

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Treasury Laws Amendment (ASIC Enforcement) Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to amend the law in relation to  
penalties and other enforcement mechanisms  
within legislation administered by ASIC, and for  
related purposes**

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1     **A Bill for an Act to amend the law in relation to**  
2     **penalties and other enforcement mechanisms**  
3     **within legislation administered by ASIC, and for**  
4     **related purposes**

5     The Parliament of Australia enacts:

6     **1 Short title**

7                     This Act is the *Treasury Laws Amendment (ASIC Enforcement) Act*  
8                     2018.

9     **2 Commencement**

10                    (1) Each provision of this Act specified in column 1 of the table  
11                    commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.

3

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## Commencement information

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Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1, 2, 3 and 4	The day after this Act receives the Royal Assent.	

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

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

## 10 3 Schedules

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12 repealed as set out in the applicable items in the Schedule  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

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Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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1 **Schedule 1—Amendment of the Corporations**  
2 **Act 2001**

3 **Part 1—Amendments**

4 *Corporations Act 2001*

5 **1 Section 9**

6 Insert:

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

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

11 Insert:

12 (baa) a relinquishment order under section 1317GAF;

13 **3 Section 9 (definition of *compliance period*)**

14 Repeal the definition.

15 **4 Section 9**

16 Insert:

17 *contravene*, in relation to a civil penalty provision, has a meaning  
18 affected by section 1317DB.

19 *dishonest* means dishonest according to the standards of ordinary  
20 people.

21 **5 Section 9 (definition of *infringement notice*)**

22 Repeal the definition.

23 **6 Section 9 (at the end of the definition of *offence based on*)**

24 Add:

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

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## 7 Section 9

Insert:

***Part 7.7A civil penalty provision*** means any of the following provisions:

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

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



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1 **8 Section 9**

2 Insert:

3 *relinquishment order* has the meaning given by  
4 subsection 1317GAF(1).

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

7 **9 Paragraph 5.3 of the small business guide in Part 1.5**

8 Omit:

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

11 • may contravene a civil penalty provision (and the Court may  
12 order the person to pay to the Commonwealth an amount of up to  
13 \$200,000); and

14 substitute:

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

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

24 **10 Paragraph 184(1)(b)**

25 Omit “intentionally”.

26 **11 After subsection 184(2)**

27 Insert:

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- 1 (2A) To avoid doubt, it is not a defence in a proceeding for an offence  
2 against subsection (2) that the director, other officer or employee  
3 of the corporation uses their position dishonestly:  
4 (a) with the intention of directly or indirectly gaining an  
5 advantage for the corporation; or  
6 (b) with the result that the corporation directly or indirectly  
7 gained an advantage.

## 8 **12 At the end of section 184**

9 Add:

- 10 (4) To avoid doubt, it is not a defence in a proceeding for an offence  
11 against subsection (3) that the person uses the information  
12 dishonestly:  
13 (a) with the intention of directly or indirectly gaining an  
14 advantage for the corporation; or  
15 (b) with the result that the corporation directly or indirectly  
16 gained an advantage.

