 Repeal the subparagraph, substitute:

- 31 (iii) countries prescribed for the purposes of this  
32 subparagraph; and

# EXPOSURE DRAFT

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(iv) colonies, overseas territories or protectorates of countries so prescribed;

## 82 Section 588C (heading)

Repeal the heading, substitute:

### 588C Meaning of *property*

## 83 Section 588FK

Repeal the section, substitute:

### 588FK Interpretation and application

(1) A word or expression used in this Division (other than the expression PPSA security interest) has the same meaning as in the *Personal Property Securities Act 2009*.

Note: For *PPSA security interest*: see section 9.

(2) Subsection (1) applies despite any other provision of this Act.

(3) For the purposes of this Division, whether or not a person has acquired actual or constructive knowledge of a circumstance is to be determined in accordance with sections 297 to 300 of the *Personal Property Securities Act 2009*.

Note: As a result of this section, in this Division, *company* has the same meaning as in the *Personal Property Securities Act 2009*.

## 84 Before subsection 589(5)

Insert:

*Meaning of appropriate officer and property*

## 85 Subsection 589(5) (definition of *relevant day*)

Repeal the definition.

## 86 At the end of section 590

Add:

*Meaning of relevant day*

(8) In this section:

*relevant day* means the day on which:

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# EXPOSURE DRAFT

- 
- 1 (a) in relation to a company that has been wound up, has been in  
2 the course of being wound up, or is being wound up:  
3 (i) if, because of Division 1A of Part 5.6, the winding up is  
4 taken to have begun on the day when an order that the  
5 company be wound up was made—the application for  
6 the order was filed; or  
7 (ii) otherwise—the winding up is taken because of  
8 Division 1A of Part 5.6 to have begun;  
9 (b) in relation to a company of which a provisional liquidator has  
10 been appointed—the provisional liquidator was appointed;  
11 (c) in relation to a company that is or has been under  
12 administration—the administration began;  
13 (d) in relation to a company that has executed a deed of company  
14 arrangement—the deed was executed;  
15 (e) in relation to a company that is or has been under  
16 restructuring—the restructuring began;  
17 (f) in relation to a company that has made a restructuring plan—  
18 the plan was made;  
19 (g) in relation to a company affairs of which are or have been  
20 under investigation:  
21 (i) if paragraph 589(2)(a) applies—the investigation began;  
22 or  
23 (ii) if paragraph 589(2)(b) applies—a direction was given to  
24 the NCSC to arrange for the investigation;  
25 (h) in relation to a company in respect of property of which a  
26 receiver, or a receiver and manager, has been appointed—the  
27 receiver, or the receiver and manager, was appointed;  
28 (i) in relation to a company that is unable to pay its debts—the  
29 execution or other process was returned unsatisfied in whole  
30 or in part;  
31 (j) in relation to a company that has ceased to carry on  
32 business—a notice was first published in relation to the  
33 company under subsection 601AA(4) or 601AB(3);  
34 (k) in relation to a company that has entered into a compromise  
35 or arrangement with its creditors—the compromise or  
36 arrangement was approved by the Court.

37 **87 Section 601 (heading)**

38 Repeal the heading, substitute:

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1 **601 Meaning of *property***

2 **88 Section 601C (heading)**

3 Repeal the heading, substitute:

4 **601C Meaning of *property***

5 **Division 4—Terms relating to managed investment**  
6 **schemes**

7 ***Corporations Act 2001***

8 **89 Section 9**

9 Insert:

10 *compliance committee* means a compliance committee established  
11 under section 601JA.

12 *liquid*:

13 (a) for a registered scheme—has the meaning given by  
14 subsection 601KA(4); and

15 (b) for a sub-fund—has the meaning given by  
16 subsection 1230H(1).

17 **90 Paragraphs 601GA(4)(b) and (c)**

18 Omit “(as defined in section 601KA)”.

19 **Division 5—Terms relating to licensed trustee companies**

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

21 **91 Subsection 5(1)**

22 Repeal the following definitions:

23 (a) definition of *traditional trustee company services*;

24 (b) definition of *trustee company*.

25 ***Corporations Act 2001***

26 **92 Section 9**

27 Insert:

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# EXPOSURE DRAFT

- 
- 1            **asset** means property, or a right, of any kind, and includes:
- 2            (a) any legal or equitable estate or interest (whether present or
- 3            future, vested or contingent, tangible or intangible, in real or
- 4            personal property) of any kind; and
- 5            (b) any chose in action; and
- 6            (c) any right, interest or claim of any kind including rights,
- 7            interests or claims in or in relation to property (whether
- 8            arising under an instrument or otherwise, and whether
- 9            liquidated or unliquidated, certain or contingent, accrued or
- 10            accruing); and
- 11            (d) any CGT asset within the meaning of the *Income Tax*
- 12            *Assessment Act 1997*.
- 13            **certificate of transfer** has the meaning given by
- 14            subsection 601WBG(1).
- 15            **client**, in relation to a trustee company, has the meaning given by
- 16            subsection 601RAB(3).
- 17            **common fund**, in Chapter 5D, has the meaning given by
- 18            subsection 601SCA(2).
- 19            **compulsory transfer determination** has the meaning given by
- 20            subsection 601WBA(1).
- 21            **estate assets and liabilities** has the meaning given by
- 22            section 601WAA.
- 23            **estate management functions** has the meaning given by
- 24            subsection 601RAC(2).
- 25            **estate that is administered or managed** has the meaning given by
- 26            subsection 601SBB(1A).
- 27            **fees**, in Chapter 5D, has the meaning given by section 601RAA.
- 28            **interest**, in relation to land, includes:
- 29            (a) a legal or equitable estate or interest in the land; or
- 30            (b) a right, power or privilege over, or in relation to, the land.
- 31            **interests**, of clients of a licenced trustee company, in Part 5D.5
- 32            (limit on control of licensed trustee companies), has a meaning
- 33            affected by section 601VCB.
- 34            **law**, in Chapter 5D, has the meaning given by section 601RAA.
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# EXPOSURE DRAFT

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1                    *liability* includes a duty or obligation of any kind (whether arising  
2                    under an instrument or otherwise, and whether actual, contingent  
3                    or prospective).

## 4                    **93 Section 9 (definition of *licensed trustee company*)**

5                    Repeal the definition, substitute:

6                    *licensed trustee company* means a trustee company that holds an  
7                    Australian financial services licence covering the provision of one  
8                    or more traditional trustee company services.

9                    Note:            Traditional trustee company services are financial services: see  
10                    subsection 766A(1A).

## 11                   **94 Section 9**

12                   Insert:

13                   *person with a proper interest*, in relation to an estate, has the  
14                   meaning given by section 601RAD.

15                   *receiving company* has the meaning given by  
16                   subsection 601WBA(1).

17                   *traditional trustee company services* has the meaning given by  
18                   subsection 601RAC(1).

19                   *transfer determination* has the meaning given by  
20                   subsection 601WBA(1).

21                   *transferring company* has the meaning given by  
22                   subsection 601WBA(1).

23                   *trustee company* has the meaning given by section 601RAB.

24                   *trustee company provisions* has the meaning given by  
25                   section 601RAE.

26                   *unacceptable control situation*:

27                   (a) in relation to a trustee company, has the meaning given by  
28                   section 601VAA; and

29                   (b) in relation to a widely held market body, has the meaning  
30                   given by section 850B.

31                   *voluntary transfer determination* has the meaning given by  
32                   subsection 601WBA(1).

33                   *will* includes a codicil and any other testamentary writing.

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# EXPOSURE DRAFT

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1 **95 Paragraph 490(1)(c)**

2 Omit “(within the meaning of Chapter 5D)”.

3 **96 Subsection 490(2)**

4 Omit “(within the meaning of Chapter 5D)”.

5 **97 Section 601RAA**

6 Repeal the section, substitute:

7 **601RAA Meaning of *fees* and *law*—Chapter 5D**

8 In this Chapter:

9 *fees* means fees in the nature of remuneration (including  
10 commission).

11 *law* means a law of the Commonwealth or of a State or Territory,  
12 and includes a rule of common law or equity.

13 **98 Section 601RAB (heading)**

14 Omit “of trustee company”.

15 **99 Paragraph 601RAB(2A)(e)**

16 Omit “as defined in”, substitute “see”.

17 **100 After subsection 601SBB(1)**

18 Insert:

19 (1A) An *estate that is administered or managed* by a trustee company,  
20 means all or any of the estate of a person (whether living or dead)  
21 that is administered or managed by the trustee company in the  
22 course of performing estate management functions.

23 **101 Subsection 601SCA(2)**

24 Omit “A fund”, substitute “In this Chapter, a fund”.

25 **102 Section 601VAA**

26 Omit “For the purposes of this Part, an”, substitute “An”.

27 **103 Section 601VAC (heading)**

28 Repeal the heading, substitute:

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# EXPOSURE DRAFT

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## 1 601VAC Orders to remedy unacceptable control situation

### 2 104 Section 601WAA

3 Repeal the section, substitute:

#### 4 601WAA Meaning of *estate assets and liabilities*

5 A company's *estate assets and liabilities* are assets (including  
6 assets in common funds) and liabilities of an estate, or incurred in  
7 relation to an estate, in relation to which the company was  
8 performing estate management functions, if the assets and  
9 liabilities were vested in or otherwise belonged to the company:

10 (a) because of its performance of those functions; and

11 (b) immediately before:

12 (i) if ASIC has under Part 7.6 cancelled the company's  
13 Australian financial services licence or varied the  
14 conditions of the company's Australian financial  
15 services licence so that the licence ceases to cover  
16 traditional trustee company services—the cancellation  
17 or variation; or

18 (ii) otherwise—a relevant certificate of transfer comes into  
19 force.

20 Note: This Part does not apply to liabilities for breach of trust etc.: see  
21 section 601WBK.

### 22 105 Paragraph 601WBA(1)(a)

23 Repeal the paragraph, substitute:

24 (a) ASIC has under Part 7.6 cancelled the transferring  
25 company's Australian financial services licence or varied the  
26 conditions of the transferring company's Australian financial  
27 services licence so that the licence ceases to cover traditional  
28 trustee company services (the determination is a *compulsory*  
29 *transfer determination*); or

### 30 106 Paragraph 601WBH(b)

31 After "publish", insert "(in accordance with any requirements  
32 prescribed by the regulations for the purposes of this paragraph)".

### 33 107 Subsection 601WCA(1)

34 Omit "An authorised ASIC officer", substitute "A person authorised  
35 under section 601WCP".

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## 108 Subparagraph 601WCB(b)(i)

Omit “an authorised ASIC officer”, substitute “a person authorised under section 601WCF”.

## 109 Subparagraph 601WCC(1)(b)(i)

Omit “an authorised ASIC officer”, substitute “a person authorised under section 601WCF”.

## 110 Subsection 601WDA(1)

Repeal the subsection, substitute:

*Notice of cancellation or variation of Australian financial services licence*

(1) If ASIC has under Part 7.6 cancelled a trustee company’s Australian financial services licence or varied the conditions of a trustee company’s Australian financial services licence so that the licence ceases to cover traditional trustee company services, the trustee company must, as soon as practicable:

(a) take all reasonable steps to contact the following persons and advise them of the cancellation or variation of the licence:

(i) all persons who the trustee company is aware have executed and lodged instruments, such as wills, that have not yet come into effect, but will potentially lead to estate assets and liabilities being held by the trustee company;

(ii) all persons who the trustee company is aware have appointed the trustee company as trustee or to some other capacity; and

(b) publish (in accordance with any requirements prescribed by the regulations for the purposes of this paragraph) notice of the cancellation or variation of the licence.

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

## 111 Subsection 601WDA(3)

After “publish”, insert “(in accordance with any requirements prescribed by the regulations for the purposes of this subsection)”.

## 112 At the end of Division 3 of Part 5D.6

Add:

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1 **601WCI Authorisation to perform functions or exercise powers in**  
2 **this Part**

3 ASIC may, in writing, authorise a person who is a member of  
4 ASIC, or of its staff, to perform functions or exercise powers under  
5 a particular provision of this Part.

6 **113 Paragraph 792A(1)(h)**

7 Omit “within the meaning of that Division”, substitute “see Division 1  
8 of Part 7.4”.

9 **114 Paragraph 821A(1)(g)**

10 Omit “within the meaning of that Division”, substitute “see Division 1  
11 of Part 7.4”.

12 **Division 6—Terms relating to takeovers and acquisitions**

13 *Australian Securities and Investments Commission Act 2001*

14 **115 Paragraph 43(1)(e)**

15 Omit “Part 6.9”, substitute “Subdivision B of Division 2 of Part 6.10”.

16 *Corporations Act 2001*

17 **116 Section 9 (paragraph (b) of the definition of *enter into*)**

18 Before “issued”, insert “allotted”.

19 **117 Section 64**

20 Repeal the section.

21 **118 Paragraphs 617(1)(a) and (3)(a)**

22 Omit “*bid class*”, substitute “bid class”.

23 **Division 7—References to Panel**

24 *Australian Securities and Investments Commission Act 2001*

25 **119 Subsection 5(1) (paragraph (a) of the definition of**  
26 ***member*)**

27 Omit “the Panel”, substitute “the Takeovers Panel”.

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# EXPOSURE DRAFT

1 **120 Subsection 5(1) (paragraph (c) of the definition of**  
2 ***member*)**

3 Omit “Panel” (wherever occurring), substitute “Takeovers Panel”.

4 **121 Subsection 5(1) (definition of *Panel*)**

5 Repeal the definition.

6 **122 Subsection 5(1) (definition of *Panel proceedings*)**

7 Repeal the definition.

8 **123 Subsection 5(1) (definition of *President*)**

9 Omit “Panel”, substitute “Takeovers Panel”.

10 **124 Subsection 5(1)**

11 Insert:

12 *Takeovers Panel* means the Takeovers Panel referred to in Part 10.

13 *Takeovers Panel proceedings* means proceedings before the Panel  
14 on:

15 (a) an application made to the Takeovers Panel under the  
16 Corporations Act; or

17 (b) a reference of a decision to the Takeovers Panel for review  
18 under the Corporations Act.

19 **125 Subsection 5(1) (paragraph (b) of the definition of**  
20 ***witness*)**

21 Omit “Panel”, substitute “Takeovers Panel”.

22 **126 Amendments of listed provisions**

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**Amendments relating to the Takeovers Panel**

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<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
1	Paragraph 11(2)(a)	Panel (wherever occurring)	Takeovers Panel
2	Paragraph 127(4)(a)	Panel	Takeovers Panel
3	Section 172	Panel (wherever occurring)	Takeovers Panel
4	Section 173	Panel	Takeovers Panel
5	Section 174 (heading)	<b>Panel</b>	<b>Takeovers Panel</b>

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# EXPOSURE DRAFT

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<b>Amendments relating to the Takeovers Panel</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
6	Section 174	Panel	Takeovers Panel
7	Subsection 183(1)	Panel (wherever occurring)	Takeovers Panel
8	Division 2 of Part 10 (heading)	<b>Panel's</b>	<b>Takeovers Panel's</b>
9	Section 184 (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
10	Section 184	Panel (wherever occurring)	Takeovers Panel
11	Subsection 185(1)	Panel	Takeovers Panel
12	Paragraph 185(1)(b)	Panel's	Takeovers Panel's
13	Subsection 185(1A)	Panel's	Takeovers Panel's
14	Subsections 185(2) and (3)	Panel	Takeovers Panel
15	Section 186	Panel (wherever occurring)	Takeovers Panel
16	Division 3 of Part 10 (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
17	Section 187	Panel's	Takeovers Panel's
18	Section 187	Panel (wherever occurring)	Takeovers Panel
19	Section 188	Panel (wherever occurring)	Takeovers Panel
20	Section 190 (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
21	Subsections 190(1) and (2)	Panel (wherever occurring)	Takeovers Panel

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1 **127 Subsection 190(3)**

2 Repeal the subsection, substitute:

3 (3) In this section:

4 *Takeovers Panel proceedings* includes a part of Takeovers Panel  
5 proceedings.

6 **128 Amendments of listed provisions**

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# EXPOSURE DRAFT

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<b>Amendments relating to the Takeovers Panel</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
1	Section 192	Panel (wherever occurring)	Takeovers Panel
2	Section 193	Panel	Takeovers Panel
3	Section 194 (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
4	Section 194	Panel (wherever occurring)	Takeovers Panel
5	Section 195	Panel (wherever occurring)	Takeovers Panel
6	Section 197	Panel (wherever occurring)	Takeovers Panel
7	Section 199	Panel (wherever occurring)	Takeovers Panel
8	Section 200 (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
9	Paragraph 200(1)(a)	Panel	Takeovers Panel
10	Paragraph 200(1)(a)	Panel's	Takeovers Panel's
11	Paragraph 200(1)(b)	Panel	Takeovers Panel
12	Section 201	Panel (wherever occurring)	Takeovers Panel
13	Section 201A (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
14	Section 201A	Panel (wherever occurring)	Takeovers Panel
15	Subparagraph 243(a)(i)	Panel	Takeovers Panel
16	Paragraph 246(1)(e)	Panel	Takeovers Panel

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1 ***Corporations Act 2001***

2 **129 Section 9 (definition of *Panel*)**

3 Repeal the definition.

4 **130 Section 9**

5 Insert:

6 *Takeovers Panel* has the same meaning as in the *Australian*  
7 *Securities and Investments Commission Act 2001*.

# EXPOSURE DRAFT

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2

## 131 Amendments of listed provisions

### Amendments relating to the Takeovers Panel

Item	Provision	Omit	Substitute
1	Subsection 655A(1) (note)	Panel	Takeovers Panel
2	Paragraph 655B(1)(b)	Panel	Takeovers Panel
3	Subsections 656A(1), (2) and (3)	Panel (wherever occurring)	Takeovers Panel
4	Subsection 656A(5)	Panel (first occurring)	Takeovers Panel
5	Paragraph 656A(5)(a)	Panel	Takeovers Panel
6	Paragraph 656A(5)(b)	Panel's	Takeovers Panel's
7	Subsection 656A(5)	Panel (last occurring)	Takeovers Panel
8	Section 656B	Panel (wherever occurring)	Takeovers Panel
9	Subsections 657A (1), (2), (3) and (4)	Panel (wherever occurring)	Takeovers Panel
10	Subsection 657A(6)	Panel	Takeovers Panel
11	Paragraph 657A(6)(b)	Panel's	Takeovers Panel's
12	Subsection 657A(7)	Panel	Takeovers Panel
13	Section 657A	Panel (wherever occurring)	Takeovers Panel
14	Section 657B (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
15	Section 657B	Panel (wherever occurring)	Takeovers Panel
16	Section 657C	Panel (wherever occurring)	Takeovers Panel
17	Section 657D (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
18	Section 657D	Panel (wherever occurring)	Takeovers Panel
19	Section 657E	Panel (wherever occurring)	Takeovers Panel
20	Section 657EA (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
21	Section 657EA	Panel (wherever occurring)	Takeovers Panel
22	Section 657EB	Panel (wherever occurring)	Takeovers Panel

# EXPOSURE DRAFT

<b>Amendments relating to the Takeovers Panel</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
23	Section 657F (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
24	Section 657G (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
25	Subsection 657G(1)	Panel	Takeovers Panel
26	Subsection 657G(1)	Panel's	Takeovers Panel's
27	Paragraph 657G(2)(b)	Panel	Takeovers Panel
28	Paragraphs 657G(2)(c) and (d)	Panel	Takeovers Panel
29	Subsection 657G(2)	Panel (wherever occurring)	Takeovers Panel
30	Section 657H (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
31	Section 657H	Panel (wherever occurring)	Takeovers Panel
32	Section 658A (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
33	Section 658A	Panel (wherever occurring)	Takeovers Panel
34	Section 658A (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
35	Section 658A	Panel (wherever occurring)	Takeovers Panel
36	Section 658B (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
37	Section 658B	Panel (wherever occurring)	Takeovers Panel
38	Section 658C (heading)	<b>Panel's</b>	<b>Takeovers Panel's</b>
39	Section 658C	Panel (wherever occurring)	Takeovers Panel
40	Section 658D (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
41	Section 659A (heading)	<b>Panel</b>	<b>Takeovers Panel</b>
42	Section 659A	Panel (wherever occurring)	Takeovers Panel
43	Section 659AA	Panel	Takeovers Panel
44	Paragraph 659B(3)(b)	Panel	Takeovers Panel
45	Subsection 659C(1)	Panel (wherever occurring)	Takeovers Panel

# EXPOSURE DRAFT

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**Amendments relating to the Takeovers Panel**

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Item	Provision	Omit	Substitute
		occurring)	
46	Section 1240D	Panel	Takeovers Panel

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1 **Division 8—Terms relating to financial services and**  
2 **markets**

3 *Australian Securities and Investments Commission Act 2001*

4 **132 Subsection 5(1)**

5 Insert:

6 *arrangement* has the meaning given by section 761B of the  
7 Corporations Act.