## 17 **13 Subsection 198G(2) (penalty)**

18 Repeal the penalty, substitute:

19 Penalty: 30 penalty units.

## 20 **14 Subsection 205G(1)**

21 Omit “under subsections (3) and (4)”, substitute “in accordance with  
22 subsections (2), (3) and (4)”.

## 23 **15 Subsection 205G(9)**

24 Repeal the subsection (including the note), substitute:

25 *Fault-based offence*

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

28 *Strict liability offence*

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

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1 **16 Section 250SA**

2 Omit “At a listed company’s AGM,”, substitute “(1) At a listed  
3 company’s AGM,”.

4 **17 At the end of section 250SA**

5 Add:

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

7 **18 Subsection 286(3)**

8 Repeal the subsection (including the note), substitute:

9 *Fault-based offence*

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

12 *Strict liability offence*

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

15 **19 Subsection 307A(3)**

16 Repeal the subsection (including the note), substitute:

17 *Fault-based offence*

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

20 *Strict liability offence*

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

23 **21 Subsection 347A(3)**

24 Repeal the subsection (including the note), substitute:

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

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1 **22 Subsection 347B(3)**

2 Repeal the subsection (including the note), substitute:

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

5 **23 Subsection 428(3)**

6 Repeal the subsection (including the note), substitute:

7 *Strict liability offence*

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

10 **24 At the end of subsection 601ED(5)**

11 Add:

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

14 **25 At the end of subsection 601ED(7)**

15 Add:

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

19 **26 At the end of section 601ED**

20 Add:

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

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

24 **27 Subsection 606(4A)**

25 Repeal the subsection (including the note), substitute:

26 *Fault-based offence*

27 (4A) A person commits an offence if the person contravenes  
28 subsection (1), (2) or (4).

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1 *Absolute liability offence*

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

## 4 **28 At the end of section 670A**

5 Add:

6 *Civil liability*

7 (4) A person contravenes this subsection if:

8 (a) the person contravenes subsection (1); and

9 (b) either:

10 (i) the misleading or deceptive statement; or

11 (ii) the omission or new circumstance;

12 is materially adverse from the point of view of the holder of  
13 securities to whom the document is given.

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

## 15 **29 Subsection 671B(1)**

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

## 19 **30 Subsection 671B(1A)**

20 Repeal the subsection.

## 21 **31 At the end of section 671B**

22 Add:

23 *Fault-based offence*

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

26 *Strict liability offence*

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

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1 **32 At the end of section 727**

2 Add:

3 *Civil liability*

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

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

7 **33 At the end of section 728**

8 Add:

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

11 (4) A person contravenes this subsection if:

12 (a) the person contravenes subsection (1); and

13 (b) either:

14 (i) the misleading or deceptive statement; or

15 (ii) the omission or new circumstance;

16 is materially adverse from the point of view of an investor.

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

18 **34 At the end of section 791A**

19 Add:

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

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

23 **35 Section 792A**

24 Omit “A market licensee”, substitute “(1) A market licensee”.

25 **36 At the end of section 792A**

26 Add:

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

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

2 **37 At the end of section 792B**

3 Add:

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

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

7 **38 Subsection 798G(2)**

8 Repeal the subsection.

9 **39 Subsection 798K(2)**

10 Repeal the subsection, substitute:

11 (2) The penalty payable under regulations made under paragraph (1)(a)  
12 in relation to an alleged contravention of a market integrity rule  
13 must not exceed:

14 (a) for an individual—3,000 penalty units; and

15 (b) for a body corporate—15,000 penalty units.

16 **40 At the end of section 820A**

17 Add:

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

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

21 **41 Section 821A**

22 Omit “A CS facility licensee”, substitute “(1) A CS facility licensee”.

23 **42 At the end of section 821A**

24 Add:

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

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

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1 **43 At the end of section 821B**

2 Add:

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

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

6 **44 At the end of section 853F**

7 Add:

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

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

11 **45 Subsection 901A(4)**

12 Repeal the subsection.

13 **46 Subsection 901F(2)**

14 Repeal the subsection, substitute:

15 (2) The penalty payable under regulations made under paragraph (1)(a)  
16 in relation to an alleged contravention of a derivative transaction  
17 rule must not exceed:

- 18 (a) for an individual—200 penalty units; and  
19 (b) for a body corporate—1,000 penalty units.

20 **47 Subsection 903A(4)**

21 Repeal the subsection.

22 **48 Subsection 903E(2)**

23 Repeal the subsection, substitute:

24 (2) The penalty payable under regulations made under paragraph (1)(a)  
25 in relation to an alleged contravention of a derivative trade  
26 repository rule must not exceed:

- 27 (a) for an individual—200 penalty units; and  
28 (b) for a body corporate—1,000 penalty units.



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1 **49 Section 904A**

2 Omit “A derivative trade repository licensee”, substitute “(1) A  
3 derivative trade repository licensee”.

4 **50 At the end of section 904A**

5 Add:

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

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

9 **51 After subsection 904C(1)**

10 Insert:

11 (1A) A person contravenes this subsection if the person contravenes  
12 subsection (1).

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

14 **52 At the end of section 905A**

15 Add:

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

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

19 **53 Subsection 908BA(1) (penalty)**

20 Repeal the penalty, substitute:

21 Penalty: 5 years imprisonment.

22 **54 Section 908BB (penalty)**

23 Repeal the penalty, substitute:

24 Penalty: 5 years imprisonment.

25 **55 Subsection 908CF(1) (note 1)**

26 Omit “subsection 1317G(1DD)”, substitute “section 1317G”.

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1 **56 Subsection 908CG(2)**

2 Repeal the subsection, substitute:

3 (2) The penalty payable under regulations made under paragraph (1)(a)  
4 in relation to an alleged contravention of a provision of the  
5 financial benchmark rules or the compelled financial benchmark  
6 rules must not exceed:

7 (a) for an individual—1,110 penalty units; and

8 (b) for a body corporate—5,550 penalty units.

9 **57 Section 908CO**

10 Repeal the section, substitute:

11 **908CO Requirements**

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

14 **58 Section 908DC**

15 Repeal the section, substitute:

16 **908DC Penalties for offences against this Division**

17 The penalty for an offence against this Division is 10 years  
18 imprisonment.

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

21 **59 After subsection 911A(5A)**

22 Insert:

23 (5B) A person contravenes this subsection if the person contravenes  
24 subsection (1).

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

26 **60 At the end of section 911B**

27 Add:

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

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

## 4 **61 After subsection 912A(5)**

5 Insert:

6 (5A) A person contravenes this subsection if the person contravenes  
7 paragraph (1)(a), (aa), (ca), (d), (e), (f), (g), (h) or (j).

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

## 9 **62 At the end of section 912D**

10 Add:

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

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

## 14 **63 Subsection 920C(2)**

15 Repeal the subsection (including the note), substitute:

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

18 *Fault-based offence*

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

21 *Civil liability*

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

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

## 25 **64 Subsection 921L(7) (penalty)**

26 Repeal the penalty, substitute:

27 Penalty: 30 penalty units.

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Part 1 Amendments

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1 **65 Subsections 921M(1), (2) and (3) (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: 30 penalty units.

4 **66 Subsection 921P(2) (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: 30 penalty units.

7 **67 Section 922M**

8 Repeal the section, substitute:

9 **922M Failing to comply with obligation to notify ASIC**

10 *Failing to comply with obligation to notify ASIC*

11 (1) A person contravenes this subsection if:

12 (a) the person is required to cause a notice to be lodged under a  
13 notice provision; and

14 (b) the person fails to cause the notice to be lodged in accordance  
15 with that provision.

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

19 (2) However, subsection (1) does not apply if:

20 (a) the person fails to cause the notice to be lodged in accordance  
21 with section 922D; and

22 (b) the only reason the person fails to cause the notice to be  
23 lodged in accordance with that section is because the  
24 information referred to in paragraph 922F(1)(h), (l) or (m) is  
25 not included in the notice; and

26 (c) subsection 922F(3) provides that the notice does not need to  
27 include that information.

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

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1

## *Fault-based offence*

2

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

3

4

Penalty: 50 penalty units.

5

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

6

7

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

8

9

10

## *Civil liability*

11

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

12

13

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

14

## **68 At the end of section 941A**

15

Add:

16

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

17

18

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

19

## **69 At the end of section 941B**

20

Add:

21

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

22

23

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

24

## **70 At the end of section 946A**

25

Add:

26

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

27

28

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

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Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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1 **71 Section 952E**

2 Repeal the section, substitute:

3 **952E Giving a defective disclosure document or statement (whether**  
4 **or not known to be defective)**

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

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

9 (a) the providing entity:

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

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

20 (b) the disclosure document or statement is defective.