8 **133 Subsection 5(1) (definition of *crowd-funding service*)**

9 Repeal the definition.

10 **134 Subsection 5(1)**

11 Insert:

12 *dealing* in a financial product has the meaning given by  
13 section 766C of the Corporations Act (and *deal* has a  
14 corresponding meaning).

15 **135 Subsection 5(1) (paragraph (b) of the definition of**  
16 ***financial product*)**

17 Omit “Chapter 7 of”.

18 **136 Subsection 5(1) (paragraph (b) of the definition of**  
19 ***financial service*)**

20 Omit “Chapter 7 of”.

21 **137 Subsection 5(1) (note to the definition of *financial***  
22 ***service*)**

23 Omit “Chapter 7 of”.

24 **138 Subsection 5(1)**

25 Insert:

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1 *issue*, in relation to a financial product, has a meaning affected by  
2 section 761E of the Corporations Act.

3 *issuer*, in relation to a financial product, has a meaning affected by  
4 section 761E of the Corporations Act.

5 *person* has a meaning affected by section 761F (which deals with  
6 partnerships) and 761FA (which deals with multiple trustees) of  
7 the Corporations Act.

## 8 **139 Subsection 5(1) (definition of *proposed action notice*)**

9 Repeal the definition.

## 10 **140 Subsection 5(1)**

11 Insert:

12 *regulated superannuation fund*:

- 13 (a) has the same meaning as in the *Superannuation Industry*  
14 *(Supervision) Act 1993*; and  
15 (b) includes an AFCA superannuation scheme (within the  
16 meaning of the Corporations Act).

## 17 **141 Subsection 5(1)**

18 Repeal the following definitions:

- 19 (a) definition of *relevant provider*;  
20 (b) definition of *restricted civil penalty provision*.

## 21 **142 Subsection 5(1)**

22 Insert:

23 *securities* has the same meaning as in subsection 92(5) of the  
24 Corporations Act.

## 25 **143 Subsection 5(1) (definition of *Tax Practitioners Board*)**

26 Repeal the definition.

## 27 **144 Subsection 5(2)**

28 Repeal the subsection, substitute:

- 29 (2) An expression that:  
30 (i) is used, but not defined, in this Act; and  
31 (ii) is used in the Corporations Act;

# EXPOSURE DRAFT

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1 has the same meaning in this Act as in the Corporations Act.

2 **145 Subsection 12BA(1) (definition of *superannuation trustee***  
3 ***service*)**

4 Omit “Chapter 7 of the *Corporations Act 2001*”, substitute “the  
5 Corporations Act”.

6 **146 Paragraph 12DU(a)**

7 Repeal the paragraph, substitute:

- 8 (a) the person sells the add-on insurance product, or makes the  
9 offer, request or invitation, in the course of providing  
10 personal advice in circumstances where Division 2 (best  
11 interests obligations) of Part 7.7A of the Corporations Act  
12 applies; and

13 **147 Subparagraph 127(4)(aa)(i)**

14 Omit “(within the meaning of Chapter 7 of the *Corporations Act*  
15 *2001*)”.

16 ***Corporations Act 2001***

17 **148 Section 9**

18 Insert:

19 ***able to be traded:***

- 20 (a) includes (but is not limited to) admitted to quotation on the  
21 market; and  
22 (b) for the purposes of Division 3 of Part 7.10 (market  
23 misconduct etc.)—has a meaning affected by section 1042E.

24 **149 Section 9 (definition of *acquire*)**

25 Repeal the definition, substitute:

26 ***acquire***, in relation to a financial product, has a meaning affected  
27 by section 761E.

28 **150 Section 9**

29 Insert:

30 ***AFCA*** (short for the Australian Financial Complaints Authority)  
31 has the meaning given by section 761A.

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1 *AFCA scheme* has the meaning given by section 761A.

2 *AFCA staff member* has the meaning given by section 761A.

3 *AFCA superannuation scheme* has the meaning given by  
4 section 761A.

5 *anniversary day*, for an ongoing fee arrangement, has the meaning  
6 given by subsection 962G(3).

## 7 **151 Section 9 (definition of *annual turnover*)**

8 Repeal the definition, substitute:

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

- 14 (a) supplies made from any of those bodies corporate to any  
15 other of those bodies corporate; or
- 16 (b) supplies that are input taxed; or
- 17 (c) supplies that are not for consideration (and are not taxable  
18 supplies under section 72-5 of the *A New Tax System (Goods  
19 and Services Tax) Act 1999*); or
- 20 (d) supplies that are not made in connection with an enterprise  
21 that the body corporate carries on; or
- 22 (e) supplies that are not connected with Australia.

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

## 26 **152 Section 9**

27 Insert:

28 *annuity policy* has the meaning given by section 761A.

29 *apportionable claim* has the meaning given by  
30 subsection 1041L(1).

31 *appropriate*, in relation to a target market determination, has the  
32 meaning given by subsection 994B(8A).

33 *approved deposit fund* has the same meaning as in the  
34 *Superannuation Industry (Supervision) Act 1993*.



# EXPOSURE DRAFT

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## 153 Section 9 (definition of *arrangement*)

Repeal the definition, substitute:

*arrangement*:

- (a) in Part 5.1—includes a reorganisation of the share capital of a body corporate by the consolidation of shares of different classes, by the division of shares into shares of different classes, or by both of those methods; and
- (b) for the purposes of Chapter 7—has the meaning given by section 761B.

*arrangements* in Subdivision D (approved compensation arrangements) of Division 3 of Part 7.5, has a meaning affected by subsection 885A(2).

## 154 Section 9

Insert:

*asset-based fee* has the meaning given by section 964F.

## 155 Section 9 (definition of *Australian CS facility licence*)

Repeal the definition, substitute:

*Australian CS facility licence* means a licence under section 824B that authorises a person to operate a clearing and settlement facility.

## 156 Section 9 (definition of *Australian derivative trade repository licence*)

Repeal the definition, substitute:

*Australian derivative trade repository licence* means a licence under section 905C that authorises a body corporate to operate a derivative trade repository.

## 157 Section 9 (definition of *Australian financial services licence*)

Repeal the definition, substitute:

*Australian financial services licence* means a licence under section 913B that authorises a person who carries on a financial services business to provide financial services.

# EXPOSURE DRAFT

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## 158 Section 9 (definition of *Australian market licence*)

Repeal the definition, substitute:

*Australian market licence* means a licence under section 795B that authorises a person to operate a financial market.

## 159 Section 9

Insert:

*authorised clearing and settlement facility* has the meaning given by section 761A.

*authorised representative* of a financial services licensee means a person authorised in accordance with section 916A or 916B to provide a financial service or financial services on behalf of the licensee.

## 160 Section 9 (definition of *BAS agent*)

Repeal the definition.

## 161 Section 9

Insert:

*basic banking product* has the meaning given by section 961F.

*basic deposit product* means a deposit product that is a facility in relation to which the following conditions are satisfied:

- (a) the terms applicable to the facility (the *governing terms*) do not permit the amount from time to time standing to the credit of the facility to be reduced otherwise than in consequence of one or more of the following:
  - (i) a withdrawal, transfer or debit on the instruction of, or by authority of, the depositor, not being on account of entry fees, exit fees or charges for the management of the funds (but this does not exclude charges for the maintenance of the facility itself);
  - (ii) a payment of charges or duties on deposits into, or withdrawals from, the facility that are payable under a law of the Commonwealth or of a State or Territory;
  - (iii) a payment that a law of the Commonwealth, or of a State or Territory, requires to be made out of the facility;

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- 1 (iv) a payment that an order of a court requires to be made  
2 out of the facility;
- 3 (v) the exercise of a right to combine accounts;
- 4 (vi) the correction of an error;
- 5 (vii) any other circumstances specified in regulations made  
6 for the purposes of this subparagraph; and
- 7 (b) any return to be generated for the depositor on the amount  
8 from time to time standing to the credit of the facility is an  
9 amount that is set out in, or that is calculated by reference to  
10 a rate or rates that are set out in, the governing terms; and
- 11 (c) either:
- 12 (i) there is no minimum period before which funds cannot  
13 be withdrawn or transferred from the facility without a  
14 reduction in the return generated for the depositor; or
- 15 (ii) if there is such a period, it expires on or before the end  
16 of the period of 5 years starting on the day on which  
17 funds were first deposited in the facility; and
- 18 (d) unless subparagraph (c)(ii) applies and the period referred to  
19 in that subparagraph expires on or before the end of the  
20 period of 2 years starting on the day on which funds were  
21 first deposited in the facility—funds are able to be withdrawn  
22 or transferred from the facility on the instruction of, or by  
23 authority of, the depositor:
- 24 (i) without any prior notice to the ADI that makes the  
25 facility available; or
- 26 (ii) if the ADI that makes the facility available is included  
27 in a class of ADIs specified in regulations made for the  
28 purposes of this subparagraph—subject to a prior notice  
29 requirement that does not exceed the period specified in  
30 those regulations in relation to that class of ADIs;  
31 whether or not the withdrawal or transfer will attract a  
32 reduction in the return generated for the depositor as  
33 mentioned in subparagraph (c)(i); and
- 34 (e) any other conditions specified in regulations made for the  
35 purposes of this paragraph.

36 ***benefit ratio*** has the meaning given by subsection 963B(3A).

37 ***benefit ratio requirements*** has the meaning given by 963BA(1).

38 ***binder*** has the meaning given by section 761A.

39 ***body corporate licensee*** has the meaning given by section 910A.

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# EXPOSURE DRAFT

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1 *borrowed*, in Part 7.7A (best interests obligations and  
2 remuneration), has the meaning given by section 964G.

3 *borrowing* includes obtaining credit.

4 *cancellation time*, in relation to a registration prohibition order,  
5 has the meaning given by subparagraph 921L(1)(c)(i).

## 6 **162 Section 9 (definition of *carry on*)**

7 Repeal the definition, substitute:

8 *carry on*:

9 (a) has a meaning affected by Division 3; and

10 (b) for a financial services business—has a meaning affected by  
11 section 761C.

## 12 **163 Section 9**

13 Insert:

14 *Cash Settlement Fact Sheet* means a Cash Settlement Fact Sheet  
15 required by section 948C to be given in accordance with  
16 Division 3A of Part 7.7.

## 17 **164 Section 9 (definition of *cause*)**

18 Repeal the definition.

## 19 **165 Section 9**

20 Insert:

21 *CGS depository interest* has the meaning given by section 761A.

22 *CGS depository interest information website* has the meaning  
23 given by subsection 1020AH(1).

24 *choice product* has the same meaning as in the *Superannuation*  
25 *Industry (Supervision) Act 1993*.

26 *claimant intermediary* has the meaning given by section 761CAA.

## 27 **166 Section 9 (definition of *claims handling and settling* 28 *service*)**

29 Repeal the definition, substitute:

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# EXPOSURE DRAFT

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1 *claims handling and settling service* has the meaning given by  
2 section 766G.

## 3 **167 Section 9 (at the end of the definition of *class*)**

4 Insert:

5 ; and (d) in relation to financial products or financial services—has a  
6 meaning affected by regulations made for the purposes of  
7 section 761CA.

## 8 **168 Section 9**

9 Insert:

10 *class of product advice* has the meaning given by section 910A.

11 *clawback requirements* has the meaning given by 963BA(3).

12 *clearing and settlement arrangements* has the meaning given by  
13 section 790A.

## 14 **169 Section 9 (definition of *clearing and settlement facility*)**

15 Repeal the definition, substitute:

16 *clearing and settlement facility*:

17 (a) has the meaning given by section 768A; and

18 (b) in relation to an Australian CS facility licence—has a  
19 meaning affected by section 824E.

## 20 **170 Section 9**

21 Insert:

22 *clearing requirements* has the meaning given by  
23 subsection 901A(7).

24 *client*:

25 (a) for a recommendation situation—has the meaning given by  
26 subsection 1012A(2); and

27 (b) for an issue situation—has the meaning given by  
28 subsection 1012B(2).

29 *client money reporting rules* has the meaning given by  
30 section 981J.

31 *Code of Ethics* means the Code of Ethics in force under  
32 section 921E.

# EXPOSURE DRAFT

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1                    **compensation arrangements** has the meaning given by section  
2                    880B.

3                    **compensation rules:**

- 4                    (a) has the meaning given by section 880B; and  
5                    (b) in Subdivision D (approved compensation arrangements) of  
6                    Division 3 of Part 7.5—has a meaning affected by subsection  
7                    885A(3).

8                    **complaint**, in Part 7.8A (design and distribution requirements), has  
9                    the meaning given by subsection 994A(2).

10                  **concurrent wrongdoer** has the meaning given by  
11                  subsection 1041L(3).

12                  **conflicted remuneration** has the meaning given by section 963A,  
13                  as affected by sections 963AA, 963B, 963C and 963D.

14                  **consumer credit insurance** has the same meaning as in the  
15                  *Insurance Contracts Act 1984*.

16                  **contract of insurance**, in Division 4 of Part 7.8 (special provisions  
17                  relating to insurance), has the meaning given by  
18                  subsection 985A(1).

19                  **core obligation** has the meaning given by subsection 912D(3).

20                  **CPD provision** (short for continuing professional development  
21                  provision) means:

- 22                    (a) subsection 921BA(4); or  
23                    (b) subsection 921BB(3).

24                  **CPD year** (short for continuing professional development year) has  
25                  the meaning given by section 910A.

26                  **crowd-funding service** that a person provides has the meaning  
27                  given by section 766F.

28                  **CS facility licensee** means a person who holds an Australian CS  
29                  facility licence.

30                  **custodial arrangement**, in Subdivision A (volume-based shelf-  
31                  space fees) of Division 5 of Part 7.7A, has the meaning given by  
32                  subsection 964(2).

# EXPOSURE DRAFT

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1 *custodian*, in relation to a registrable superannuation entity, has the  
2 same meaning as in the *Superannuation Industry (Supervision) Act*  
3 *1993*.

## 4 **171 Section 9 (definition of *dealing*)**

5 Repeal the definition, substitute:

6 *dealing* in a financial product:

7 (a) other than in Part 7.8A—has the meaning given by  
8 section 766C; and

9 (b) in Part 7.8A (design and distribution requirements)—has the  
10 meaning given by subsection 994A(2);

11 (and *deal* has a corresponding meaning).

## 12 **172 Section 9**

13 Insert:

14 *death benefit decision-maker* has the meaning given by  
15 section 761A.

## 16 **173 Section 9 (definition of *defective*)**

17 Repeal the definition, substitute:

18 *defective*:

19 (a) in relation to a CSF offer document, has the meaning given  
20 by subsection 738U(1); and

21 (b) in relation to a disclosure document or statement:

22 (i) in Subdivision A of Division 7 of Part 7.7 (financial  
23 services disclosure offences)—has the meaning given  
24 by subsection 952B(1);

25 (ii) in Subdivision B of Division 7 of Part 7.7 (financial  
26 services disclosure civil liability)—has the meaning  
27 given by subsection 953A(1);

28 (iii) in Subdivision A of Division 7 of Part 7.9 (financial  
29 product disclosure offences)—has the meaning given by  
30 subsection 1021B(1);

31 (iv) in Subdivision B of Division 7 of Part 7.9 (financial  
32 product disclosure civil liability)—has the meaning  
33 given by subsection 1022A(1).

## 34 **174 Section 9**

35 Insert:

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# EXPOSURE DRAFT

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1                    *deposit product* means a financial product described in  
2                    paragraph 764A(1)(i).

## 3        **175 Section 9 (definition of *derivative*)**

4                    Repeal the definition, substitute:

5                    *derivative* has the meaning given by section 761D.

## 6        **176 Section 9**

7                    Insert:

8                    *derivative trade data* has the meaning given by section 761A.

9                    *derivative trade repository*:

- 10                    (a) means a facility to which information about derivative  
11                    transactions, or about positions relating to derivative  
12                    transactions, can be reported (whether or not other  
13                    information or data can also be reported to the facility); and  
14                    (b) in relation to an Australian derivative trade repository  
15                    licence—has a meaning affected by section 905E.

16                    *derivative trade repository licensee* means a person who holds an  
17                    Australian derivative trade repository licence.

## 18        **177 Section 9 (definition of *derivative trade repository rules*)**

19                    Repeal the definition, substitute:

20                    *derivative trade repository rules* means rules made under  
21                    subsection 903A(1) by ASIC.

## 22        **178 Section 9**

23                    Insert:

24                    *derivative transaction* means:

- 25                    (a) the entry into of an arrangement that is a derivative; or  
26                    (b) the modification or termination of such an arrangement; or  
27                    (c) the assignment, by a party to such an arrangement, of some  
28                    or all of the party's rights and obligations under the  
29                    arrangement; or  
30                    (d) any other transaction that relates to a derivative and that is in  
31                    a class of transactions prescribed by the regulations for the  
32                    purposes of this paragraph.



# EXPOSURE DRAFT

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## 179 Section 9 (definition of *derivative transaction rules*)

Repeal the definition, substitute:

*derivative transaction rules* means rules made under subsection 901A(1) by ASIC.

## 180 Section 9

Insert:

*disclosure document or statement*:

- (a) in Subdivision A of Division 7 of Part 7.7 (financial services disclosure offences)—has the meaning given by subsection 952B(1);
- (b) in Subdivision B of Division 7 of Part 7.7 (financial services disclosure civil liability)—has the meaning given by subsection 953A(1);
- (c) in Subdivision A of Division 7 of Part 7.9 (financial product disclosure offences)—has the meaning given by subsection 1021B(1);
- (d) in Subdivision B of Division 7 of Part 7.9 (financial product disclosure civil liability)—has the meaning given by subsection 1022A(1).

## 181 Section 9 (paragraph (a) of the definition of *dispose*)

Repeal the paragraph, substitute:

- (a) when used in relation to financial products, otherwise than in a situation to which paragraph (b) applies, *dispose* includes terminate or close out the legal relationship that constitutes the financial product;

## 182 Section 9

Insert:

*disqualified individual* has the meaning given by section 853A.

*distribution information*, in relation to a financial product, has the meaning given by subsection 994F(3).

*Division 3 arrangements* has the meaning given by section 880B.

*Division 3 financial products* has the meaning given by subsection 1042A(1).

*Division 3 loss* has the meaning given by section 880B.

# EXPOSURE DRAFT

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- 1 *Division 4 arrangements* has the meaning given by section 880B.
- 2 *education and training standards* has the meaning given by  
3 section 921B.
- 4 *employer-sponsor* has the same meaning as in the *Superannuation*  
5 *Industry (Supervision) Act 1993*.
- 6 *excluded conduct* has the meaning given by subsection 994A(1).
- 7 *execution requirements* has the meaning given by  
8 subsection 901A(5).
- 9 *exempt public sector superannuation scheme* has the same  
10 meaning as in the *Superannuation Industry (Supervision) Act 1993*.
- 11 *facility*, has the meaning given by section 762C.
- 12 *fee disclosure statement* has the meaning given by  
13 subsection 962H(1).
- 14 *fee recipient* has the meaning given by section 962C.
- 15 *fidelity fund* has the meaning given by section 880B.

## 183 Section 9 (definition of *financial benchmark*)

17 Repeal the definition, substitute:

### *financial benchmark:*

- 18 (a) has the meaning given by section 908AB; and  
19 (b) in relation to a benchmark administrator licence—has a  
20 meaning affected by section 908BE.  
21

## 184 Section 9 (definition of *financial market*)

22 Repeal the definition, substitute:

23 *financial market* has the meaning given by section 767A.  
24

## 185 Section 9 (definition of *financial product*)

25 Repeal the definition, substitute:

### *financial product:*

- 26 (a) has the meaning given by Division 3 of Part 7.1; and  
27 (b) in Part 7.8A (design and distribution requirements)—has a  
28 meaning affected by subsection 994AA(1); and  
29  
30

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1 (c) in Part 7.9A (product intervention orders)—has a meaning  
2 affected by section 1023B; and

3 (d) in Part 7.10 (market misconduct etc.)—has a meaning  
4 affected by section 1040B.

## 5 **186 Section 9**

6 Insert:

7 *financial product advice* has the meaning given by section 766B.

## 8 **187 Section 9 (definition of *financial service*)**

9 Repeal the definition, substitute:

10 *financial service* has the meaning given by Division 4 of Part 7.1.

## 11 **188 Section 9 (definition of *Financial Services and Credit*** 12 ***Panel*)**

13 Repeal the definition, substitute:

14 *Financial Services and Credit Panel* has the same meaning as in  
15 the ASIC Act.

## 16 **189 Section 9 (definition of *financial Services business*)**

17 Repeal the definition.

## 18 **190 Section 9**

19 Insert:

20 *Financial Services Guide* means a Financial Services Guide  
21 required by section 941A or 941B to be given in accordance with  
22 Division 2 of Part 7.7.

23 *financial services law* has the meaning given by section 761A.

## 24 **191 Section 9 (definition of *financial services licensee*)**

25 Repeal the definition, substitute:

26 *financial services licensee* means a person who holds an  
27 Australian financial services licence.

## 28 **192 Section 9 (definition of *financial year*)**

29 Repeal the definition, substitute:

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*financial year:*

- (a) for a company, registered scheme or disclosing entity (other than a notified foreign passport fund)—has the meaning given by section 323D; and
- (b) for a notified foreign passport fund—has the meaning given by section 323DAA; and
- (c) for a financial services licensee that is not covered by paragraph (a) and is a body corporate—a period determined by the entity to be a financial year of the entity; and
- (d) for a financial services licensee that is not covered by paragraph (a) or (c)—means a year ending on 30 June.

**193 Section 9**

Insert:

*foreign exchange contract* has the meaning given by section 761A.

**194 Section 9 (definition of *foreign passport fund product*)**

Repeal the definition, substitute:

*foreign passport fund product* means a financial product described in paragraph 764A(1)(bb).

**195 Section 9**

Insert:

*foreign qualification* has the meaning given by section 910A.

*funeral benefit* has the meaning given by section 761A.

*further market-related advice* means advice to which subsection 946B(1) applies.

*general advice* has the meaning given by subsection 766B(4).

*general insurance product* means a financial product described in paragraph 764A(1)(d).

*generally available*, for the purposes of Division 3 of Part 7.10 (insider trading), has the meaning given by section 1042C.

*holder:*

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- 1 (a) in relation to a financial product—means the person to whom  
2 the financial product was issued, or if it has (since issue)  
3 been disposed of to another person who has not themselves  
4 disposed of it, that other person (and **hold** has a  
5 corresponding meaning); and  
6 (b) in relation to an RSA—has the same meaning as in the  
7 *Retirement Savings Accounts Act 1997*;  
8 (and **hold** has a corresponding meaning)
- 9 **information**, in Division 3 of Part 7.10 (insider trading) has the  
10 meaning given by subsection 1042A(2).
- 11 **information statement** for a class of CGS depository interests has  
12 the meaning given by subsection 1020AH(1).
- 13 **inside information** has the meaning given by subsection 1042A(1).
- 14 **insurance claims manager** has the meaning given by  
15 section 761DA.
- 16 **insurance product** means a financial product described in  
17 paragraph 764A(1)(d), (e) or (f).
- 18 **insured**, for the purposes of Division 4 of Part 7.8, has the meaning  
19 given by section 985A.
- 20 **insurer**, in relation to a superannuation complaint, has the meaning  
21 given by section 761A.
- 22 **investment life insurance product** means a financial product  
23 described in paragraph 764A(1)(f).
- 24 **involved in** a market licensee, CS facility licensee, derivative trade  
25 repository licensee or a benchmark administrator licensee, or in an  
26 applicant for such a licence, has the meaning given by  
27 section 853B.

## 28 **196 Section 9 (definition of *issue*)**

29 Repeal the definition, substitute:

30 **issue**:

31 (a) includes:

- 32 (i) in relation to interests in a managed investment  
33 scheme—make available; and  
34 (ii) otherwise—circulate, distribute and disseminate; and

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(b) in relation to a financial product (other than in Chapters 2J, 5C and 6D)—has a meaning affected by section 761E.

## 197 Section 9

Insert:

*issuer*, in relation to a financial product (other than in Chapters 2J, 5C and 6D), has a meaning affected by section 761E.

*issue situation* has the meaning given by subsection 1012B(2).

*issue Statement* has the meaning given by subsection 1013A(1).

*kind*, in relation to financial products or financial services, has a meaning affected by regulations made for the purposes of section 761CA.

*licensed CS facility* means a clearing and settlement facility the operation of which is authorised by an Australian CS facility licence.

*licensed derivative trade repository* has the meaning given by section 761A.

*licensed market* means a financial market the operation of which is authorised by an Australian market licence.

*life policy* has the same meaning as in the *Life Insurance Act 1995*.

*life policy fund* has the meaning given by section 761A.

*life risk insurance product* means a financial product described in paragraph 764A(1)(e).

*limit*, in relation to a margin lending facility, has the meaning given by subsection 761EA(11).

*limited-service time-sharing adviser* has the meaning given by section 910A.

## 198 Section 9 (definition of *listing rules*)

Repeal the definition, substitute:

*listing rules* of a financial market, or proposed financial market, means any rules (however described) that are made by the operator of the market, or contained in the operator's constitution, and that deal with:

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- 1 (a) admitting entities to, or removing entities from, the market’s  
2 official list, whether for the purpose of enabling financial  
3 products of those entities to be traded on the market or for  
4 other purposes; or  
5 (b) the activities or conduct of entities that are included on that  
6 list.

## 7 **199 Section 9**

8 Insert:

9 *makes a financial investment* has the meaning given by  
10 section 763B.

11 *makes a market* for a financial product has the meaning given by  
12 section 766D.

13 *makes non-cash payments* has the meaning given by  
14 section 763D.

## 15 **200 Section 9 (definition of *managed investment product*)**

16 Repeal the definition, substitute:

17 *managed investment product* means a financial product described  
18 in paragraph 764A(1)(b).

## 19 **201 Section 9 (paragraph (h) of the definition of *managed investment scheme*)**

20  
21 Omit “, or a public sector superannuation scheme, within the meaning  
22 of the *Superannuation Industry (Supervision) Act 1993*”, substitute “or  
23 a public sector superannuation scheme”.

## 24 **202 Section 9**

25 Insert:

26 *manages financial risk* has the meaning given by section 763C.

27 *margin call*:

- 28 (a) in relation to a standard margin lending facility—has the  
29 meaning given by subsection 761EA(4); and  
30 (b) in relation to a non-standard margin lending facility—has the  
31 meaning given by subsection 761EA(7); and

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1 (c) in relation to a facility that ASIC has declared to be a margin  
2 lending facility under subsection 761EA(8)—has the  
3 meaning given in the declaration.

4 *margin lending facility* has the meaning given by  
5 subsection 761EA(1).

6 *market*, in relation to an Australian market licence, has a meaning  
7 affected by section 795E.

## 8 **203 Section 9 (definition of *market integrity rules*)**

9 Repeal the definition, substitute:

10 *market integrity rules* means the rules made by ASIC under  
11 section 798G.

## 12 **204 Section 9**

13 Insert:

14 *market licensee* means a person who holds an Australian market  
15 licence.

16 *material effect*, for the purposes of Division 3 of Part 7.10 (insider  
17 trading), has the meaning given by section 1042D.

18 *MySuper product* has the same meaning as in the *Superannuation*  
19 *Industry (Supervision) Act 1993*.

20 *NGF* means the National Guarantee Fund that continues in  
21 existence under section 889A.

22 *non-standard margin lending facility* has the meaning given by  
23 subsection 761EA(5).

24 *offering*, to issue or sell a financial product, for the purposes of  
25 Part 7.8A (design and distribution requirements) and Part 7.9  
26 (financial product disclosure), has a meaning affected by  
27 subsection 1010C(2).

28 *ongoing fee* has the meaning given by section 962B.

29 *ongoing fee arrangement* has the meaning given by section 962A.

## 30 **205 Section 9 (definition of *operated in this jurisdiction*)**

31 Repeal the definition, substitute:

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*operated in this jurisdiction:*

- (a) in relation to a financial market—has a meaning affected by section 791D; and
- (b) in relation to a clearing and settlement facility—has a meaning affected by section 820D.

## **206 Section 9 (definition of *operating rules*)**

Repeal the definition, substitute:

*operating rules:*

- (a) of a clearing and settlement facility, or proposed clearing and settlement facility, means any rules (however described) made by the operator of the facility, or contained in the operator's constitution, that deal with:

- (i) the activities or conduct of the facility; or
- (ii) the activities or conduct of persons in relation to the facility;

but does not include any such rules that deal with matters in respect of which licensed CS facilities must have written procedures under regulations made for the purposes of subsection 822A(2); or

- (b) of a financial market, or proposed financial market, means any rules (however described), including the market's listing rules (if any), that are made by the operator of the market, or contained in the operator's constitution, and that deal with:

- (i) the activities or conduct of the market; or
- (ii) the activities or conduct of persons in relation to the market;

but does not include:

- (iii) any such rules that deal with matters in respect of which licensed markets must have written procedures under regulations made for the purposes of subsection 793A(2); or

- (iv) compensation rules; and

- (c) of the SEGC, means the rules referred to in section 890D.

## **207 Section 9**

Insert:

*Part 7.5 authority* has the meaning given by section 892A.

# EXPOSURE DRAFT

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1 *Part 7.5 regulated fund* has the meaning given by subsection  
2 section 892A.

## 3 **208 Section 9 (definition of *person*)**

4 Repeal the definition, substitute:

5 *person*:

- 6 (a) in Division 2 of Part 2D.2 (sections 200 to 200J)—includes a  
7 superannuation fund; and  
8 (b) for the purposes of Chapter 5 and Part 9.2—has a meaning  
9 affected by subsection 6(1) (which deals with Part 5.7  
10 bodies); and  
11 (c) in applying Chapter 7 and Part 6D.3A—has a meaning  
12 affected by section 761F (which deals with partnerships) and  
13 section 761FA (which deals with multiple trustees).

## 14 **209 Section 9**

15 Insert:

16 *personal advice* has the meaning given by subsections 766B(3) and  
17 (3A).

18 *policy cost*, for a life risk insurance product, or life risk insurance  
19 products, for a year has the meaning given by  
20 subsections 963B(3B) and (3C).

21 *pooled superannuation trust* has the same meaning as in the  
22 *Superannuation Industry (Supervision) Act 1993*.

23 *prescribed CS facility* means a licensed CS facility that is  
24 prescribed by regulations made for the purposes of this definition.

## 25 **210 Section 9 (definition of *prescribed derivative trade* 26 *repository*)**

27 Repeal the definition, substitute:

28 *prescribed derivative trade repository* means a facility that is (or  
29 that is in a class that is) prescribed by the regulations for the  
30 purposes of paragraph 901A(6)(b).

## 31 **211 Section 9 (definition of *procure*)**

32 Repeal the definition, substitute:

# EXPOSURE DRAFT

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1 *procure*, for the purposes of Division 3 of Part 7.10 (insider trading  
2 prohibitions), has a meaning affected by section 1042F.

## 3 **212 Section 9 (definition of *Product Disclosure Statement*)**

4 Repeal the definition, substitute:

### 5 ***Product Disclosure Statement*:**

6 (a) means a Product Disclosure Statement:

7 (i) required by section 1012A, 1012B, 1012C or 1012I to  
8 be given in accordance with Division 2 of Part 7.9; or

9 (ii) that section 1012H requires an issuer of a financial  
10 product to take reasonable steps to ensure is given to a  
11 new group member in accordance with Division 2 of  
12 Part 7.9; and

13 (b) has a meaning affected by section 1014J (about replacement  
14 Product Disclosure Statements).

## 15 **213 Section 9**

16 Insert:

17 *product intervention order* means an order made under  
18 subsection 1023D(1) or (3).

## 19 **214 Section 9 (paragraph (b) of the definition of *professional investor*)**

20 Omit “(within the meaning of the *Superannuation Industry*  
21 *(Supervision) Act 1993*)”.

## 22 **215 Section 9 (paragraph (d) of the definition of *professional investor*)**

23 Omit “within the meaning of the *Superannuation Industry (Supervision)*  
24 *Act 1993*”.

## 25 **216 Section 9**

26 Insert:

27 *prohibition end day*, in relation to a registration prohibition order,  
28 has the meaning given by subparagraph 921L(1)(c)(ii).

## 29 **217 Section 9 (definition of *proposed action notice*)**

30 Repeal the definition, substitute:  
31  
32

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# EXPOSURE DRAFT

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1 *proposed action notice* has the meaning given by  
2 subsection 921P(1).

## 3 **218 Section 9**

4 Insert:

5 *provide*, in relation to a financial product, has a meaning affected  
6 by section 761E.

7 *provider*, in Subdivision A (volume-based shelf-space fees) of  
8 Division 5 of Part 7.7A, has the meaning given by subsection  
9 964(2).

10 *provisional relevant provider* means a relevant provider who is  
11 undertaking work and training in accordance with  
12 subsection 921B(4).

13 *public sector superannuation scheme* has the same meaning as in  
14 the *Superannuation Industry (Supervision) Act 1993*.

15 *purchase* of a financial product, for the purposes of Part 7.8A  
16 (design and distribution requirements) and Part 7.9 (financial  
17 product disclosure), has a meaning affected by subsection  
18 1010C(1).

19 *qualified tax relevant provider* has the meaning given by  
20 section 910A.

21 *reasonable investigation* has a meaning affected by section 961D.

22 *reasonably apparent*:

23 (a) for the purposes of Division 2 of Part 7.7A—has the meaning  
24 given by section 961C; and

25 (b) for the purposes of Subdivision B of Division 5 of  
26 Part 7.7A—has the meaning given by section 964H.

27 *recent advising history* has the meaning given by section 922G.

28 *recommendation situation* has the meaning given by  
29 subsection 1012A(2).

30 *registered tax agent or BAS agent* has the same meaning as in the  
31 *Tax Agent Services Act 2009*.

32 *Register of Relevant Providers* means the Register of Relevant  
33 Providers maintained under section 922Q.

# EXPOSURE DRAFT

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1 **registration prohibition order** has the meaning given by  
2 paragraph 921L(1)(c).

3 **registration suspension order** has the meaning given by  
4 paragraph 921L(1)(b).

5 **regulated person:**

- 6 (a) in Part 7.8A (design and distribution requirements)—has the  
7 meaning given by subsection 994A(2); and  
8 (b) in Divisions 2 and 7 of Part 7.9 (Product Disclosure  
9 Statements)—has the meaning given by section 1011B; and  
10 (c) in Division 5C of Part 7.9 (information about CGS  
11 depository interests)—has the meaning given by  
12 subsection 1020AH(2).

13 **regulated sale** means a sale:

- 14 (a) that, under subsection 707(2), (3) or (5), needs disclosure to  
15 investors under Part 6D.2; or  
16 (b) in relation to which a Product Disclosure Statement must be  
17 given under subsection 1012C(5), (6) or (8); or  
18 (c) made in circumstances prescribed by regulations made for  
19 the purposes of this paragraph.

20 **regulated superannuation fund** has the same meaning as in the  
21 *Superannuation Industry (Supervision) Act 1993*.

22 **relevant conduct:**

- 23 (a) for a recommendation situation—has the meaning given by  
24 subsection 1012A(2); and  
25 (b) for an issue situation—has the meaning given by  
26 subsection 1012B(2).

27 **relevant Division 3 financial products** has the meaning given by  
28 subsection 1042A(1).

29 **relevant financial products** has the meaning given by  
30 section 910A.

31 **relevant personal circumstances** has the meaning given by  
32 section 761A.

33 **relevant provider** has the meaning given by section 910A.

34 **renewal period** has the meaning given by section 962L.

# EXPOSURE DRAFT

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1 **219 Section 9 (definition of *Replacement Product Disclosure***  
2 ***Statement*)**

3 Repeal the definition, substitute:

4 *Replacement Product Disclosure Statement* has the meaning  
5 given by section 1014H.

6 **220 Section 9**

7 Insert:

8 *reportable situation* has the meaning given by section 912D.

9 *reporting period*, in Part 7.8A (design and distribution  
10 requirements), has the meaning given by subsection 994A(2).

11 *reporting requirements*, in Division 2 of Part 7.5A (derivative  
12 transaction rules), has the meaning given by subsection 901A(6).

13 *representative*, of a person, means:

14 (a) if the person is a financial services licensee:

15 (i) an authorised representative of the licensee; or

16 (ii) an employee or director of the licensee; or

17 (iii) an employee or director of a related body corporate of  
18 the licensee; or

19 (iv) any other person acting on behalf of the licensee; or

20 (b) in any other case:

21 (i) an employee or director of the person; or

22 (ii) an employee or director of a related body corporate of  
23 the person; or

24 (iii) any other person acting on behalf of the person.

25 **221 Section 9 (definition of *response period*)**

26 Repeal the definition, substitute:

27 *response period*, for a proposed action notice, has the meaning  
28 given by paragraph 921P(2)(b).

29 **222 Section 9**

30 Insert:

31 *responsible licensee*, in relation to a contravention of a provision  
32 of Part 7.7A, has the meaning given by section 961P.

# EXPOSURE DRAFT

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1 *responsible person*, for a Product Disclosure Statement, has the  
2 meaning given by subsection 1013A(3).

## 3 **223 Section 9 (definition of *restricted civil penalty provision*)**

4 Repeal the definition, substitute:

5 *restricted civil penalty provision* has the meaning given by  
6 subsection 921Q(3).

## 7 **224 Section 9 (definition of *retail client*)**

8 Repeal the definition, substitute:

9 *retail client*:

- 10 (a) other than in relation to a CSF offer—has the meaning given  
11 by sections 761G and 761GA; and  
12 (b) in relation to a CSF offer—has the meaning given by  
13 section 738D.

## 14 **225 Section 9**

15 Insert:

16 *retail product distribution conduct* has the meaning given by  
17 subsection 994A(1).

18 *review period*, for a target market determination, has the meaning  
19 given by subsection 994A(1).

20 *review triggers*, for a target market determination, has the meaning  
21 given by paragraph 994B(5)(d).

22 *risk insurance product* means a financial product described in  
23 paragraph 764A(1)(d) or (e).

24 *RSA* (short for retirement savings account) has the same meaning  
25 as in the *Retirement Savings Accounts Act 1997*.

26 *RSA provider* has the same meaning as in the *Retirement Savings*  
27 *Accounts Act 1997*.

28 *RSE licence* has the same meaning as in the *Superannuation*  
29 *Industry (Supervision) Act 1993*.

30 *sale*:

- 31 (a) in relation to an annuity policy—has the meaning given by  
32 section 761A; and

# EXPOSURE DRAFT

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1 (b) of a financial product, for the purposes of Part 7.8A (design  
2 and distribution requirements) and Part 7.9 (financial product  
3 disclosure)—has a meaning affected by subsection 1010C(1).

4 *sale Statement* has the meaning given by subsection 1013A(2).

5 *section 1020B products* has the meaning given by  
6 subsection 1020B(1).

7 *securities lending arrangement* has the meaning given by  
8 section 1020AA.

9 *SEGC* (short for Securities Exchanges Guarantee Corporation) has  
10 the meaning given by section 880B.

11 *self managed superannuation fund* has the same meaning as in  
12 the *Superannuation Industry (Supervision) Act 1993*.

13 *sinking fund policy* has the same meaning as in the *Life Insurance*  
14 *Act 1995*.

15 *standard employer-sponsor* has the same meaning as in the  
16 *Superannuation Industry (Supervision) Act 1993*.

17 *standard employer-sponsored fund* has the same meaning as in the  
18 *Superannuation Industry (Supervision) Act 1993*.

19 *standard employer-sponsored member* has the same meaning as in  
20 the *Superannuation Industry (Supervision) Act 1993*.

21 *standard margin lending facility* has the meaning given by  
22 subsection 761EA(2).

23 *Statement of Advice* means a Statement of Advice required by  
24 section 946A to be given in accordance with Subdivisions C and D  
25 of Division 3 of Part 7.7.

26 *superannuation complaint* has the meaning given by  
27 subsection 1053(3).

28 *superannuation entity* has the same meaning as in the  
29 *Superannuation Industry (Supervision) Act 1993*.

30 *superannuation product* means a superannuation interest within  
31 the meaning of the *Superannuation Industry (Supervision) Act*  
32 *1993*.

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# EXPOSURE DRAFT

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1 *superannuation provider* means a person who is a superannuation  
2 provider within the meaning of:

- 3 (a) the *Superannuation Contributions Tax (Assessment and*  
4 *Collection) Act 1997*; or  
5 (b) the *Superannuation Contributions Tax (Members of*  
6 *Constitutionally Protected Superannuation Funds)*  
7 *Assessment and Collection Act 1997*.

8 *superannuation trustee service* that a person provides has the  
9 meaning given by section 766H.

10 *supervisor* of a provisional relevant provider has the meaning  
11 given by subsection 921F(2).

12 *Supplementary Financial Services Guide* has the meaning given  
13 by section 943A.

## 14 **226 Section 9 (definition of *Supplementary Product*** 15 ***Disclosure Statement*)**

16 Repeal the definition, substitute:

17 *Supplementary Product Disclosure Statement* has the meaning  
18 given by section 1014A.

## 19 **227 Section 9**

20 Insert:

21 *suspension period*, in relation to a registration suspension order,  
22 has the meaning given by paragraph 921L(1)(b).

23 *target market*, for a financial product, means the class of retail  
24 clients described in the target market determination for the product  
25 under paragraph 994B(5)(b).

26 *target market determination* means a determination that:

- 27 (a) is made as required by section 994B; and  
28 (b) meets the requirements of subsections 994B(5) and (8).