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

24 *Authorised representative gives a defective disclosure statement or*  
25 *document*

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

28 (a) the representative gives (see subsection (5)) a person a  
29 disclosure document or statement, being a Statement of  
30 Advice, or information, a statement or a copy of a record  
31 required by subsection 941C(5) or (7), 941D(2), 946AA(5),  
32 946B(3), (6) or (8) or 946C(2), in circumstances in which the  
33 document or statement is required by a provision of this Part  
34 to be given to the person; and

35 (b) the disclosure document or statement is defective.

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

## 4 *Exceptions*

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

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

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

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

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

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

## 23 *Meaning of give*

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

## 26 *Fault-based offence*

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

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

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

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1 *Civil liability*

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

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

## 5 **72 Section 952H**

6 Repeal the section, substitute:

### 7 **952H Financial services licensee failing to ensure authorised** 8 **representative gives disclosure documents or statements** 9 **as required**

10 *Obligation*

11 (1) A financial services licensee contravenes this subsection if the  
12 licensee does not take reasonable steps to ensure that an authorised  
13 representative of the licensee:

14 (a) complies with their obligations under this Part to give  
15 disclosure documents or statements as and when required;  
16 and

17 (b) without limiting paragraph (a), does not, in purported  
18 compliance with obligations under this Part, give disclosure  
19 documents or statements that are defective.

20 *Fault-based offence*

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

23 *Civil liability*

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

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

## 27 **73 At the end of section 981B**

28 Add:

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

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

## 4 **74 Section 981C**

5 Omit “The regulations”, substitute “(1) The regulations”.

## 6 **75 At the end of section 981C**

7 Add:

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

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

## 11 **76 Subsection 981K(3)**

12 Repeal the subsection.

## 13 **77 Subsection 981N(2)**

14 Repeal the subsection, substitute:

15 (2) The penalty payable under regulations made under paragraph (1)(a)  
16 in relation to an alleged contravention of a provision of client  
17 money reporting rules must not exceed:

- 18 (a) for an individual—3,000 penalty units; and  
19 (b) for a body corporate—15,000 penalty units.

## 20 **78 Subsection 989CA(3)**

21 Repeal the subsection (including the note), substitute:

22 *Fault-based offence*

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

25 *Strict liability offence*

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

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1 **79 Section 993D**

2 Repeal the section, substitute:

3 **993D Failing to pay loan money into an account as required**

4 *Failing to pay loan money into account as required*

- 5 (1) A financial services licensee contravenes this subsection if:
- 6 (a) the licensee is required by subsection 982B(1) to pay
- 7 particular money into an account in accordance with that
- 8 subsection; and
- 9 (b) the licensee does not pay the money into an account in
- 10 accordance with that subsection.

11 *Fault-based offence*

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

14 *Strict liability offence*

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

17 *Civil liability*

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

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

21 **80 At the end of section 1012A**

22 Add:

23 *Civil liability*

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

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

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1 **81 At the end of section 1012B**

2 Add:

3 *Civil liability*

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

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

7 **82 At the end of section 1012C**

8 Add:

9 *Civil liability*

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

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

13 **83 After subsection 1017BA(4A)**

14 Insert:

15 *Civil liability*

16 (4B) A person contravenes this subsection if the person contravenes  
17 subsection (1).

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

19 **84 After subsection 1017BB(5)**

20 Insert:

21 (5A) A person contravenes this subsection if the person contravenes  
22 subsection (1) or (2), or regulations made for the purposes of  
23 subsection (3).

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

25 **85 Section 1020A**

26 Repeal the section, substitute:

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1 **1020A Offers etc. relating to certain managed investment schemes**  
2 **not to be made in certain circumstances**

3 *Obligation*

- 4 (1) A person must not engage in conduct of a kind referred to in  
5 subsection (2) in relation to a financial product described in  
6 paragraph 764A(1)(ba) (which relates to certain managed  
7 investment schemes that are not registered schemes) if the  
8 managed investment scheme concerned needs to be, or will need to  
9 be, registered and has not been registered. This is so even if it is  
10 proposed to register the scheme.
- 11 (2) Subject to subsection (3), the kinds of conduct that must not be  
12 engaged in in relation to such a managed investment product are as  
13 follows:
- 14 (a) making a recommendation, as described in  
15 subsection 1012A(3), that is received in this jurisdiction;
  - 16 (b) making an offer, as described in subsection 1012B(3) or  
17 1012C(3), that is received in this jurisdiction;
  - 18 (c) accepting an offer, made as described in subsection 1012B(3)  
19 or (4), that was received in this jurisdiction.