29 *tax (financial) advice service* has the same meaning as in the *Tax*  
30 *Agent Services Act 2009*.

31 *Tax Practitioners Board* means the Tax Practitioners Board  
32 established by section 60-5 of the *Tax Agent Services Act 2009*.

# EXPOSURE DRAFT

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1 *title document*, for a financial product, has the meaning given by  
2 section 761A.

3 *transfer* of a financial product, in Divisions 3 and 4 of Part 7.11  
4 (title and transfer), has the meaning given by subsection 1073B(2).

5 *trustee*:

6 (a) in relation to a superannuation entity—means the person who  
7 is the trustee of the entity for the purposes of the  
8 *Superannuation Industry (Supervision) Act 1993*; or

9 (b) in relation to the scheme provided for by the *Australian*  
10 *Defence Force Cover Act 2015*—means CSC (within the  
11 meaning of the *Governance of Australian Government*  
12 *Superannuation Schemes Act 2011*).

13 *unsolicited contact* has the meaning given by subsection 992A(4).

14 *volume-based shelf-space fee* has a meaning affected by  
15 section 964A.

16 *wholesale client* has the meaning given by section 761G.

17 *widely held market body* has the meaning given by section 850A.

18 *within authority*, for the purposes of Division 6 (liability of  
19 financial services licensees for representatives) of Part 7.6, has a  
20 meaning affected by subsection 917A(2) and (3).

## 21 **228 Section 92**

22 Omit “(as defined in Chapter 7)” (wherever occurring).

## 23 **229 Subsection 92(4)**

24 Repeal the subsection, substitute:

25 (4) In Chapter 6D securities has the meaning given by section 700.

26 Note: However, in Chapter 6D, securities does not include securities in a  
27 CCIV: see section 1240G.

28 (5) In Chapter 7, *security* means:

29 (a) a share in a body; or

30 (b) a debenture of a body; or

31 (c) a legal or equitable right or interest in a security covered by  
32 paragraph (a) or (b); or

# EXPOSURE DRAFT

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- 1 (d) an option to acquire, by way of issue, a security covered by  
2 paragraph (a), (b) or (c); or  
3 (e) a right (whether existing or future and whether contingent or  
4 not) to acquire, by way of issue, the following under a rights  
5 issue:  
6 (i) a security covered by paragraph (a), (b), (c) or (d);  
7 (ii) an interest or right covered by paragraph 764A(1)(b),  
8 (ba) or (bb); or  
9 (f) a CGS depository interest; or  
10 (g) a simple corporate bonds depository interest;  
11 but does not include an excluded security or a foreign passport  
12 fund product. In Part 7.11, it also includes a managed investment  
13 product and a foreign passport fund product.

14 **230 Paragraph 324CH(6A)(b)**

15 Omit “(within the meaning of section 761A)”.

16 **231 Subparagraph 440JA(b)(iv)**

17 Omit “(as defined in Chapter 7)”.

18 **232 Subparagraph 440JA(d)(ii)**

19 Omit “(within the meaning of section 768A)”.

20 **233 Subparagraph 453X(b)(iv)**

21 Omit “(as defined in Chapter 7)”.

22 **234 Subparagraph 453X(d)(ii)**

23 Omit “(within the meaning of section 768A)”.

24 **235 Subsection 601RAB(3)**

25 Omit “, within the meaning of Chapter 7,”.

26 **236 Paragraph 601RAC(3)(e)**

27 Omit “(within the meaning of the *Superannuation Industry*  
28 *(Supervision) Act 1993)*”.

29 **237 Subsection 609(9A)**

30 Omit “(within the meaning of Chapter 7)”.

# EXPOSURE DRAFT

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1 **238 Paragraph 636(1)(ga)**

2 Omit “(within the meaning of section 1012B)”.

3 **239 Section 703A**

4 Omit “(within the meaning of Chapter 7)”.

5 **240 Section 738D**

6 Omit “for the purposes of Chapter 7”.

7 **241 Section 760B (table item 1)**

8 Repeal the item, substitute:

1 7.1 meaning of certain terms relating to financial services and markets

9 **242 Division 2 of Part 7.1 (heading)**

10 Repeal the heading, substitute:

11 **Division 2—Meaning of certain terms relating to financial**  
12 **services and markets**

13 **243 Sections 761A and 761B**

14 Repeal the sections, substitute:

15 **761A Meaning of certain terms relating to financial services and**  
16 **markets**

17 In this Act:

18 *AFCA* (short for the Australian Financial Complaints Authority)  
19 means the operator of the AFCA scheme.

20 *AFCA scheme* means the external dispute resolution scheme for  
21 which an authorisation under Part 7.10A is in force.

22 *AFCA staff member* means:

- 23 (a) a director, officer or employee of AFCA; or  
24 (b) a person engaged as a consultant to, or to perform services  
25 for, AFCA for the purposes of the AFCA scheme.

26 *AFCA superannuation scheme* means:

- 27 (a) the scheme provided for by the *Australian Defence Force*  
28 *Cover Act 2015*; and

# EXPOSURE DRAFT

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- 1 (b) if, under the AFCA scheme, an exempt public sector  
2 superannuation scheme may elect to join the AFCA scheme,  
3 and such a superannuation scheme so elects—that  
4 superannuation scheme.

5 **annuity policy** means a life policy in relation to an annuity that is  
6 declared to be a superannuation policy under regulations made for  
7 the purposes of paragraph (b) of the definition of **superannuation**  
8 **policy** in the Dictionary in the *Life Insurance Act 1995*.

9 **authorised clearing and settlement facility** means:

- 10 (a) a licensed CS facility; or  
11 (b) a clearing and settlement facility that satisfies the following  
12 requirements:  
13 (i) the operator of the facility is authorised to operate the  
14 facility in the foreign country in which the operator’s  
15 principal place of business is located;  
16 (ii) any requirements specified in regulations made for the  
17 purposes of this subparagraph.

18 **binder** means an authorisation given to a person by a financial  
19 services licensee who is an insurer to do either or both of the  
20 following:

- 21 (a) enter into contracts that are risk insurance products on behalf  
22 of the insurer as insurer;  
23 (b) provide a claims handling and settling service, on behalf of  
24 the insurer as insurer, in relation to risk insurance products;

25 but does not include an authorisation of a kind referred to in  
26 paragraph (a) that is limited to effecting contracts of insurance by  
27 way of interim cover unless there is also in existence an authority  
28 given by the insurer to the person to enter into, on behalf of the  
29 insurer and otherwise than by way of interim cover, contracts of  
30 insurance.

31 **CGS depository interest** means a depository interest (within the  
32 meaning of the *Commonwealth Inscribed Stock Act 1911* that can  
33 be transferred through a licensed CS facility.

34 **death benefit decision-maker** means any of the following persons:

- 35 (a) the trustee of:  
36 (i) a regulated superannuation fund; or  
37 (ii) an AFCA superannuation scheme; or  
38 (iii) an approved deposit fund;
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# EXPOSURE DRAFT

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- 1 (b) an insurer in relation to a superannuation complaint;  
2 (c) an RSA provider.

3 ***derivative trade data*** means:

- 4 (a) information about derivative transactions, or about positions  
5 relating to derivative transactions; or  
6 (b) information (including statistical data) that is created or  
7 derived from information referred to in paragraph (a).

8 ***financial services law*** means:

- 9 (a) a provision of this Chapter or of Chapter 5C, 5D, 6, 6A, 6B,  
10 6C, 6D, 8A or 8B; or  
11 (b) a provision of Chapter 9 as it applies in relation to a  
12 provision referred to in paragraph (a); or  
13 (c) a provision of the Passport Rules for this jurisdiction; or  
14 (d) a provision of Division 2 of Part 2 of the ASIC Act; or  
15 (e) any other Commonwealth, State or Territory legislation that  
16 covers conduct relating to the provision of financial services  
17 (whether or not it also covers other conduct), but only in so  
18 far as it covers conduct relating to the provision of financial  
19 services; or  
20 (f) in relation to a financial services licensee that is a licensed  
21 trustee company (in addition to paragraphs (a) to (e))—any  
22 rule of common law or equity that covers conduct relating to  
23 the provision of financial services that are traditional trustee  
24 company services (whether or not it also covers other  
25 conduct), but only in so far as it covers conduct relating to  
26 the provision of such services.

27 ***foreign exchange contract*** means a contract:

- 28 (a) to buy or sell currency (whether Australian or not); or  
29 (b) to exchange one currency (whether Australian or not) for  
30 another (whether Australian or not).

31 ***funeral benefit***:

- 32 (a) means a benefit that consists of the provision of funeral,  
33 burial or cremation services, with or without the supply of  
34 goods connected with such services; but  
35 (b) does not include a scheme or arrangement for the provision  
36 of benefits consisting of the payment of money, on the death  
37 of a person, for the purpose of meeting the whole or a part of  
38 the expenses of and incidental to the funeral, burial or  
39 cremation of the person.
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# EXPOSURE DRAFT

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1 *insurer*, in relation to a superannuation complaint, means the life  
2 company (within the meaning of the *Life Insurance Act 1995*) that  
3 is a party to the policy to which the complaint relates.

4 *licensed derivative trade repository* means a derivative trade  
5 repository the operation of which is authorised by an Australian  
6 derivative trade repository licence.

7 *life policy fund* means a regulated superannuation fund, or an  
8 AFCA superannuation scheme, for the purpose of which the trustee  
9 maintains, in relation to at least some of the members of the fund:

- 10 (a) individual life policies covering each of those members; or  
11 (b) a single life policy covering all of those members.

12 *relevant personal circumstances*, in relation to advice provided or  
13 to be provided to a person in relation to a matter, are such of the  
14 person's objectives, financial situation and needs as would  
15 reasonably be considered to be relevant to the advice.

16 *sale*, in relation to an annuity policy, includes any activity  
17 undertaken, or representation made:

- 18 (a) at the time of, or preliminary to, the entry into the policy, so  
19 that the policy as so entered into extends to a particular  
20 person; and  
21 (b) at the time of, or preliminary to, the variation of the policy,  
22 so that the policy as so varied affects a particular person.

23 *title document*, for a financial product, means a certificate or other  
24 document evidencing ownership of the financial product.

## 25 **761B Meaning of arrangement**

- 26 (1) For the purposes of this Chapter, an *arrangement* is, subject to  
27 subsection (2), a contract, agreement, understanding, scheme or  
28 other arrangement (as existing from time to time):  
29 (a) whether formal or informal, or partly formal and partly  
30 informal; and  
31 (b) whether written or oral, or partly written and partly oral; and  
32 (c) whether or not enforceable, or intended to be enforceable, by  
33 legal proceedings and whether or not based on legal or  
34 equitable rights.

- 35 (2) If:

# EXPOSURE DRAFT

- 
- 1 (a) an arrangement, when considered by itself, does not  
2 constitute a derivative, or some other kind of financial  
3 product; and  
4 (b) that arrangement, and one or more other arrangements, if  
5 they had instead been a single arrangement, would have  
6 constituted a derivative or other financial product; and  
7 (c) it is reasonable to assume that the parties to the arrangements  
8 regard them as constituting a single scheme;  
9 the arrangements are, for the purposes of this Part, to be treated as  
10 if they together constituted a single arrangement.

11 **244 Section 761C**

12 Omit “the purposes of this Chapter”, substitute “that purpose”.

13 **245 Section 761CA**

14 Omit “this Chapter”, substitute “this Act”.

15 **246 Subsection 761D(1)**

16 Omit “For the purposes of this Chapter, subject”, substitute “Subject”.

17 **247 Subsection 761D(2)**

18 Omit “for the purposes of this section is a derivative for the purposes of  
19 this Chapter”, substitute “is a *derivative*”.

20 **248 Subsection 761D(3)**

21 Omit “the following are not derivatives for the purposes of this Chapter  
22 even if they are covered by the definition in subsection (1)”, substitute  
23 “none of the following is a *derivative* even if covered by  
24 subsection (1)”.

25 **249 Paragraph 761D(3)(d)**

26 Omit “for the purposes of this Chapter”.

27 **250 Subsection 761D(4)**

28 Omit “is not a derivative for the purposes of this Chapter”, substitute “is  
29 not a *derivative*”.

30 **251 Subsection 761E(3) (table item 2)**

31 Omit “RSA product”, substitute “RSA”.



# EXPOSURE DRAFT

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1 **252 Subsection 761E(7)**

2 Omit “for the purposes of this Chapter”.

3 **253 Subsections 761G(1) and (2)**

4 Omit “For the purposes of this Chapter, a”, substitute “A”.

5 **254 Subsection 761G(3)**

6 Omit “, for the purposes of this Chapter,”.

7 **255 Subsection 761G(4)**

8 Omit “For the purposes of this Chapter, a”, substitute “A”.

9 **256 Subsection 761G(5)**

10 Omit “For the purposes of this Chapter, if”, substitute “If”.

11 **257 Subsection 761G(6)**

12 Omit “this Chapter”, substitute “this Act”.

13 **258 Paragraph 761G(6)(a)**

14 Omit “RSA product”, substitute “RSA”.

15 **259 Paragraph 761G(6)(aa)**

16 Omit “(within the meaning of the *Superannuation Industry*  
17 *(Supervision) Act 1993*)”.

18 **260 Paragraph 761G(6)(b)**

19 Omit “RSA product”, substitute “RSA”.

20 **261 Subparagraph 761G(6)(c)(i)**

21 Omit “(within the meaning of the *Superannuation Industry*  
22 *(Supervision) Act 1993*)”.

23 **262 Subparagraph 761G(6)(c)(ii)**

24 Omit “(within the meaning of the *Retirement Savings Accounts Act*  
25 *1997*)”.

26 **263 Paragraph 761G(6)(c)**

27 Omit “RSA product”, substitute “RSA”.

# EXPOSURE DRAFT

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1 **264 Subsections 761G(6A) and (7)**

2 Omit “For the purpose of this Chapter, if”, substitute “If”.

3 **265 Subsection 761G(7)**

4 Omit “RSA product”, substitute “RSA”.

5 **266 Subsection 761G(9) (note 1)**

6 Omit “RSA product”, substitute “RSA”.

7 **267 Paragraph 761G(7)(c)**

8 Omit “(as defined in section 9)”.

9 **268 Section 761GA**

10 Omit “For the purposes of this Chapter, a”, substitute “A”.

11 **269 Paragraph 761GA(b)**

12 Omit “RSA product”, substitute “RSA”.

13 **270 Section 762B**

14 Omit “this Chapter”, substitute “this Act”.

15 **271 Subsections 763A(1) and (2)**

16 Omit “For the purposes of this Chapter, a”, substitute “A”.

17 **272 Section 763B**

18 Omit “For the purposes of this Chapter, a”, substitute “A”.

19 **273 Section 763C**

20 Omit “For the purposes of this Chapter, a”, substitute “A”.

21 **274 Subsection 763D(1)**

22 Omit “For the purposes of this Chapter, a”, substitute “A”.

23 **275 Subsection 763D(2)**

24 Omit “For the purposes of this Chapter, the”, substitute “The”.

25 **276 Subsection 764A(1)**

26 Omit “*financial products* for the purposes of this Chapter”, substitute  
27 “*financial products*”.

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1 **277 Paragraphs 764A(1)(d), (e) and (f)**

2 Omit “within the meaning of the *Life Insurance Act 1995*”.

3 **278 Paragraph 764A(1)(g)**

4 Repeal the paragraph, substitute:

5 (g) a superannuation product; or

6 **279 Paragraph 764A(1)(h)**

7 Repeal the paragraph, substitute:

8 (h) an RSA; or

9 **280 Paragraph 764A(1)(m)**

10 Omit “for the purposes of this Chapter”.

11 **281 Subsection 764A(3)**

12 Omit “this Chapter”, substitute “this Act”.

13 **282 Subsection 765A(1)**

14 Omit “for the purposes of this Chapter”.

15 **283 Subparagraph 765A(1)(v)(li)**

16 Omit “within the meaning of the *Life Insurance Act 1995*”.

17 **284 Subsection 765A(2)**

18 Omit “for the purposes of this Chapter”.

19 **285 Subsection 766A(1)**

20 Omit “For the purposes of this Chapter, subject”, substitute “Subject”.

21 **286 Subsection 766B(1)**

22 Omit “For the purposes of this Chapter, *financial product advice*”,  
23 substitute “*Financial product advice*”.

24 **287 Subsection 766B(3)**

25 Omit “For the purposes of this Chapter, *personal advice*”, substitute  
26 “*Personal advice*”.

27 **288 Subsection 766B(3A)**

28 Omit “(as defined in subsection 994A(1))”.

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# EXPOSURE DRAFT

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1 **289 Subsection 766B(4)**

2 Omit “For the purposes of this Chapter, *general advice*”, substitute  
3 “*General advice*”.

4 **290 Subsection 766C(1)**

5 Omit “For the purposes of this Chapter,”, substitute “The”.

6 **291 Subsection 766D(1)**

7 Omit “For the purposes of this Chapter, a”, substitute “A”.

8 **292 Paragraph 766E(3)(c)**

9 Repeal the paragraph, substitute:

10 (c) the operation of:

11 (i) a regulated superannuation fund; or

12 (ii) an AFCA superannuation scheme; or

13 (iii) an approved deposit fund; or

14 (iv) a pooled superannuation trust;

15 by the trustees of that fund, scheme or trust;

16 **293 Subsection 767A(1)**

17 Omit “For the purposes of this Chapter, a”, substitute “A”.

18 **294 Subsection 767A(2)**

19 Omit “for the purposes of this Chapter”.

20 **295 Subsection 768A(1)**

21 Omit “For the purposes of this Chapter, a”, substitute “A”.

22 **296 Subsection 768A(2)**

23 Omit “for the purposes of this Chapter”.

24 **297 Section 790A**

25 Repeal the section, substitute:

26 **790A Meaning of *clearing and settlement arrangements***

27 *Clearing and settlement arrangements* for a transaction effected  
28 through a financial market are arrangements for the clearing and  
29 settlement of those transactions. The arrangements may be part of

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1 the market's operating rules or be separate from those operating  
2 rules.

3 **298 Paragraph 792A(1)(h)**

4 Omit "(within the meaning of Division 1 of Part 7.4)".

5 **299 Subsections 793D(1) and (3)**

6 After "lodge with ASIC", insert "in a prescribed form".

7 **300 Subsection 795A(1)**

8 After "lodging with ASIC", insert "in a prescribed form".

9 **301 Subsection 795E(2)**

10 Omit "in this Chapter".

11 **302 Paragraph 796A(2)(b)**

12 After "lodges with ASIC", insert "in a prescribed form".

13 **303 Subsection 797A(1)**

14 After "lodges with ASIC", insert "in a prescribed form".

15 **304 Section 820D (heading)**

16 Repeal the heading, substitute:

17 **820D Meaning of *operated in this jurisdiction***

18 **305 Subsection 820D(1)**

19 Omit "For the purposes of this Chapter, a", substitute "A".

20 **306 Subsection 820D(1) and (2)**

21 Omit "operated *in this jurisdiction*", substitute "*operated in this*  
22 *jurisdiction*".

23 **307 Paragraph 821A(1)(g)**

24 Omit "(within the meaning of Division 1 of Part 7.4)".

25 **308 Subsections 822D(1) and (3)**

26 After "lodge with ASIC", insert "in a prescribed form".

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1 **309 Subsection 824A(1)**

2 After “lodging with ASIC”, insert “in a prescribed form”.

3 **310 Subsection 824E(2)**

4 Omit “in this Chapter”.

5 **311 Paragraph 825A(2)(b)**

6 After “lodges with ASIC”, insert “in a prescribed form”.

7 **312 Subsection 826A(1)**

8 After “lodges with ASIC”, insert “in a prescribed form”.

9 **313 Section 850A**

10 Repeal the section, substitute:

11 **850A Meaning of *widely held market body***

12 A *widely held market body* is a body corporate that:

- 13 (a) has an Australian market licence or an Australian CS facility  
14 licence; or  
15 (b) is the holding company of a body corporate that has an  
16 Australian market licence or an Australian CS facility  
17 licence; or  
18 (c) is specified in regulations made for the purposes of this  
19 section.

20 **314 Subsection 850B(1)**

21 Omit “For the purposes of this Division, an”, substitute “An”.

22 **315 Section 850D (heading)**

23 Repeal the heading, substitute:

24 **850D Orders to remedy unacceptable control situation**

25 **316 Subsection 851D(4)**

26 After “lodged with ASIC”, insert “in a prescribed form”.

27 **317 Section 853A (heading)**

28 Repeal the heading, substitute:

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1 **853A Meaning of *disqualified individual***

2 **318 Section 853A**

3 Omit “For the purposes of this Division, an individual is *disqualified*”,  
4 substitute “An individual is a *disqualified individual*”.