20 *Exceptions*

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

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

27 *Fault-based offence*

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

30 *Civil liability*

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

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

2 **86 Section 1021E**

3 Repeal the section, substitute:

4 **1021E Preparer of defective disclosure document or statement**  
5 **giving the document or statement (whether or not known**  
6 **to be defective)**

7 *Obligations*

- 8 (1) A person contravenes this subsection if:
- 9 (a) the person prepares (or has someone else prepare for them) a  
10 disclosure document or statement (not being information  
11 required by paragraph 1012G(3)(a)); and  
12 (b) the disclosure document or statement is defective; and  
13 (c) the person:
- 14 (i) gives (see subsection (4)) another person the disclosure  
15 document or statement in circumstances in which it is  
16 required by a provision of this Part to be given to the  
17 other person; or  
18 (ii) gives (see subsection (4)), or makes available to,  
19 another person the disclosure document or statement,  
20 reckless as to whether the other person will or may rely  
21 on the information in it.

22 Note: In criminal proceedings, a defendant bears an evidential burden in  
23 relation to the matters in sections 1012D, 1012DAA, 1012DA and  
24 1012E.

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

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1

## *Exception*

2

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

3

4

5

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

6

7

8

## *Meaning of give*

9

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

10

11

## *Fault-based offence*

12

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

13

14

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

15

16

17

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

18

19

20

## *Civil liability*

21

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

22

23

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

24

## **87 Section 1021G**

25

Repeal the section, substitute:

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1 **1021G Financial services licensee failing to ensure authorised**  
2 **representative gives etc. disclosure documents or**  
3 **statements as required**

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

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

11 *Fault-based offence*

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

14 *Civil liability*

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

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

18 **88 Subsection 1041F(2)**

19 Repeal the subsection.

20 **89 Subsection 1041G(1)**

21 Omit “(1) A person”, substitute “A person”.

22 **90 Subsection 1041G(2)**

23 Repeal the subsection.

24 **91 Subsection 1211B(3) (penalty)**

25 Repeal the penalty, substitute:

26 Penalty:

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

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1 **92 Subsections 1309(1) and (2)**

2 Omit “is guilty of an offence”, substitute “contravenes this subsection”.

3 **93 At the end of section 1309**

4 Add:

5 *Fault-based offence*

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

8 *Civil liability*

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

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

12 **94 Subsections 1311(2) to (6)**

13 Repeal the subsections (including the note).

14 **95 After section 1311**

15 Insert:

16 **1311A Penalty for committing an offence**

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

20 **1311B Penalty applicable to an offence committed by an individual**

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

23 (a) for an offence for which a fine is stated—the fine stated; and

24 (b) for an offence for which a term of imprisonment is stated—  
25 either the term of imprisonment, the fine worked out under  
26 this section, or both.

27 (2) If:

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- 1 (a) a term of imprisonment is stated as the penalty for an  
2 offence; and  
3 (b) the term of imprisonment is less than 10 years;  
4 the fine mentioned in paragraph (1)(b) is the number of penalty  
5 units worked out using the individual fine formula.
- 6 (3) The *individual fine formula* is:
- 7 Term of imprisonment,  $\times 10$   
expressed in months
- 8 (4) If:
- 9 (a) a term of imprisonment is stated as the penalty for an  
10 offence; and  
11 (b) the term of imprisonment is 10 years or more;  
12 the fine mentioned in paragraph (1)(b) is the greater of:  
13 (c) 4,500 penalty units; and  
14 (d) an amount equal to the benefit derived or detriment avoided  
15 by the individual because of the offence, multiplied by 3.
- 16 (5) The *benefit derived or detriment avoided* by an individual because  
17 of an offence is the sum of:
- 18 (a) the total value of all benefits that the individual obtained that  
19 are reasonably attributable to the commission of the offence;  
20 and  
21 (b) the total value of all detriments that the individual avoided  
22 that are reasonably attributable to the commission of the  
23 offence.
- 24 (6) This section applies in relation to an offence committed by an  
25 individual unless there is a contrary intention under this Act in  
26 relation to the penalty applicable to the offence.

## 27 **1311C Penalty applicable to an offence committed by a body** 28 **corporate**

- 29 (1) The *penalty applicable* to an offence committed by a body  
30 corporate is:
- 31 (a) for an offence for which a fine is stated—the fine stated  
32 multiplied by 10; and
-

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- 1 (b) for an offence for which a term of imprisonment is stated—  
2 the fine worked out under this section.
- 3 (2) If:  
4 (a) a term of imprisonment is stated as the penalty for an  
5 offence; and  
6 (b) the term of imprisonment is less than 10 years;  
7 the fine mentioned in paragraph (1)(b) is worked out by  
8 multiplying the number of penalty units worked out using the  
9 individual fine formula by 10.
- 10 (3) If:  
11 (a) a term of imprisonment is stated as the penalty for an  
12 offence; and  
13 (b) the term of imprisonment is 10 years or more;  
14 the fine mentioned in paragraph (1)(b) is the greater of:  
15 (c) 45,000 penalty units; and  
16 (d) the benefit derived or detriment avoided by the body  
17 corporate because of the offence, multiplied by 3; and  
18 (e) 10% of the annual turnover of the body corporate for the 12  
19 month period ending at the end of the month in which the  
20 body corporate committed, or began committing, the offence.
- 21 (4) The *benefit derived or detriment avoided* by a body corporate  
22 because of an offence is the sum of:  
23 (a) the total value of all benefits that the body corporate obtained  
24 that are reasonably attributable to the commission of the  
25 offence; and  
26 (b) the total value of all detriments that the body corporate  
27 avoided that are reasonably attributable to the commission of  
28 the offence.
- 29 (5) This section applies in relation to an offence committed by a body  
30 corporate unless there is a contrary intention under this Act in  
31 relation to the penalty applicable to the offence.

## 1311D Where is the penalty for an offence stated?

32  
33 The penalty *stated* for an offence is:

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- 1 (a) if a penalty, pecuniary or otherwise, is specified in  
2 Schedule 3 for the provision under which the offence is  
3 created, or a provision or provisions in which that provision  
4 is included—that penalty; and  
5 (b) if a penalty, pecuniary or otherwise, is specified in any other  
6 provision of this Act for the provision under which the  
7 offence is created, or a provision or provisions in which that  
8 provision is included—that penalty.

9 **1311E If no penalty is stated**

10 If no penalty is stated for an offence:

- 11 (a) the offence is an offence of strict liability; and  
12 (b) the penalty is 20 penalty units.

13 **96 Section 1312**

14 Repeal the section.

15 **97 Section 1313**

16 Repeal the section.

17 **98 Paragraph 1317C(gf)**

18 Repeal the paragraph, substitute:

- 19 (gf) a decision of ASIC:  
20 (i) to give an infringement notice under section 1317DAM;  
21 or  
22 (ii) to extend, or to refuse to extend, the payment period for  
23 an infringement notice under section 1317DAQ; or  
24 (iii) to make an arrangement, or to refuse to make an  
25 arrangement, to pay the amount payable under an  
26 infringement notice by instalments under  
27 section 1317DAR; or  
28 (iv) to withdraw, or not to withdraw, an infringement notice  
29 under section 1317DAS; or

30 **99 After Part 9.4AA**

31 Insert:

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## Part 9.4AB—Infringement notices for other alleged contraventions

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

- (1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, ASIC may give the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) ASIC may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than 1 day; and
  - (d) each contravention is constituted by the failure or refusal on one of those days.
- (5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence provision, the infringement notice must relate to the alleged contravention of the offence provision.