5 **319 Section 853B (heading)**

6 Repeal the heading, substitute:

7 **853B Meaning of *involved in***

8 **320 Section 853B**

9 Omit “For the purposes of this Division, an individual”, substitute “An  
10 individual”.

11 **321 Subsection 853C(1)**

12 Omit “is *disqualified* for the purposes of this Division”, substitute “is  
13 disqualified”.

14 **322 Section 880B**

15 Repeal the section, substitute:

16 **880B Meaning of certain terms relating to compensation regimes for**  
17 **financial markets**

18 In this Act:

19 *compensation arrangements* are arrangements that consist of:

- 20 (a) a set of rules about compensation; and  
21 (b) a source of funds from which compensation is payable  
22 (including in a form other than money); and  
23 (c) associated administrative and monitoring arrangements.

24 *compensation rules* means the set of rules forming part of  
25 compensation arrangements.

26 *Division 3 arrangements* means compensation arrangements  
27 approved under Division 3 of Part 7.5.

28 *Division 3 loss* means a loss described in section 885C, other than  
29 a loss that section 885D provides is to be taken not to be a  
30 Division 3 loss.

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1 *Division 4 arrangements* means the arrangements constituted by  
2 Division 4 of Part 7.5.

3 *fidelity fund*, in relation to a financial market, means a fund  
4 consisting principally of contributions made by:

5 (a) participants and past participants in the market; or

6 (b) participants and past participants in:

7 (i) the market; and

8 (ii) one or more other financial markets;

9 the purpose, or the main purpose, of which is to provide a source of  
10 funds for the payment of compensation (including in a form other  
11 than money) to clients of participants. Any investments made using  
12 money in the fund are taken to form part of the fund.

13 *SEGC* (short for Securities Exchanges Guarantee Corporation)  
14 means the body corporate in relation to which a nomination as the  
15 Securities Exchanges Guarantee Corporation is in force under  
16 section 890A.

## 17 **323 At the end of Division 1 of Part 7.5**

18 Insert:

## 19 **880BA When compensation arrangements are adequate**

20 For the purposes of this Part, whether:

21 (a) proposed compensation arrangements; or

22 (b) compensation arrangements as proposed to be changed; or

23 (c) compensation arrangements that have been approved;

24 are adequate is to be determined in accordance with Subdivision D  
25 of Division 3.

## 26 **324 Paragraph 882B(2)(b)**

27 After “lodging the application with ASIC”, insert “in a prescribed  
28 form”.

## 29 **325 Subparagraph 883B(1)(c)(i)**

30 Omit “(as defined in section 790A)”.

## 31 **326 Section 883C**

32 After “pay compensation”, insert “(including in a form other than  
33 money)”.



# EXPOSURE DRAFT

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1 **327 Subsection 884B(2)**

2 After “lodge with ASIC”, insert “in a prescribed form”.

3 **328 Paragraph 884C(2)(b)**

4 After “lodging the application with ASIC”, insert “in a prescribed  
5 form”.

6 **329 Subsection 885A(2)**

7 Omit “*arrangements*”, substitute “arrangements”.

8 **330 Subsection 885A(3)**

9 Omit “*compensation rules*”, substitute “compensation rules”.

10 **331 Subsection 885B(1)**

11 Omit “*adequate*”, substitute “adequate”.

12 **332 Paragraph 885B(1)(e)**

13 After “paying compensation”, insert “(including in a form other than  
14 money)”.

15 **333 Subsection 885E(1)**

16 After “amount of compensation to be paid”, insert “(including in a form  
17 other than money)”.

18 **334 Subsection 885E(7)**

19 Repeal the subsection.

20 **335 Subsection 885F(1)**

21 After “to be paid”, insert “(which may be in a form other than money)”.

22 **336 Paragraph 886A(a)**

23 After “for compensation”, insert “(including interest referred to in  
24 subsection 885E(5))”.

25 **337 Subsection 890A(1)**

26 Omit “*Securities Exchanges Guarantee Corporation*”, substitute  
27 “Securities Exchanges Guarantee Corporation (the *SEGC*)”.

28 **338 Subsection 890G(1)**

29 After “lodge with ASIC”, insert “in a prescribed form”.

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# EXPOSURE DRAFT

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1 **339 Section 892A**

2 Repeal the section, substitute:

3 **892A Meaning of *Part 7.5 authority* and *Part 7.5 regulated fund***

4 In this Act:

5 ***Part 7.5 authority*** means:

- 6 (a) in relation to Division 3 arrangements of a financial market,  
7 the operator of the market; or  
8 (b) in relation to Division 4 arrangements, the SEGC.

9 ***Part 7.5 regulated fund*** means:

- 10 (a) a fidelity fund that is the source, or a source, of funds under  
11 Division 3 arrangements; or  
12 (b) the NGF; or  
13 (c) an account kept as required by subsection 892B(3).

14 **340 Section 892B (heading)**

15 Omit “regulated funds”, substitute “**Part 7.5 regulated funds**”.

16 **341 Subsection 892B(1)**

17 Omit “relevant authority”, substitute “Part 7.5 authority”.

18 **342 Subsection 892B(2)**

19 Omit “regulated fund”, substitute “Part 7.5 regulated fund”.

20 **343 Subsection 892B(3)**

21 Omit “relevant authority”, substitute “Part 7.5 authority”.

22 **344 Section 892C**

23 Repeal the section, substitute:

24 **892C Money in a Part 7.5 regulated fund may be invested**

- 25 (1) Money in a Part 7.5 regulated fund that is not immediately required  
26 for the purposes of meeting claims may be invested in any way in  
27 which trustees are for the time being authorised by law in force in a  
28 State or Territory in this jurisdiction to invest trust funds.

# EXPOSURE DRAFT

- 
- 1 (2) The Part 7.5 authority may, with the approval of ASIC, appoint a  
2 person to invest on behalf of the authority money to which  
3 subsection (1) applies.
- 4 (3) ASIC must not grant approval to the appointment of a person under  
5 subsection (2) unless it is satisfied that:
- 6 (a) the person has appropriate qualifications and expertise to  
7 perform the duties of the appointment; and
- 8 (b) the Part 7.5 authority has adequate indemnity insurance in  
9 respect of its liabilities for any negligence, or any defalcation  
10 or fraudulent misuse of property, by the person in the  
11 performance of those duties, or has made other satisfactory  
12 provisions for meeting those liabilities.
- 13 (4) A person appointed under subsection (2) must perform the duties  
14 of the appointment in accordance with the directions of the Part 7.5  
15 authority and subject to such conditions (if any) as the authority  
16 imposes.

## 17 **345 Section 892D (heading)**

18 Omit “relevant authority”, substitute “Part 7.5 authority”.

## 19 **346 Subsection 892D(1)**

20 Omit “relevant authority in relation to Part 7.5 arrangements”, substitute  
21 “Part 7.5 authority in relation to Division 3 arrangements or Division 4  
22 arrangements”.

## 23 **347 Subsection 892D(1)**

24 Omit “the relevant authority” (wherever occurring), substitute “the  
25 Part 7.5 authority”.

## 26 **348 Subsections 892D(4), (5) and (6)**

27 Omit “relevant authority”, substitute “Part 7.5 authority”.

## 28 **349 Subsection 892D(6)**

29 Omit “the Part 7.5 arrangements”, substitute “the Division 3  
30 arrangements or Division 4 arrangements”.

## 31 **350 Subsections 892D(7) and (8)**

32 Omit “the relevant authority” (wherever occurring), substitute “the  
33 Part 7.5 authority”.

# EXPOSURE DRAFT

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## 1 351 Section 892F (heading)

2 Omit “**Relevant authority’s**”, substitute “**Part 7.5 authority’s**”.

## 3 352 Subsection 892F(1)

4 Omit “Part 7.5 arrangements, the relevant authority”, substitute  
5 “Division 3 arrangements or Division 4 arrangements, the Part 7.5  
6 authority”.

## 7 353 Subsection 892F(2)

8 Omit “relevant authority”, substitute “Part 7.5 authority”.

## 9 354 Subsections 892G(1) and (2)

10 Omit “regulated fund”, substitute “Part 7.5 regulated fund”.

## 11 355 Section 892H

12 Repeal the section, substitute:

### 13 892H Accounting and reporting

14 (1) The Part 7.5 authority in relation to Division 3 arrangements or  
15 Division 4 arrangements must, in relation to each Part 7.5 regulated  
16 fund established in connection with the arrangements, keep written  
17 financial records that:

18 (a) correctly record and explain the fund’s transactions and  
19 financial position and performance; and

20 (b) would enable true and fair financial statements to be prepared  
21 and audited;

22 and must retain the financial records for 7 years after the  
23 transactions covered by the records are completed.

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

26 (2) Within 2 months after the end of each financial year of the Part 7.5  
27 authority, the authority must cause financial statements and notes  
28 to those financial statements (within the meaning of section 295)  
29 for the Part 7.5 regulated fund to be made out as at the end of that  
30 financial year.

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

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- 
- 1 (3) A registered company auditor, or authorised audit company, must  
2 be appointed to audit the accounts of the Part 7.5 regulated fund in  
3 accordance with whichever of the following paragraphs applies:  
4 (a) if there is only one Part 7.5 authority for the fund, that  
5 authority must appoint a registered company auditor, or  
6 authorised audit company, to audit the fund's accounts;  
7 (b) if there is more than one Part 7.5 authority for the fund:  
8 (i) each of those Part 7.5 authorities must ensure that a  
9 registered company auditor, or authorised audit  
10 company, is appointed in accordance with  
11 subparagraph (ii) to audit the fund's accounts; and  
12 (ii) the appointment is to be made by one or more of the  
13 Part 7.5 authorities, with the consent of such of the  
14 authorities (if any) as do not make the appointment; and  
15 (iii) a Part 7.5 authority must not purport to appoint a person  
16 to audit the fund's accounts unless each other Part 7.5  
17 authority (if any) who has not also made the  
18 appointment has consented to the appointment.

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

- 21 (4) If there is more than one Part 7.5 authority for a fund and they  
22 cannot agree on which auditor to appoint, ASIC may, on the  
23 written application of any of the authorities, appoint an auditor  
24 who consents to being so appointed.

- 25 (5) The auditor must:  
26 (a) audit the accounts of the Part 7.5 regulated fund and the  
27 financial statements; and  
28 (b) do the things required by sections 307 and 308 in relation to  
29 those documents, as if the audit were being done under  
30 Chapter 2M.

- 31 (6) The Part 7.5 authority for the Part 7.5 regulated fund must, within  
32 14 days after receiving the auditor's report, lodge with ASIC in a  
33 prescribed form a copy of the report and a copy of the financial  
34 statements. If there is more than one Part 7.5 authority for the  
35 Part 7.5 regulated fund, the copy must be given to ASIC by at least  
36 one of those authorities, or else they all contravene this subsection.

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

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1 (7) If the regulated fund is the NGF, the Part 7.5 authority (being the  
2 SEGC) must:

3 (a) give a copy of the audited financial statements to each  
4 member of the SEGC; and

5 (b) cause a copy of the audited financial statements to be laid  
6 before the annual general meeting of each member of the  
7 SEGC next following the making of that report.

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

## 10 356 Section 892I

11 Repeal the section, substitute:

### 12 892I Division 3 arrangements—reporting in situations where 13 compensation does not come out of a Part 7.5 regulated 14 fund

15 The regulations may impose reporting requirements to be complied  
16 with by the Part 7.5 authority in relation to Division 3  
17 arrangements in relation to situations in which compensation under  
18 the arrangements is provided otherwise than out of a Part 7.5  
19 regulated fund.

## 20 357 Subsection 901A(5)

21 Omit “For the purpose of this Chapter, *execution*”, substitute  
22 “*Execution*”.

## 23 358 Subsection 901A(6)

24 Omit “For the purpose of this Chapter”, substitute “For the purposes of  
25 this Division”.

## 26 359 Subsection 901A(7)

27 Omit “For the purpose of this Chapter, *clearing*”, substitute “*Clearing*”.

## 28 360 Subsection 905E(2)

29 Omit “in this Chapter”.

## 30 361 Subsection 908BD(1)

31 Omit “that is in a form approved by ASIC in writing”, substitute “in a  
32 prescribed form”.

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## 1 362 Subsection 908BD(2)

2 After “lodge with ASIC”, insert “in a prescribed form”.

## 3 363 Subsection 908BE(2)

4 Omit “in this Chapter”.

## 5 364 Paragraph 908DA(2)(b)

6 Repeal the paragraph, substitute:

7 (b) the acts or omissions result, or are likely to result, in any of  
8 the following suffering financial or other disadvantage from  
9 use of the financial benchmark:

10 (i) an Australian citizen;

11 (ii) a resident of Australia (within the meaning of the  
12 *Criminal Code*);

13 (iii) a body corporate incorporated by or under a law of the  
14 Commonwealth or of a State or Territory.

## 15 365 Paragraph 908DB(2)(b)

16 Repeal the paragraph, substitute:

17 (b) making the statements or disseminating the information  
18 results, or is likely to result, in any of the following suffering  
19 financial or other disadvantage from use of the financial  
20 benchmark:

21 (i) an Australian citizen;

22 (ii) a resident of Australia (within the meaning of the  
23 *Criminal Code*);

24 (iii) a body corporate incorporated by or under a law of the  
25 Commonwealth or of a State or Territory.

## 26 366 Paragraph 908DD(2)(c)

27 Repeal the paragraph, substitute:

28 (c) the person’s conduct that allegedly contravenes the provision  
29 occurs wholly outside Australia and, at the time of the  
30 alleged contravention, the person is:

31 (i) an Australian citizen; or

32 (ii) a resident of Australia; or

33 (iii) a body corporate incorporated by or under a law of the  
34 Commonwealth or of a State or Territory.

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## 367 Section 910A

Repeal the section, substitute:

### 910A Meaning of certain terms relating to licensing of providers of financial services

In this Act:

**body corporate licensee** means a body corporate that:

- (a) is a financial services licensee; and
- (b) is authorised to provide personal advice to retail clients in relation to relevant financial products.

**class of product advice** means financial product advice about a class of products, but does not include a recommendation about a specific product in the class.

**CPD year** (short for continuing professional development year): a financial services licensee's **CPD year** is the 12-month period beginning on the day of the year included in the most recent notice given by the licensee under section 922HA.

**foreign qualification** means a bachelor or higher degree, or equivalent qualification, awarded by a tertiary education institution outside Australia.

**limited-service time-sharing adviser**: a person is a limited-service time-sharing adviser if:

- (a) the person is a relevant provider; and
- (b) the only relevant financial product that the person provides advice in relation to is a time-sharing scheme; and
- (c) the person has not met any one or more of the education and training standards in subsections 921B(2) to (4).

**qualified tax relevant provider**: a person is a qualified tax relevant provider if:

- (a) the person is a relevant provider; and
- (b) if a determination is in force under subsection 921BB(1)—the person meets each requirement set out in the determination that is of a kind mentioned in any of paragraphs (a) to (d) of that subsection.

**relevant financial products** means financial products other than:

- (a) basic banking products; or



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- 
- 1 (b) general insurance products; or
  - 2 (c) consumer credit insurance; or
  - 3 (d) a combination of any of those products.

4 **relevant provider:** a person is a relevant provider if the person:

- 5 (a) is an individual; and
- 6 (b) is:
  - 7 (i) a financial services licensee; or
  - 8 (ii) an authorised representative of a financial services
  - 9 licensee; or
  - 10 (iii) an employee or director of a financial services licensee;
  - 11 or
  - 12 (iv) an employee or director of a related body corporate of a
  - 13 financial services licensee; and
- 14 (c) is authorised to provide personal advice to retail clients, as
- 15 the licensee or on behalf of the licensee, in relation to
- 16 relevant financial products.

17 Note: For rules about when relevant providers can use the expressions  
18 “financial adviser” and “financial planner”, see section 923C.

## 19 **368 Section 910D**

20 Omit “An insurance fulfilment provider”, substitute “A person who:”.

## 21 **369 Paragraph 910D(a)**

22 Repeal the paragraph, substitute:

- 23 (a) in carrying on a business provides goods or services to a
- 24 person insured under an insurance product in satisfaction of
- 25 the liability of the insurer under the product; and

## 26 **370 Subsection 911D(1)**

27 Omit “For the purposes of this Chapter, a financial services business is  
28 taken to be carried on *in this jurisdiction*”, substitute “A financial  
29 services business is taken to be carried on in this jurisdiction”.

## 30 **371 Subsection 911D(2)**

31 Omit “carried on *in this jurisdiction* for the purposes of this Chapter”,  
32 substitute “carried on in this jurisdiction”.

## 33 **372 Paragraph 912A(1)(cb)**

34 Repeal the paragraph, substitute:

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1 (cb) if the licensee is either of the following—comply with the  
2 law of each host economy for the fund:

3 (i) the operator of an Australian passport fund;

4 (ii) a person (other than a regulator) who has functions or  
5 duties in relation to an Australian passport fund under  
6 the Passport Rules for this jurisdiction; and

## 7 **373 Subsection 912A(6)**

8 Repeal the subsection.

## 9 **374 Section 912B (heading)**

10 Omit “**Compensation arrangements**”, substitute “**Arrangements for**  
11 **compensation**”.

## 12 **375 At the end of section 912DAA**

13 Add:

14 *Meaning of knowledge and recklessness*

15 (8) For the purposes of this section:

16 *knowledge* has the meaning given by section 5.3 of the *Criminal*  
17 *Code*.

18 *recklessness* has the meaning given by section 5.4 of the *Criminal*  
19 *Code*.

## 20 **376 At the end of section 912DAB**

21 Add:

22 *Meaning of knowledge and recklessness*

23 (9) For the purposes of this section:

24 *knowledge* has the meaning given by section 5.3 of the *Criminal*  
25 *Code*.

26 *recklessness* has the meaning given by section 5.4 of the *Criminal*  
27 *Code*.

## 28 **377 Paragraph 912DAC(1)(a)**

29 After “with ASIC”, insert “in a prescribed form”.

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1 **378 At the end of section 912EA**

2 Add:

3 *Meaning of knowledge and recklessness*

4 (6) For the purposes of this section:

5 *knowledge* has the meaning given by section 5.3 of the *Criminal*  
6 *Code*.

7 *recklessness* has the meaning given by section 5.4 of the *Criminal*  
8 *Code*.

9 **379 At the end of section 912EB**

10 Add:

11 *Meaning of knowledge and recklessness*

12 (12) For the purposes of this section:

13 *knowledge* has the meaning given by section 5.3 of the *Criminal*  
14 *Code*.

15 *recklessness* has the meaning given by section 5.4 of the *Criminal*  
16 *Code*.

17 **380 Section 913A**

18 After “lodging an application with ASIC”, insert “in a prescribed form”.

19 **381 Subsections 913B(3) and (4B)**

20 After “lodge with ASIC”, insert “in a prescribed form”.

21 **382 Paragraph 914A(2)(b)**

22 After “lodges with ASIC”, insert “in a prescribed form”.

23 **383 Subsections 914B(3) and (6)**

24 After “lodge with ASIC”, insert “in a prescribed form”.

25 **384 Subsection 915A(1)**

26 After “lodges with ASIC”, insert “in a prescribed form”.

27 **385 Paragraphs 915B(1)(e), (2)(d) and (3)(e)**

28 After “lodges with ASIC”, insert “in a prescribed form”.

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1 **386 Paragraph 915B(4)(d)**

2 After “lodge with ASIC”, insert “in a prescribed form”.

3 **387 Paragraph 915C(1)(e)**

4 Omit “or a person with responsibilities in relation to an Australian  
5 passport fund”, substitute “or a person (other than a regulator) who has  
6 functions or duties in relation to an Australian passport fund under the  
7 Passport Rules for this jurisdiction”.

8 **388 Subsection 915C(5)**

9 Repeal the subsection.

10 **389 Subsection 916F(1)**

11 After “lodge with ASIC”, insert “in a prescribed form”.

12 **390 Subsection 917A(2)**

13 Omit “*within authority*”, substitute “within authority”.

14 **391 Paragraphs 917A(3)(d) and (e)**

15 Omit “*within authority*”, substitute “within authority”.

16 **392 Paragraph 920D(2)(b)**

17 After “lodges with ASIC”, insert “in a prescribed form”.

18 **393 Subsection 921B(4) (note)**

19 Omit “section 910A”, substitute “section 9”.

20 **394 Subsection 922L(1) (not including the notes)**

21 Repeal the subsection, substitute:

22 (1) A notice lodged with ASIC under any of the following provisions  
23 (a *notice provision*) must be in a prescribed form:

- 24 (a) section 922D;  
25 (b) section 922H;  
26 (c) section 922HA;  
27 (d) section 922HB;  
28 (e) section 922J;  
29 (f) section 922K.

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1 **395 Paragraph 922M(1)(a)**

2 Omit “notice provision”, substitute “provision referred to in  
3 subsection 922L(1)”.

4 **396 Subsection 922M(1) (note)**

5 Repeal the note.

6 **397 Subsection 923C(10) (heading)**

7 Omit “*compensation arrangements*”, substitute “*arrangements for*  
8 *compensation*”.

9 **398 Subsection 923C(10) (note)**

10 Omit “compensation arrangements”, substitute “arrangements for  
11 compensation”.

12 **399 Paragraph 946AA(1)(c)**

13 Omit “RSA product”, substitute “RSA”.

14 **400 Paragraph 947D(1)(b)**

15 After “regulated superannuation fund”, insert “, or an AFCA  
16 superannuation scheme,”.

17 **401 Subsection 947D(5)**

18 Repeal the subsection.

19 **402 Section 952B (heading)**

20 Repeal the heading substitute:

21 **952B Meaning of *defective and disclosure document or statement***

22 **403 Section 953A (heading)**

23 Repeal the heading substitute:

24 **953A Meaning of *defective and disclosure document or statement***

25 **404 Section 960**

26 Repeal the section.

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## 1 405 Section 961C

2 Omit “Something”, substitute “For the purposes of this Division,  
3 something”.

## 4 406 Section 961P

5 Omit “For the purposes of this Part, the”, substitute “The”.

## 6 407 Subparagraph 963B(1)(b)(ii)

7 Repeal the subparagraph, substitute:

- 8 (ii) none of the products is a life risk insurance product  
9 covered by subsection (2);

## 10 408 Sub-subparagraph 963B(1)(b)(iii)(B)

11 Omit “in section 963BA”.

## 12 409 Subsections 963B(2) and (3)

13 Repeal the subsections, substitute:

- 14 (2) A life risk insurance product is covered by this subsection if:  
15 (a) the product is issued to an RSE licensee of a registrable  
16 superannuation entity, or a custodian in relation to a  
17 registrable superannuation entity, for the benefit of a class of  
18 members of the entity; or  
19 (b) both of the following apply:  
20 (i) the product is issued to an RSE licensee of a registrable  
21 superannuation entity, or a custodian in relation to a  
22 registrable superannuation entity, for the benefit of a  
23 person who is a member of the entity;  
24 (ii) the person has not given written notice to an employer  
25 of the person that the fund is the person’s chosen fund,  
26 but the employer of the person makes contributions to  
27 the fund for the benefit of the person.

28 Note: Superannuation guarantee surcharge may be imposed on an employer  
29 if the employer does not make contributions to a superannuation fund  
30 for the benefit of its employees. If an employee does not notify the  
31 employer of the employee’s chosen fund, the employer is still able to  
32 satisfy its obligations by making contributions to certain funds (see the  
33 *Superannuation Guarantee (Administration) Act 1992*).

## 34 410 Section 963BA (heading)

35 Repeal the heading, substitute:

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1 **963BA Meaning of *benefit ratio requirements* and *clawback***  
2 ***requirements***

3 **411 Section 964H**

4 Omit “Something”, substitute “For the purposes of this Division,  
5 something”.

6 **412 Division 7 of Part 7.7A**

7 Repeal the Division.

8 **413 Subsection 981D(2)**

9 Repeal the subsection, substitute:

10 (2) However, subsection (1) only applies to an obligation if:

11 (a) the financial service or product the money is given in  
12 connection with would be provided to the client as a retail  
13 client if:

14 (i) the service or product were provided to the client when  
15 the money is paid; and

16 (ii) section 761GA (about sophisticated investors) did not  
17 apply; and

18 (b) the entry into of the derivative referred to in paragraph (1)(a)  
19 or (b) was or will be cleared through an authorised clearing  
20 and settlement facility; and

21 (c) the licensee incurred the obligation, in connection with the  
22 derivative, under the operating rules of the facility.

23 **414 Subsection 981J(1)**

24 Omit “derivative retail client money”, substitute “money of a kind  
25 referred to in paragraph 981D(2)(a)”.

26 **415 Subsection 984B(3)**

27 Repeal the subsection, substitute:

28 (3) However, subsection (2) only applies to an obligation if:

29 (a) the financial service or product the property is given in  
30 connection with would be provided to the client as a retail  
31 client if:

32 (i) the service or product were provided to the client when  
33 the property is given; and

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- 
- 1 (ii) section 761GA (about sophisticated investors) did not  
2 apply; and  
3 (b) the entry into of the derivative referred to in paragraph (2)(a)  
4 or (b) was or will be cleared through an authorised clearing  
5 and settlement facility; and  
6 (c) the licensee incurred the obligation, in connection with the  
7 derivative, under the operating rules of the facility.

8 **416 Section 985A (heading)**

9 Repeal the heading.

10 **985A Meaning of contract of insurance and insured**

11 **417 Paragraph 985A(2)(a)**

12 Omit “(within the meaning of the *Life Insurance Act 1995*)”.

13 **418 Section 989A**

14 Repeal the section.

15 **419 Subsection 989B(2)**

16 After “with ASIC”, insert “, in a prescribed form,”.

17 **420 Subsection 990K(1)**

18 After “with ASIC”, insert “in a prescribed form”.

19 **421 Section 994A**

20 Repeal the section, substitute:

21 **994A Meaning of certain term relating to design and distribution**  
22 **requirements**

23 (1) In this Act:

24 *excluded conduct* means:

- 25 (a) a dealing in a financial product that consists of arranging for  
26 a retail client to apply for or acquire the product, where the  
27 arranging is undertaken:  
28 (i) by a person, or by an associate of a person; and  
29 (ii) for the purpose of implementing personal advice that the  
30 person has given to the retail client; or  
31 (b) providing personal advice.



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1 **retail product distribution conduct**, in relation to a financial  
2 product, means any of the following:

- 3 (a) dealing in the product in relation to a retail client;  
4 (b) under Part 6D.2, giving a disclosure document in relation to  
5 an offer of the product to a retail client;  
6 (c) under Part 7.9, giving a Product Disclosure Statement for the  
7 product to a retail client;  
8 (d) providing financial product advice in relation to the product  
9 to a retail client.

10 **review period**, for a target market determination, means each of the  
11 following:

- 12 (a) the period starting on the day the determination is made and  
13 ending on the earlier of:  
14 (i) the day that a review of the determination under  
15 section 994C is started; and  
16 (ii) the last day of the maximum period specified in the  
17 determination under paragraph 994B(5)(e);  
18 (b) a period starting on the day after a review of the  
19 determination under section 994C is finished and ending on  
20 the earlier of:  
21 (i) the day on which the next review of the determination  
22 under section 994C is started; and  
23 (ii) the last day of the maximum period specified in the  
24 determination under paragraph 994B(5)(f).

25 (2) In this Part:

26 **complaint**, in relation to a financial product, means a complaint  
27 made to a regulated person about the product, which is covered by  
28 a dispute resolution system complying with subsection 912A(2).

29 **dealing** in a financial product has the meaning given by  
30 section 766C, subject to the following:

- 31 (a) paragraphs 766C(1)(d) and (e) do not apply;  
32 (b) despite subsection 766C(3), a person deals in a financial  
33 product if the dealing is a regulated sale of the product on the  
34 person's own behalf;  
35 (c) paragraph 766C(4)(c) does not apply if the dealing is an offer  
36 of securities that needs disclosure to investors under  
37 Part 6D.2.

38 **regulated person**, in relation to a financial product, means:

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- 
- 1 (a) the seller of the financial product, if a sale takes place in  
2 circumstances described in subsection 707(2), (3) or (5) or  
3 1012C(5), (6) or (8); or  
4 (b) a regulated person as defined in section 1011B (modified so  
5 that the references to financial products include references to  
6 securities); or  
7 (c) a person prescribed, in relation to the product, by regulations  
8 made for the purposes of this paragraph.

9 **reporting period** means:

- 10 (a) for information about the number of complaints about a  
11 financial product—a period specified under  
12 paragraph 994B(5)(g), in the target market determination for  
13 the product, as a reporting period for that kind of  
14 information; or  
15 (b) for other kinds of information that must be reported under  
16 subsection 994F(5)—a period specified under  
17 subparagraph 994B(5)(h)(ii), in the target market  
18 determination for the product, as a reporting period for those  
19 other kinds of information.

- 20 (3) Section 1010C (references to sale, purchase and offer) applies for  
21 the purposes of this Part.

## 22 **422 Subsection 994AA(1)**

23 Repeal the subsection, substitute:

- 24 (1) In this Part, a **financial product** includes a financial product within  
25 the meaning of Division 2 of Part 2 of the ASIC Act.

26 Note: Whether a target market determination is required to be made in  
27 relation to financial products covered by this extended definition is  
28 determined under section 994B, including any regulations made for  
29 the purposes of paragraph 994B(3)(f).

## 30 **423 Paragraph 994B(1)(ba)**

31 Repeal the paragraph, substitute:

- 32 (ba) the product is not a financial product within the meaning of  
33 Division 3 of Part 7.1 and:  
34 (i) the person issues the product to another person as a  
35 retail client; or  
36 (ii) the person sells the product under a regulated sale; or

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## 424 After subsection 994B(8)

Insert:

(8A) A target market determination for a financial product is *appropriate* if it satisfies the requirements of subsection (8).

## 425 Paragraph 994G(b)

Omit “(except an excluded dealing)”, substitute “(except a dealing of a kind referred to in paragraph (a) of the definition of *excluded conduct* in section 994A(1))”.

## 426 Section 994K

Repeal the section.

## 427 At the end of section 994L

Add:

(8) For the purposes of this section, the *provisions of this Part* include definitions in this Act as they apply to references in this Part.

## 428 Section 1010C (heading)

Repeal the heading, substitute:

### 1010C Interpretation of references to sale and offer

## 429 Subsection 1010C(1)

Omit “*sale* or *purchase*”, substitute “sale or purchase”.

## 430 Section 1011B

Repeal the section, substitute:

### 1011B Meaning of *regulated person*

In this Division, a *regulated person*, in relation to a financial product, is:

- (a) an issuer of the financial product; or
- (b) a seller of the financial product if the sale takes place in circumstances described in subsection 1012C(5), (6) or (8) (secondary sales that require a Product Disclosure Statement); or
- (c) any financial services licensee; or

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- 
- 1 (d) any authorised representative of a financial services licensee;  
2 or  
3 (e) any person who is not required to hold an Australian  
4 financial services licence because the person is covered by:  
5 (i) paragraph 911A(2)(j); or  
6 (ii) an exemption in regulations made for the purposes of  
7 paragraph 911A(2)(k); or  
8 (iii) an exemption specified by ASIC for the purposes of  
9 paragraph 911A(2)(l); or  
10 (f) any person who is required to hold an Australian financial  
11 services licence but who does not hold such a licence.

12 **431 Subsection 1012A(2)**

13 Omit “this Division”, substitute “this Act”.

14 **432 Subsection 1012B(2)**

15 Omit “this Division”, substitute “this Act”.

16 **433 Section 1012I (heading)**

17 Omit “RSA products”, substitute “RSAs”.

18 **434 Subsection 1012I(2)**

19 Omit “RSA product” (wherever occurring), substitute “RSA”.

20 **435 Subsections 1013A(1) and (2)**

21 Omit “in this Division referred to as”.

22 **436 Subsection 1013A(3)**

23 Omit “, in this Division, referred to as”.

24 **437 Subsection 1015B(1)**

25 After “lodged with ASIC”, insert “in a prescribed form”.

26 **438 Subsection 1016A(1) (paragraph (d) of the definition of**  
27 ***relevant financial product*)**

28 Repeal the paragraph, substitute:

29 (d) an RSA; or

30 **439 Subsection 1016A(1)**

31 Repeal the following definitions:

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- 1 (a) the definition of *RSA provider*;  
2 (b) the definition of *standard employer-sponsor*;  
3 (c) the definition of *standard employer-sponsored fund*;  
4 (d) the definition of *standard employer-sponsored member*.

5 **440 Subparagraphs 1016A(2)(e)(i) and (iii)**

6 Omit “RSA product”, substitute “RSA”.

7 **441 Subsection 1017B(9) (definition of *MySuper product*)**

8 Repeal the definition.

9 **442 Subsection 1017BA(5)**

10 Repeal the following definitions:

- 11 (a) the definition of *choice product*;  
12 (b) the definition of *life policy*;  
13 (c) the definition of *MySuper product*;  
14 (d) the definition of *regulated superannuation fund*.

15 **443 Subsection 1017BB(6)**

16 Repeal the following definitions:

- 17 (a) definition of *MySuper product*;  
18 (b) definition of *pooled superannuation trust*.

19 **444 Subsection 1017BB(6) (definition of *small APRA fund*)**

20 Omit “(within the meaning of the *Superannuation Industry*  
21 *(Supervision) Act 1993*)”.

22 **445 Section 1017C (heading)**

23 Omit “RSA products”, substitute “RSAs”.

24 **446 Paragraph 1017C(1)(b)**

25 Omit “RSA product”, substitute “RSA”.

26 **447 Subsection 1017C(2A) (heading)**

27 Omit “*RSA product*”, substitute “*RSA*”.

28 **448 Subsection 1017C(2A)**

29 Omit “RSA product” (wherever occurring), substitute “RSA”.

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1 **449 Subsection 1017C(3A) (heading)**

2 Omit “*RSA product*”, substitute “*RSA*”.

3 **450 Subsection 1017C(3A)**

4 Omit “*RSA product*” (wherever occurring), substitute “*RSA*”.

5 **451 Subsection 1017C(5)**

6 Omit “*RSA product*”, substitute “*RSA*”.

7 **452 Subsection 1017C(9) (paragraph (b) of the definition of**  
8 ***concerned person*)**

9 Repeal the paragraph, substitute:

10 (b) in relation to an RSA—means a person who:

11 (i) is, or was within the preceding 12 months, a holder of  
12 the RSA; or

13 (ii) has a right or a claim under the RSA.

14 **453 Subparagraph 1017D(1)(b)(iii)**

15 Repeal the subparagraph, substitute:

16 (iii) an RSA; or

17 **454 Subparagraphs 1017DA(1)(b)(i) and (ii)**

18 Omit “*RSA product*”, substitute “*RSA*”.

19 **455 Subsection 1017DA(4)**

20 Repeal the subsection.

21 **456 Subparagraph 1019A(1)(a)(v)**

22 Repeal the subparagraph, substitute:

23 (v) RSAs; and

24 **457 Section 1019C**

25 Repeal the section.

26 **458 Subsection 1019I(1)**

27 Omit “**date of offer**”, substitute “date of offer”.

28 **459 Section 1020AA**

29 Repeal the section, substitute:

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## 1020AAA Interpretation

### *Treatment of crossing of section 1020B products*

- (1) For the purposes of this Division, treat the following as being made on a licensed market:
  - (a) a sale of section 1020B products made by a financial services licensee on behalf of both the buyer and the seller of the products;
  - (b) a sale of section 1020B products made by a financial services licensee on behalf of the buyer of the products and on its own behalf as seller of the products;
  - (c) a sale of section 1020B products made by a financial services licensee on behalf of the seller of the products and on its own behalf as buyer of the products.
- (2) To avoid doubt, for the purposes of this Division, treat the entering into of an agreement to sell section 1020B products as the sale of the products.
- (3) To avoid doubt, for the purposes of this Division, treat a financial services licensee as making a sale on behalf of a person if the sale is, in economic substance, made by the licensee for the person.

Example: A request that the sale be made is passed from the person to the financial services licensee through a chain of intermediaries.

## 1020AA Meaning of *securities lending arrangement*

A *securities lending arrangement* is an arrangement under which:

- (a) one entity (the *lender*) agrees that it will:
  - (i) deliver particular securities, managed investment products, foreign passport fund products or other financial products to another entity (the *borrower*) or to an entity nominated by the borrower; and
  - (ii) vest title in those products in the entity to which they are delivered; and
- (b) the borrower agrees that it will, after the lender does the things mentioned in paragraph (a):
  - (i) deliver the products (or equivalent products) to the lender or to an entity nominated by the lender; and
  - (ii) vest title in those products (or those equivalent products) in the entity to which they are delivered.

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## 1 460 Section 1020AH

2 Repeal the section, substitute:

### 3 1020AH Meaning of *CGS depository interest information website,* 4 *information statement and regulated person*

5 (1) In this Act:

6 *CGS depository interest information website* means a website that  
7 is prescribed by the regulations for the purposes of this definition.

8 *information statement* for a class of CGS depository interests  
9 means a document that:

- 10 (a) contains a statement that the document is an information  
11 statement for that class; and
- 12 (b) contains information about all CGS depository interests of  
13 that class (whether or not it also contains information about  
14 CGS depository interests of another class); and
- 15 (c) is prepared by the Commonwealth; and
- 16 (d) is published on the CGS depository interest information  
17 website.

18 (2) In this Division and Division 7:

19 *regulated person*, in relation to a CGS depository interest, means:

- 20 (a) an issuer of the CGS depository interest; or
- 21 (b) any financial services licensee; or
- 22 (c) any authorised representative of a financial services licensee;  
23 or
- 24 (d) any person who is not required to hold an Australian  
25 financial services licence because the person is covered by:
  - 26 (i) paragraph 911A(2)(j); or
  - 27 (ii) an exemption in regulations made for the purposes of  
28 paragraph 911A(2)(k); or
  - 29 (iii) an exemption specified by ASIC for the purposes of  
30 paragraph 911A(2)(l); or
- 31 (e) any person who is required to hold an Australian financial  
32 services licence but who does not hold such a licence.

## 33 461 Subsection 1020B(1)

34 Omit “In this section and in Division 5B”, substitute “In this Act”.



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1 **462 Section 1021B (heading)**

2 Repeal the heading, substitute:

3 **1021B Meaning of *defective and disclosure document or statement***

4 **463 Subsection 1021B(1) (definition of *regulated person*)**

5 Repeal the definition.

6 **464 Section 1022A (heading)**

7 Repeal the heading, substitute:

8 **1022A Meaning of *defective and disclosure document or statement***

9 **465 Subsection 1022A(1) (definition of *regulated person*)**

10 Repeal the definition.

11 **466 Section 1023B**

12 Repeal the section, substitute:

13 **1023B Meaning of *financial product*—Part 7.9A**

14 In this Part, *financial product*:

- 15 (a) includes a financial product within the meaning of Division 2  
16 of Part 2 of the ASIC Act;
- 17 (b) does not include:
- 18 (i) a financial product issued, or offered for regulated sale,  
19 by an exempt body corporate of a State or Territory or  
20 by an exempt public authority; or
- 21 (ii) a financial product specified in regulations made for the  
22 purposes of this paragraph.

23 **467 Paragraph 1040B(1)(b)**

24 Omit “(within the meaning of Division 3)”.

25 **468 Paragraphs 1041F(3)(a) and (b)**

26 Repeal the paragraphs, substitute:

- 27 (a) applying to become a standard employer-sponsor of a  
28 superannuation entity;
- 29 (b) permitting a person to become a standard employer-sponsor  
30 of a superannuation entity;

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## 1 469 Paragraph 1041F(3)(c)

2 Omit “RSA product”, substitute “RSA”.

## 3 470 Subparagraphs 1041H(2)(b)(iv) to (ix)

4 Repeal the subparagraphs, substitute:

- 5 (iv) applying to become a standard employer-sponsor of a  
6 superannuation entity;
- 7 (v) permitting a person to become a standard  
8 employer-sponsor of a superannuation entity;
- 9 (vi) a trustee of a superannuation entity dealing with a  
10 beneficiary of that entity as such a beneficiary;
- 11 (vii) a trustee of a superannuation entity dealing with an  
12 employer-sponsor (within the meaning of the  
13 *Superannuation Industry (Supervision) Act 1993*), or an  
14 associate (within the meaning of that Act) of an  
15 employer-sponsor, of that entity as such an  
16 employer-sponsor or associate;
- 17 (viii) applying, on behalf of an employee (within the meaning  
18 of the *Retirement Savings Accounts Act 1997*), for the  
19 employee to become the holder of an RSA;
- 20 (ix) an RSA provider dealing with an employer (within the  
21 meaning of the *Retirement Savings Accounts Act 1997*),  
22 or an associate (within the meaning of that Act) of an  
23 employer, who makes an application, on behalf of an  
24 employee (within the meaning of that Act) of the  
25 employer, for the employee to become the holder of an  
26 RSA, as such an employer;

## 27 471 Subsection 1041L(3)

28 Omit “In this Division, a”, substitute “A”.

## 29 472 Section 1042A

30 Repeal the section, substitute:

### 31 1042A Meaning of certain terms relating to the insider trading 32 prohibitions

33 (1) In this Act:

34 *Division 3 financial products* means:

- 35 (a) securities; or

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- 1 (b) derivatives; or  
2 (c) interests in a managed investment scheme; or  
3 (d) debentures, stocks or bonds issued or proposed to be issued  
4 by a government; or  
5 (e) superannuation products, other than those prescribed by  
6 regulations made for the purposes of this paragraph; or  
7 (f) any other financial products that are able to be traded on a  
8 financial market.

9 ***inside information*** means information in relation to which the  
10 following paragraphs are satisfied:

- 11 (a) the information is not generally available;  
12 (b) if the information were generally available, a reasonable  
13 person would expect it to have a material effect on the price  
14 or value of particular Division 3 financial products.

15 ***relevant Division 3 financial products***, in relation to particular  
16 inside information, means the Division 3 financial products  
17 referred to in paragraph (b) of the definition of inside information  
18 in this subsection.

19 (2) In this Division:

20 ***information*** includes:

- 21 (a) matters of supposition and other matters that are  
22 insufficiently definite to warrant being made known to the  
23 public; and  
24 (b) matters relating to the intentions, or likely intentions, of a  
25 person.

26 **473 Section 1042C (heading)**

27 Repeal the heading, substitute:

28 **1042C Meaning of *generally available***

29 **474 Section 1042D (heading)**

30 Repeal the heading, substitute:

31 **1042D Meaning of *material effect***

32 **475 Section 1042E (heading)**

33 Repeal the heading, substitute:

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1 **1042E Meaning of *able to be traded***

2 **476 Section 1042F (heading)**

3 Repeal the heading, substitute:

4 **1042F Meaning of *procure***

5 **477 Paragraphs 1043A(1)(b) and (2)(b)**

6 Omit “section 1042A”, substitute “subsection 1042A(1)”.

7 **478 Section 1050 (note)**

8 Omit “761A”, substitute “9”.

9 **479 Paragraph 1052E(1)(b)**

10 Repeal the paragraph, substitute:

11 (b) a contravention of the governing rules of any of the following  
12 may have occurred:

13 (i) a regulated superannuation fund;

14 (ii) an AFCA superannuation scheme;

15 (iii) an approved deposit fund; or

16 **480 Paragraph 1053(1)(a)**

17 Omit “or of an approved deposit fund”, substitute “or of an AFCA  
18 superannuation scheme or an approved deposit fund”.

19 **481 Subparagraph 1053(1)(a)(i)**

20 After “regulated superannuation fund”, insert “or an AFCA  
21 superannuation scheme”.

22 **482 Subsection 1053(1) (note 2)**

23 After “regulated superannuation funds”, insert “, AFCA superannuation  
24 schemes”.

25 **483 Section 1053A (heading)**

26 After “regulated superannuation funds”, insert “, AFCA  
27 superannuation schemes”.

28 **484 Section 1053A**

29 After “regulated superannuation fund”, insert “, an AFCA  
30 superannuation scheme”.

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## 485 Paragraph 1054(1)(b)

Repeal the paragraph, substitute:

(b) a trustee of:

- (i) a regulated superannuation fund; or
- (ii) an AFCA superannuation scheme; or
- (iii) an approved deposit fund;

## 486 Paragraph 1055(7)(b)

After “regulated superannuation fund”, insert “, an AFCA superannuation scheme”.

## 487 At the end of section 1058

Add:

- (6) For the purposes of subsection (1), an *investigating authority* is a tribunal, authority or person having power to require the production of documents or the answering of questions.

## 488 Section 1073B

Repeal the section, substitute:

### 1073B Meaning of *transfer*

In this Division and Division 4 *transfer* of a financial product means:

- (a) a change in the ownership of the financial product; or
- (b) if the financial product is a right—the renunciation and transfer of the right.

## 489 Section 1074B

Repeal the section.

## 490 Paragraph 1074F(a)

Repeal the paragraph, substitute:

- (a) a person contravenes the provisions of a prescribed CS facility’s operating rules that deal with:
  - (i) the cancellation of documents of title to financial products transferred through the facility; and
  - (ii) matters incidental to the cancellation of those documents;

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1 in relation to the transfer of a particular financial product  
2 through the facility; and

3 **491 Subsection 1101B(12) (definition of *compensation rules*)**

4 Repeal the definition.

5 **492 Paragraph 1240C(2)(b)**

6 Omit “(within the meaning of section 1012B)”.

7 **493 Subsection 1241B(3)**

8 Omit “(within the meaning of Part 7.6)”.

9 **494 Subsection 1241F(6)**

10 Repeal the subsection.

11 **495 Subsection 1317GA(1)**

12 Omit “person (the *fee recipient*)”, substitute “a person who is a fee  
13 recipient”.

14 **496 Subsection 1317GB(1)**

15 Omit “person (the *fee recipient*)”, substitute “a person who is a fee  
16 recipient”.

17 **Division 9—Terms relating to mutual recognition of**  
18 **securities offers**

19 ***Corporations Act 2001***

20 **497 Section 9**

21 Insert:

22 *foreign recognition scheme* has the meaning given by  
23 subsection 1200A(1).

24 *law of a recognised jurisdiction* has the meaning given by  
25 subsection 1200A(1).

26 *offeror*, of securities, in Chapter 8, has the meaning given by  
27 subsection 1200A(1A).

28 *offer securities* includes:

- 29 (a) invite applications for the issue of securities; and

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1 (b) invite offers to purchase securities.

2 *recognised jurisdiction* has the meaning given by  
3 subsection 1200A(1).

## 4 **498 At the end of section 92**

5 Add:

6 (6) In Chapter 8, *securities* has the meaning given by  
7 subsection 1200A(1A).

## 8 **499 Section 1200A (heading)**

9 Repeal the heading, substitute:

10 **1200A Meaning of certain terms relating to mutual recognition of**  
11 **securities offers**

## 12 **500 Subsection 1200A(1)**

13 Repeal the subsection, substitute:

14 (1) In this Act:

15 *foreign recognition scheme* means the provisions of a law of a  
16 recognised jurisdiction that are prescribed by the regulations as  
17 comprising a foreign recognition scheme.

18 *law of a recognised jurisdiction* includes law of part of a  
19 recognised jurisdiction.

20 *recognised jurisdiction* means a foreign country prescribed by the  
21 regulations as a recognised jurisdiction.

22 (1A) In this Chapter:

23 *offeror*, of securities, means:

- 24 (a) in relation to an offer of a kind prescribed by the  
25 regulations—a person of a kind prescribed by the regulations;  
26 and  
27 (b) otherwise—the person who has the capacity, or who agrees,  
28 to issue or transfer the securities if the offer is accepted.

29 *securities* means:

- 30 (a) a share in a body; or  
31 (b) a debenture of a body; or

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- 1 (c) an interest in a managed investment scheme; or  
2 (d) a legal or equitable right or interest in a security or interest  
3 covered by paragraph (a), (b) or (c); or  
4 (e) an option to acquire, by way of issue, an interest or right  
5 covered by paragraph (a), (b), (c) or (d).

## 6 **Division 10—Terms relating to Asia Region Funds** 7 **Passport**

### 8 *Corporations Act 2001*

#### 9 **501 Section 9**

10 Insert:

11 *APFRN*: see Australian Passport Fund Registration Number.

12 *Australian Passport Fund Registration Number* or *APFRN*  
13 means the number assigned to an Australian passport fund under  
14 paragraph 1212A(2)(a).

15 *collective investment fund* has the meaning given by  
16 subsection 1212(1).

17 *consideration period*, for a notice of intention to offer interests in a  
18 foreign passport fund in this jurisdiction, has the meaning given by  
19 section 1213D.

#### 20 **502 Section 9 (definition of *home economy*)**

21 Repeal the definition, substitute:

22 *home economy*, for a passport fund, means:

- 23 (a) if the passport fund is a regulated CIS, or a sub-fund of a  
24 regulated CIS, in only one participating economy—that  
25 participating economy; and  
26 (b) if the passport fund is a regulated CIS, or a sub-fund of a  
27 regulated CIS, in more than one participating economy—the  
28 participating economy in which the fund is first registered or  
29 approved as a regulated CIS (however that registration or  
30 approval is described).

#### 31 **503 Section 9 (definition of *home regulator*)**

32 Repeal the definition, substitute:



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1 *home regulator*, for a passport fund, means the entity that is the  
2 Passport Regulator for the home economy for the passport fund  
3 under the Passport Rules for this jurisdiction.

## 4 **504 Section 9 (definition of *host economy*)**

5 Repeal the definition, substitute:

6 *host economy*: a participating economy is a *host economy* for a  
7 passport fund if:

- 8 (a) the participating economy is not the home economy for the  
9 fund; and  
10 (b) either:  
11 (i) it is permitted under the law of the participating  
12 economy to offer interests in the fund in that economy,  
13 on the basis that the fund is a passport fund; or  
14 (ii) an application has been made under the law of the  
15 participating economy for permission to offer interests  
16 in the fund in that economy, on the basis that the fund is  
17 a passport fund.

## 18 **505 Section 9 (definition of *host regulator*)**

19 Repeal the definition, substitute:

20 *host regulator*, for a passport fund, means the entity that is the  
21 Passport Regulator for a host economy for the passport fund under  
22 the Passport Rules for this jurisdiction.

## 23 **506 Section 9 (definition of *Memorandum of Cooperation*)**

24 Repeal the definition, substitute:

25 *Memorandum of Cooperation* means the Memorandum of  
26 Cooperation on the Establishment and Implementation of the Asia  
27 Region Funds Passport signed on behalf of Australia on 28 April  
28 2016, as it applies in relation to Australia from time to time.

## 29 **507 Section 9 (definition of *operator*)**

30 Repeal the definition, substitute:

31 *operator*, of a passport fund, means the entity that is the operator of  
32 the fund under the Passport Rules for this jurisdiction.

## 33 **508 Section 9**

34 Insert:

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1 *participating economy* has the meaning given by section 1210.

## 2 **509 Section 9 (definition of *passport fund*)**

3 Repeal the definition, substitute:

4 *passport fund* means a regulated CIS, or a sub-fund of a regulated  
5 CIS, registered as a passport fund in a participating economy.

## 6 **510 Section 9**

7 Insert:

8 *proposed operator* of a collective investment fund has the meaning  
9 given by subsection 1212(1).

10 *regulated CIS* has the same meaning as in the Passport Rules for  
11 this jurisdiction.

## 12 **511 Section 9 (definition of *sub-fund*)**

13 Repeal the definition, substitute:

14 *sub-fund*:

15 (a) of a CCIV, has the meaning given by subsection 1222Q(1);  
16 and

17 (b) in relation to a regulated CIS, has the same meaning as in the  
18 Passport Rules for this jurisdiction.

## 19 **512 Section 1210**

20 Repeal the section, substitute:

### 21 **1210 Meaning of *participating economy***

22 A Participant, within the meaning of the Memorandum of  
23 Cooperation, is a *participating economy* at a particular time if:

24 (a) the Asia Region Funds Passport Joint Committee established  
25 under the Memorandum of Cooperation has published  
26 notification on the Passport website under subparagraph 5.6  
27 of the Memorandum, at or before that time, that the  
28 Participant has effected implementation; and

29 (b) at that time:

30 (i) the Memorandum of Cooperation has not been  
31 terminated; and

32 (ii) the Participant has not withdrawn from the  
33 Memorandum of Cooperation.

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1 **513 Section 1211A (heading)**

2 Repeal the heading, substitute:

3 **1211A Meaning of *Passport Rules***

4 **514 Subsection 1213E(1)**

5 Omit “*managed investment scheme*”, substitute “managed investment  
6 scheme”.

7 **Division 11—Terms relating to CCIVs**

8 ***Corporations Act 2001***

9 **515 Section 9 (paragraph (i) of the definition of *property*)**

10 Repeal the paragraph, substitute:

11 (i) in Part 8B.5 (operation of a CCIV)—has a meaning affected  
12 by section 1233; and

13 (j) in Part 8B.6 (external administration and deregistration of  
14 CCIVS)—has a meaning affected by section 1236A.

15 **516 Section 9**

16 Insert:

17 *property recovery provisions* has the meaning given by  
18 subsection 1238A(2).

19 *winding up provisions* has the meaning given by  
20 subsection 1237B(2).

21 **517 Subsection 92(3)**

22 After “6CA”, insert “and Part 8B.7”.

23 **518 Section 1233 (heading)**

24 Repeal the heading, substitute:

25 **1233 Meaning of *property***

26 **519 Section 1233H (heading)**

27 Omit “of a sub-fund”, substitute “—sub-fund”.

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1 **520 Section 1233L (heading)**

2 Omit “of a sub-fund”, substitute “—sub-fund”.

3 **521 Section 1236A (heading)**

4 Repeal the heading, substitute:

5 **1236A Meaning of *property* and *receiver*—sub-fund**

6 **522 Section 1240**

7 Repeal the section.

8 **523 Paragraph 1241J(1)(a)**

9 Omit “*non-licensee*”, substitute “non-licensee”.

10 **524 Paragraph 1241J(1)(b)**

11 Omit “*client*”, substitute “client”.

12 **525 Subsection 1241J(1)**

13 Omit “*corporate director*”, substitute “corporate director”.

14 **Division 12—Miscellaneous**

15 ***Corporations Act 2001***

16 **526 Section 9**

17 Insert:

18 *commercial-in confidence* has the meaning given by  
19 subsection 1274(4F).

20 *compensation proceedings* has the meaning given by  
21 section 1317DAAA.

22 *compliance period*, for an infringement notice issued under  
23 section 1317DAC, has a meaning affected by section 1317DAH.

24 *contravention proceedings* means proceedings under  
25 section 1101B by a person referred to in paragraph 1101B(1)(b) or  
26 (d).

27 *detriment*, in sections 1317AC and 1317AD, has the meaning  
28 given by section 1317ADA.

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1 *enforcement proceedings* means proceedings under section 793C  
2 by a person referred to in paragraph 793C(1)(b), (c) or (d).

3 *infringement notice*:

- 4 (a) in Part 7.5B—means an infringement notice issued under  
5 Part 5 of the Regulatory Powers Act (see section 908CH);  
6 and  
7 (b) in Part 9.1A—means an infringement notice issued under  
8 section 1272F; and  
9 (c) in Part 9.4AA—means an infringement notice issued under  
10 section 1317DAC; and  
11 (d) in Part 7.6 and Part 9.4AB—means an infringement notice  
12 issued under Part 5 of the Regulatory Powers Act (see  
13 section 1317DAM).

14 *pecuniary penalty applicable*:

- 15 (a) to the contravention of a civil penalty provision by an  
16 individual—has the meaning given by section 1317G; and  
17 (b) to the contravention of a civil penalty provision by a body  
18 corporate—has the meaning given by section 1317G.

19 *penalty applicable*:

- 20 (a) to an offence committed by an individual—has the meaning  
21 given by section 1311B; and  
22 (b) to an offence committed by a body corporate—has the  
23 meaning given by section 1311C; and  
24 (c) in section 1314 (continuing offences)—has the meaning  
25 given by subsection 1314(5).

26 *public interest proceedings* means proceedings under section 50 of  
27 the ASIC Act.

28 *specified*, in relation to a penalty for an offence, has the meaning  
29 given by section 1311E.

## 30 **527 Division 1 of Part 9.2**

31 Repeal the Division.

## 32 **528 Paragraphs 1311E(3)(a) and (b)**

33 After “availability”, insert “, under any law of the Commonwealth or of  
34 a State or Territory,”.

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1 **529 Paragraph 1317AAB(f)**

2 Omit “(within the meaning of the *Superannuation Industry*  
3 *(Supervision) Act 1993*)”.

4 **530 Section 1317ADA (heading)**

5 Repeal the heading, substitute:

6 **1317ADA Meaning of *detriment***

7 **531 Section 1317A**

8 Repeal the section.

9 **532 Subsections 1317B(1) and (1A)**

10 After “decision”, insert “(within the meaning of the *Administrative*  
11 *Appeals Tribunal Act 1975*)”.

12 **533 Before section 1317DAA**

13 Insert:

14 **1317DAAA Meaning of *compensation proceedings***

15 *Compensation proceedings* are:

- 16 (a) proceedings under section 1317H, 1317HA, 1317HB,  
17 1317HC or 1317HE; and  
18 (b) proceedings under section 12GF of the ASIC Act in relation  
19 to a contravention of section 12DA of that Act; and  
20 (c) any other proceedings by a person for compensation for loss  
21 or damage suffered by the person.

22 **534 Section 1317DAA (heading)**

23 Repeal the heading, substitute:

24 **1317DAA Application of this Part to disclosing entities**

25 **535 Subsection 1317DAA(1)**

26 Repeal the subsection.

27 **536 Subsection 1317DAG(3) (heading)**

28 Omit “*other*”.

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1 **537 Subparagraphs 1317DAG(4)(b)(i) and (iii) and (4)(d)(i) and**  
2 **(iii)**

3 Repeal the subparagraphs.

4 **538 Section 1363**

5 Repeal the section.

6 **539 Section 1367**

7 Omit “in such cases as are prescribed”, substitute “in such cases as are  
8 specified in the regulations”.

9 **Division 13—The Insolvency Practice Schedule**

10 *Corporations Act 2001*

11 **540 Section 9 (definition of *resolution*)**

12 Omit “when used in a provision outside Schedule 2”.

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## Part 2—Application and transitional provisions

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

#### 541 In the appropriate position in Part 40

Insert:

#### **Division 2—Schedules 1 and 2 to the [ALRC Financial Services Interim Report second amending Act]**

##### **344B Definitions**

In this Division:

*commencement time* means the time when Schedule 2 to the [ALRC Financial Services Interim Report second amending Act] commences.

##### **344C Translation of references in instruments**

- (1) This section applies to an instrument (the *affected instrument*) that:
- (a) was made under this Act; and
  - (b) was in force immediately before the commencement time.

*References to moved definitions and other provisions*

- (2) If:
- (a) immediately before the commencement time, the affected instrument contained a reference to a provision of the Corporations legislation (including, for example, a definition); and
  - (b) that provision was repealed by Schedule 1 or 2 to the [ALRC Financial Services Interim Report second amending Act]; and
  - (c) either of the following contains a corresponding provision:
    - (i) the Corporations legislation as amended by those Schedules;
    - (ii) the *Acts Interpretation Act 1901* as in force at the commencement time;



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1 then the affected instrument has effect, at and after the  
2 commencement time, as if the reference to the repealed provision  
3 were a reference to the corresponding provision.

4 *References to repealed definitions with no corresponding definition*

5 (3) If:

6 (a) immediately before the commencement time, the affected  
7 instrument contained a reference to a term defined in section  
8 9, 416, 489F, 580, 601RAA, 601WAA, 761A, 880B, 910A,  
9 960, 994A, 1011B, 1019C, 1020AA, 1020AH, 1023B,  
10 1042A, 1073B, 1074B, 1200A, 1210, 1276, 1317A,  
11 1317DAA or 1363 of the Corporations Act; and

12 (b) the definition of that term was repealed by Schedule 2 to the  
13 [*ALRC Financial Services Interim Report second amending*  
14 *Act*]; and

15 (c) neither of the following contains a corresponding definition:

16 (i) section 9 of the Corporations Act as amended by those  
17 Schedules;

18 (ii) the *Acts Interpretation Act 1901* as in force at the  
19 commencement time;

20 then despite the repeal of the definition, the definition continues, at  
21 and after the commencement time, to have effect for the purposes  
22 of the affected instrument as if the definition had not been  
23 repealed.

## 24 **344D Calculation of time**

25 (1) Despite the repeal of section 5A of this Act and section 105 of the  
26 Corporations Act by Schedule 1 to the [*ALRC Financial Services*  
27 *Interim Report second amending Act*], those sections continue to  
28 apply on and after the commencement time, as if those sections had  
29 not been repealed, in relation to:

30 (a) a period of time that starts before the commencement time;  
31 and

32 (b) a calculation of how many days a particular day, act or event  
33 is before or after another day, act or event if:

34 (i) the first mentioned day, or the day of the first mentioned  
35 act or event, starts before the commencement time; or

36 (ii) the other day, or the day of the other act or event, starts  
37 before the commencement time.

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- 1 (2) Otherwise, section 105 of the Corporations Act (as inserted by that  
2 Schedule) applies on and after the commencement time.

## 3 *Corporations Act 2001*

### 4 **542 In the appropriate position in Part 10.68**

5 Insert:

### 6 **Division 2—Schedules 1 and 2 to the [ALRC Financial 7 Services Interim Report second amending Act]**

#### 8 **1698B Definitions**

9 In this Division:

10 *commencement time* means the time when Schedule 2 to the  
11 [ALRC Financial Services Interim Report second amending Act]  
12 commences.

#### 13 **1698C Translation of references in instruments**

- 14 (1) This section applies to an instrument (the *affected instrument*)  
15 that:  
16 (a) was made under this Act or an instrument made under this  
17 Act; and  
18 (b) was in force immediately before the commencement time.

19 *References to moved definitions and other provisions*

- 20 (2) If:  
21 (a) immediately before the commencement time, the affected  
22 instrument contained a reference to a provision of the  
23 Corporations legislation (including, for example, a  
24 definition); and  
25 (b) that provision was repealed by Schedule 1 or 2 to the [ALRC  
26 Financial Services Interim Report second amending Act];  
27 and  
28 (c) either of the following contains a corresponding provision:  
29 (i) the Corporations legislation as amended by those  
30 Schedules;  
31 (ii) the *Acts Interpretation Act 1901* as in force at the  
32 commencement time;

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1 then the affected instrument has effect, at and after the  
2 commencement time, as if the reference to the repealed provision  
3 were a reference to the corresponding provision.

4 *References to repealed definitions with no corresponding definition*

5 (3) If:

6 (a) immediately before the commencement time, the affected  
7 instrument contained a reference to a term defined in section  
8 9, 416, 489F, 580, 601RAA, 601WAA, 761A, 880B, 910A,  
9 960, 994A, 1011B, 1019C, 1020AA, 1020AH, 1023B,  
10 1042A, 1073B, 1074B, 1200A, 1210, 1276, 1317A,  
11 1317DAA or 1363 of this Act; and

12 (b) the definition of that term was repealed by Schedule 2 to the  
13 [*ALRC Financial Services Interim Report second amending*  
14 *Act*]; and

15 (c) neither of the following contains a corresponding definition:

16 (i) section 9 of this Act as amended by those Schedules;

17 (ii) the *Acts Interpretation Act 1901* as in force at the  
18 commencement time;

19 then despite the repeal of the definition, the definition continues, at  
20 and after the commencement time, to have effect for the purposes  
21 of the affected instrument as if the definition had not been  
22 repealed.

## 23 **1698D Calculation of time**

24 (1) Despite the repeal of sections 5C and 105 by Schedule 1 to the  
25 [*ALRC Financial Services Interim Report second amending Act*],  
26 those sections continue to apply on and after the commencement  
27 time, as if those sections had not been repealed, in relation to:

28 (a) a period of time that starts before the commencement time;  
29 and

30 (b) a calculation of how many days a particular day, act or event  
31 is before or after another day, act or event if:

32 (i) the first mentioned day, or the day of the first mentioned  
33 act or event, starts before the commencement time; or

34 (ii) the other day, or the day of the other act or event, starts  
35 before the commencement time.

36 (2) Otherwise, section 105 of this Act (as inserted by that Schedule)  
37 applies on and after the commencement time.

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1 **1698E Saving of Part 5.D authorisations**

2 An authorisation that:

3 (a) was made under subsection 601WAA(2); and

4 (b) was in force immediately before the commencement time;

5 has effect, at and after the commencement time, as if it had been

6 made under section 601WCI, as inserted by Schedule 2 to the

7 [*ALRC Financial Services Interim Report second amending Act*].

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1 **Part 3—Consequential amendments of other Acts**

2 *Aboriginal and Torres Strait Islander Land and Sea Future*  
3 *Fund Act 2018*

4 **543 Section 4 (definition of *derivative*)**

5 Omit “Chapter 7 of”.

6 *Administrative Decisions (Judicial Review) Act 1977*

7 **544 Paragraph (hba) of Schedule 1**

8 Omit “Chapter 7 of”.

9 *Aged Care Act 1997*

10 **545 Subsection 52N-1(3)**

11 Omit “section 764A of”.

12 *Anti-Money Laundering and Counter-Terrorism Financing*  
13 *Act 2006*

14 **546 Section 5 (definition of *Australian financial services***  
15 ***licence*)**

16 Omit “Chapter 7 of”.

17 **547 Section 5 (definition of *derivative*)**

18 Omit “Chapter 7 of”.

19 **548 Section 5 (definition of *exempt financial market operator***  
20 ***issue*)**

21 Omit “Chapter 7 of”.

22 **549 Section 5 (definition of *providing a custodial or***  
23 ***depository service*)**

24 Omit “within the meaning of Chapter 7 of that Act”.

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1 **550 Section 5 (definition of *security*)**

2 Omit “section 92 of the *Corporations Act 2001* (for this purpose,  
3 disregard subsections 92(2A), (3) and (4) of that Act)”, substitute  
4 “subsections 92(1) and (2) of the *Corporations Act 2001*”.

5 ***ASIC Supervisory Cost Recovery Levy Act 2017***

6 **551 Section 7 (paragraph (a) of the definition of *market***  
7 ***infrastructure entity*)**

8 Omit “of Chapter 7”.

9 **552 Section 7 (paragraphs (e) and (g) of the definition of**  
10 ***market infrastructure entity*)**

11 Omit “of Chapter 7”.

12 ***Australian Defence Force Cover Act 2015***

13 **553 Subsection 57(2) (note)**

14 Omit “Chapter 7 of”.

15 ***Australian Prudential Regulation Authority Act 1998***

16 **554 Paragraph 56(5)(aa)**

17 Omit “Chapter 7 of”.

18 ***Banking Act 1959***

19 **555 Subsection 5(1) (definition of *financial market*)**

20 Omit “has the meaning given by section 761A of”, substitute “has the  
21 same meaning as in”.

22 **556 Subsection 5(1) (definition of *listing rules*)**

23 Omit “has the meaning given by section 761A of”, substitute “has the  
24 same meaning as in”.

25 **557 Section 11CAA (definition of *clearing and settlement***  
26 ***facility*)**

27 Omit “Division 6 of Part 7.1 of”.

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- 1 **558 Section 11CAA (definition of *operating rules*)**  
2 Omit “has the meaning given by section 761A”, substitute “has the  
3 same meaning as in”.
- 4 ***Clean Energy Finance Corporation Act 2012***
- 5 **559 Section 4 (definition of *derivative*)**  
6 Omit “Chapter 7 of”.
- 7 ***Commonwealth Inscribed Stock Act 1911***
- 8 **560 Subsection 3(1) (definition of *clearing and settlement*  
9 *facility*)**  
10 Omit “Chapter 7 of”.
- 11 ***Corporations (Aboriginal and Torres Strait Islander) Act*  
12 *2006***
- 13 **561 Paragraph 26-15(b)**  
14 Omit “Chapter 7 of”.
- 15 **562 Paragraphs 694-75(1)(e) and (2)(e)**  
16 Omit “Chapter 7 of”.
- 17 **563 Section 700-1 (paragraph (h) of the definition of *affairs*)**  
18 Omit “of Chapter 5D”.
- 19 ***DisabilityCare Australia Fund Act 2013***
- 20 **564 Section 4 (definition of *derivative*)**  
21 Omit “Chapter 7 of”.
- 22 ***Emergency Response Fund Act 2019***
- 23 **565 Section 4 (definition of *derivative*)**  
24 Omit “Chapter 7 of”.
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## *Financial Sector (Collection of Data) Act 2001*

### **566 Subparagraph 5(2)(e)(i)**

Omit “section 766A of”.

### **567 Subparagraph 13(4F)(c)(ii)**

Omit “section 766A of”.

### **568 Section 31 (definition of *financial product*)**

Omit “Chapter 7 of”.

## *Financial Transaction Reports Act 1988*

### **569 Subsection 3(1) (paragraph (d) of the definition of *cash dealer*)**

Omit “as defined by section 761A” (wherever occurring), substitute “within the meaning”.

### **570 Subsection 3(1) (subparagraph (d)(ii) of the definition of *cash dealer*)**

Omit “as defined by section 761A”, substitute “within the meaning”.

### **571 Subsection 9(4)**

Repeal the subsection, substitute:

(4) A significant cash transaction is also an exempt transaction if it is between:

- (a) a financial services licensee (within the meaning of the *Corporations Act 2001*) whose licence covers dealing in derivatives (within the meaning of that Act); and
- (b) a clearing and settlement facility (within the meaning of that Act) that is associated with a financial market (within the meaning of that Act) of which the financial services licensee is a member.

## *Future Drought Fund Act 2019*

### **572 Section 5 (definition of *derivative*)**

Omit “Chapter 7 of”.

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1 ***Future Fund Act 2006***

2 **573 Section 5 (definition of *derivative*)**

3 Omit “Chapter 7 of”.

4 ***Income Tax Assessment Act 1936***

5 **574 Subparagraph 128AE(2)(e)(iii)**

6 Repeal the subparagraph, substitute:

7 (iii) a financial services licensee (within the meaning of the  
8 *Corporations Act 2001*) whose licence covers dealing in  
9 securities (within the meaning of subsection 92(3) of  
10 that Act), providing financial advice in relation to such  
11 securities or operating a managed investment scheme  
12 (within the meaning of that Act); or

13 ***Income Tax Assessment Act 1997***

14 **575 Paragraph 115-290(1)(b)**

15 Omit “of a body corporate that is approved as a stock exchange under  
16 section 769 of the *Corporations Act 2001*”, substitute “an \*approved  
17 stock exchange”.

18 **576 Subsection 275-10(5)**

19 Omit “of section 761A” (wherever occurring).

20 **577 Paragraph 275-15(b)**

21 Omit “sections 761G and 761GA of”.

22 **578 Paragraph 275-20(5)(c)**

23 Omit “section 761G of”.

24 **579 Subparagraphs 275-35(1)(a)(i) and (ii)**

25 Repeal the subparagraphs, substitute:

26 (i) a financial services licensee (within the meaning of the  
27 *Corporations Act 2001*) holding an Australian financial  
28 services licence whose licence covers it providing financial  
29 services (within the meaning of that Act) to wholesale clients  
30 (within the meaning of that Act); or

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1 (ii) an authorised representative (within the meaning of that Act)  
2 of such a financial services licensee; or

3 **580 Subsection 275-35(2) and (3)**

4 Omit “of section 761A”.

5 **581 Section 292-330 (note)**

6 Omit “Chapter 7 of”.

7 **582 Subsection 995-1(1) (definition of *Australian financial***  
8 ***market*)**

9 Omit “Chapter 7 of”.

10 **583 Subsection 995-1(1) (definition of *Australian financial***  
11 ***services licence*)**

12 Omit “has the meaning given by section 761A of”, substitute “has the  
13 same meaning as in”.

14 ***Income Tax Rates Act 1986***

15 **584 Subparagraph 23AB(2)(a)(iv)**

16 Omit “of section 761A”.

17 ***Insurance Act 1973***

18 **585 Subsection 3(1) (definition of *financial market*)**

19 Omit “has the meaning given by section 761A of”, substitute “has the  
20 same meaning as in”.

21 **586 Subsection 3(1) (definition of *listing rules*)**

22 Omit “has the meaning given by section 761A of”, substitute “has the  
23 same meaning as in”.

24 **587 Subsection 3(1) (paragraph (b) of the definition of**  
25 ***securities exchange*)**

26 Omit “(as defined in section 761A of the *Corporations Act 2001*)”,  
27 substitute “(within the meaning of the *Corporations Act 2001*)”.

28 **588 Paragraph 3A(2)(a)**

29 Omit “Chapter 7 of”.

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# EXPOSURE DRAFT

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1 **589 Section 36A (definition of *clearing and settlement facility*)**

2 Omit “has the meaning given by Division 6 of Part 7.1 of”, substitute  
3 “has the same meaning as in”.

4 **590 Section 36A (definition of *operating rules*)**

5 Omit “has the meaning given by section 761A of”, substitute “has the  
6 same meaning as in”.

7 ***Insurance Contracts Act 1984***

8 **591 Subsection 14A(2)**

9 After “financial services law”, insert “(within the meaning of the  
10 *Corporations Act 2001*)”.

11 **592 Subsection 14A(3)**

12 Repeal the subsection.

13 ***Interactive Gambling Act 2001***

14 **593 Paragraph 5(3)(b)**

15 Omit “Chapter 7 of”.

16 ***Life Insurance Act 1995***

17 **594 Section 230AAB (definition of *clearing and settlement***  
18 ***facility*)**

19 Omit “has the meaning given by Division 6 of Part 7.1 of”, substitute  
20 “has the same meaning as in”.

21 **595 Section 230AAB (definition of *operating rules*)**

22 Omit “has the meaning given by section 761A of”, substitute “has the  
23 same meaning as in”.

24 **596 Dictionary (definition of *financial market*)**

25 Omit “has the meaning given by section 761A of”, substitute “has the  
26 same meaning as in”.

27 **597 Dictionary (definition of *listing rules*)**

28 Omit “has the meaning given by section 761A of”, substitute “has the  
29 same meaning as in”.

# EXPOSURE DRAFT

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1 ***Medibank Private Sale Act 2006***

2 **598 Clause 1 of Schedule 2 (definition of *financial product*)**

3 Omit “Chapter 7 of”.

4 **599 Subclause 6(8) of Schedule 2 (definition of *security*)**

5 Omit “Chapter 7 of”, substitute “subsection 92(5) of”.

6 ***Medical Indemnity Act 2002***

7 **600 Subsection 4(1) (definition of *AFCA*)**

8 Omit “has the meaning given by section 761A of”, substitute “has the  
9 same meaning as in”.

10 ***Medical Indemnity (Prudential Supervision and Product***  
11 ***Standards) Act 2003***

12 **601 Subsection 4(1) (definition of *provide a financial service*)**

13 Omit “has the meaning given by section 766A of”, substitute “has the  
14 same meaning as in”.

15 ***Medical Research Future Fund Act 2015***

16 **602 Section 5 (definition of *derivative*)**

17 Omit “Chapter 7 of”.

18 ***National Broadband Network Companies Act 2011***

19 **603 Section 5 (definition of *financial product*)**

20 Omit “Chapter 7 of”.

21 **604 Subsection 55(8) (definition of *security*)**

22 Omit “Chapter 7 of”, substitute “subsection 92(5) of”.

23 **605 Paragraph 60(1)(c)**

24 Omit “of Chapter 2E”.

# EXPOSURE DRAFT

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## *National Consumer Credit Protection Act 2009*

1  
2 **606 Subsection 5(1) (definition of AFCA scheme)**

3 Omit “Chapter 7 of”.

4 **607 Subsection 5(1) (definition of Australian financial**  
5 **services licence)**

6 Omit “section 761A of”.

7 **608 Paragraph 47(1)(ha)**

8 Omit “Chapter 7 of”.

9 **609 Subsection 204(1) of Schedule 1 (definition of AFCA**  
10 **scheme)**

11 Omit “Chapter 7 of”.

## *Payment Systems and Netting Act 1998*

12  
13 **610 Section 5 (definition of derivative)**

14 Omit “Chapter 7 of”.

15 **611 Section 5 (paragraph (a) of the definition of financial**  
16 **property)**

17 Repeal the paragraph, substitute:

18 (a) a security (within the meaning of subsections 92(1) and (2) of  
19 the *Corporations Act 2001*);

20 **612 Section 5 (definition of foreign exchange contract)**

21 Omit “Chapter 7 of”.

22 **613 Section 5 (subparagraph (a)(i) of the definition of netting**  
23 **market)**

24 Omit “as defined in section 761A of the *Corporations Act 2001*”,  
25 substitute “(within the meaning of the *Corporations Act 2001*)”.

26 **614 Paragraph 10(2)(f)**

27 Omit “as defined in section 761A of the *Corporations Act 2001*”,  
28 substitute “(within the meaning of the *Corporations Act 2001*)”.

# EXPOSURE DRAFT

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1 *Personal Property Securities Act 2009*

2 **615 Section 10 (definition of *clearing and settlement facility*)**

3 Omit “Chapter 7 of”.

4 *Retirement Savings Accounts Act 1997*

5 **616 Paragraph 47(1)(a)**

6 Omit “Chapter 7 of”.

7 **617 Subsection 95(1A)**

8 Omit “Chapter 7 of”.

9 **618 Subsection 163(12) (paragraph (a) of the definition of *do***  
10 ***an act or thing*)**

11 Omit “Chapter 7 of”.

12 **619 Subsection 182(1A) (paragraph (b) of the definition of**  
13 ***regulatory provision*)**

14 Omit “Chapter 7 of”.

15 *Security of Critical Infrastructure Act 2018*

16 **620 Section 5 (definition of *Australian CS facility licence*)**

17 Omit “Chapter 7 of”.

18 **621 Section 5 (definition of *Australian derivative trade***  
19 ***repository licence*)**

20 Omit “Chapter 7 of”.

21 **622 Section 5 (definition of *Australian market licence*)**

22 Omit “Chapter 7 of”.

23 **623 Section 5 (definition of *clearing and settlement facility*)**

24 Omit “Chapter 7 of”.

25 **624 Section 5 (definition of *derivative trade repository*)**

26 Omit “Chapter 7 of”.

# EXPOSURE DRAFT

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1 **625 Section 5 (definition of *financial market* )**

2 Omit “Chapter 7 of”.

3 **626 Section 5 (paragraph (k) of the definition of *financial***  
4 ***services and markets sector*)**

5 Repeal the paragraph, substitute:

6 (k) carrying on business of providing financial services (within  
7 the meaning of the *Corporations Act 2001*); or

8 **627 Section 5 (definition of *financial services business*)**

9 Repeal the definition.

10 ***Superannuation Contributions Tax (Assessment and***  
11 ***Collection) Act 1997***

12 **628 Section 24 (note)**

13 Omit “Chapter 7 of”.

14 ***Superannuation Industry (Supervision) Act 1993***

15 **629 Subsection 10(1) (definition of *AFCA scheme*)**

16 Omit “Chapter 7 of”.

17 **630 Subsection 10(1) (definition of *Corporations Law*)**

18 Repeal the definition.

19 **631 Subsection 10(1) (definition of *financial product*)**

20 Omit “Chapter 7 of”.

21 **632 Subsection 10(1) (definition of *financial product advice*)**

22 Omit “Chapter 7 of”.

23 **633 Subsection 10(1) (definition of *financial services***  
24 ***licensee*)**

25 Omit “Chapter 7 of”.

26 **634 Subsection 10(1) (definition of *ongoing fee arrangement*)**

27 Omit “Part 7.7A of”.

# EXPOSURE DRAFT

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- 1 **635 Subsection 10(1) (definition of *personal advice*)**  
2 Omit “Chapter 7 of”.
- 3 **636 Subsection 29SAC(2) (definition of *conflicted***  
4 ***remuneration*)**  
5 Omit “Part 7.7A of”.
- 6 **637 Subsection 29SAC(2) (definition of *representative*)**  
7 Omit “Part 7.6 of”.
- 8 **638 Section 38A (paragraph (b) of the definition of *regulatory***  
9 ***provision*)**  
10 Omit “Chapter 7 of”.
- 11 **639 Subsection 66(5) (paragraph (a) of the definition of *listed***  
12 ***security*)**  
13 Omit “section 761A of”.
- 14 **640 Subsection 101(1)**  
15 After “self managed superannuation fund”, insert “or of an exempt  
16 public sector superannuation scheme that has elected to join the AFCA  
17 scheme.”.
- 18 **641 Subsection 101(3)**  
19 Repeal the subsection.
- 20 **642 Subsection 242C(2) (definition of *conflicted***  
21 ***remuneration*)**  
22 Omit “Part 7.7A of”.
- 23 **643 Subsection 242C(2) (definition of *representative*)**  
24 Omit “Part 7.6 of”.
- 25 ***Tax Agent Services Act 2009***
- 26 **644 Subsection 90-1(1) (definition of *financial services***  
27 ***licensee*)**  
28 Omit “Chapter 7 of”.
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# EXPOSURE DRAFT

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1 **645 Subsection 90-1(1) (definition of *representative*)**

2 Omit “section 910A”, substitute “section 9”.

3 ***Taxation Administration Act 1953***

4 **646 Paragraph 12-390(9)(a) of Schedule 1**

5 Omit “as defined by section 766E of”, substitute “within the meaning  
6 of”.

7 **647 Subsection 133-120(2) of Schedule 1 (note)**

8 Omit “Chapter 7 of”.

9 **648 Subsection 133-140(1) of Schedule 1 (note)**

10 Omit “Chapter 7 of”.

11 **649 Section 155-90 of Schedule 1 (note)**

12 Omit “Chapter 7 of”.

13 **650 Subsection 355-65(3) of Schedule 1 (table item 3)**

14 Omit “Chapter 7 of”.

15 **651 Subsection 390-5(1) of Schedule 1 (note 2)**

16 Omit “Chapter 7 of”.

17 **652 Subparagraph 396-65(1)(b)(i)**

18 Omit “Chapter 7 of”.

19 **653 Paragraph 396-65(1)(b)**

20 Omit “that Chapter” (wherever occurring), substitute “that Act”.

21 **654 Subparagraph 396-65(2)(b)(i)**

22 Omit “Chapter 7 of”.

23 **655 Paragraph 396-65(2)(b)**

24 Omit “that Chapter” (wherever occurring), substitute “that Act”.

25 **656 Subparagraph 426-120(2)(b)(ii) of Schedule 1**

26 Omit “of Chapter 5D”.

# EXPOSURE DRAFT

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1 *Telstra Corporation Act 1991*

2 **657 Subsection 8AJA(8) (definition of *financial product*)**

3 Omit “Chapter 7 of”.

4 **658 Subsection 8AJA(8) (definition of *security*)**

5 Omit “Chapter 7 of”, substitute “subsection 92(5) of”.

6 **659 Paragraph 8AR(1)(c)**

7 Omit “of Chapter 2E”.