### 1317DAN Provision subject to an infringement notice

The following provisions are *subject to an infringement notice* under this Part:

- (a) strict liability offences against this Act;
  - (b) absolute liability offences against this Act;
  - (c) other prescribed offences;
  - (d) prescribed civil penalty provisions.
-

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

- (1) An infringement notice must:
- (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name and contact details of the person who gave the notice; and
  - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
    - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that the payment period for the notice will be 28 days, beginning on the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and
  - (i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):
    - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
    - (ii) if the provision is an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or
    - (iii) if the provision is a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

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- 1 (j) state that payment of the amount is not an admission of guilt  
2 or liability; and
- 3 (k) state that the person may apply to ASIC to have the period in  
4 which to pay the amount extended or for an arrangement to  
5 pay the amount by instalments; and
- 6 (l) state that the person may choose not to pay the amount and, if  
7 the person does so:
- 8 (i) if the provision is an offence provision and does not also  
9 constitute a civil penalty provision—the person may be  
10 prosecuted in a court for the alleged contravention; or
- 11 (ii) if the provision is an offence provision and can also  
12 constitute a civil penalty provision—the person may be  
13 prosecuted in a court, or proceedings seeking a  
14 pecuniary penalty order may be brought, in relation to  
15 the alleged contravention; or
- 16 (iii) if the provision is a civil penalty provision—  
17 proceedings seeking a pecuniary penalty order may be  
18 brought in relation to the alleged contravention; and
- 19 (m) set out how the notice can be withdrawn; and
- 20 (n) state that if the notice is withdrawn:
- 21 (i) if the provision is an offence provision and does not also  
22 constitute a civil penalty provision—the person may be  
23 prosecuted in a court for the alleged contravention; or
- 24 (ii) if the provision is an offence provision and can also  
25 constitute a civil penalty provision—the person may be  
26 prosecuted in a court, or proceedings seeking a  
27 pecuniary penalty order may be brought, in relation to  
28 the alleged contravention; or
- 29 (iii) if the provision is a civil penalty provision—  
30 proceedings seeking a pecuniary penalty order may be  
31 brought in relation to the alleged contravention; and
- 32 (o) state that the person may make written representations to  
33 ASIC seeking the withdrawal of the notice.
- 34 (2) The amount to be stated in the notice for the purposes of  
35 paragraph (1)(f) is:
- 36 (a) for a single contravention of an offence provision—half the  
37 maximum penalty that a court could impose on the person for  
38 the contravention; and
-

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- 1 (b) for multiple contraventions of an offence provision—the  
2 amount worked out under paragraph (a) for a single  
3 contravention multiplied by the number of contraventions;  
4 and  
5 (c) for a single contravention of a civil penalty provision—12  
6 penalty units for an individual and 60 penalty units for a body  
7 corporate; and  
8 (d) for multiple contraventions of a civil penalty provision—the  
9 amount worked out under paragraph (c) for a single  
10 contravention multiplied by the number of contraventions.

## 11 **1317DAP Payment period**

### 12 *Usual payment period*

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

### 16 *Payment period extended under section 1317DAQ*

- 17 (2) If, under section 1317DAQ, ASIC extends the payment period for  
18 the notice, the **payment period** is as extended.
- 19 (3) If ASIC refuses an application under subsection 1317DAQ(1) for  
20 an extension of the payment period for the notice, the **payment**  
21 **period** ends on the later of the following days:  
22 (a) the last day of the period that, without the extension that has  
23 been refused, would be the payment period for the notice;  
24 (b) the day that is 7 days after the day the applicant was given  
25 notice of ASIC's decision not to extend;  
26 (c) the day that is 7 days after the day the application is taken to  
27 have been refused under subsection 1317DAQ(4).

### 28 *Instalments*

- 29 (4) If, under section 1317DAR, ASIC makes an arrangement for the  
30 amount payable under the notice to be paid by instalments, the  
31 **payment period** ends on the earlier of the following days:  
32 (a) the last day on which an instalment is to be paid under the  
33 arrangement;

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

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

- 8 (a) the last day of the period that, without the instalment  
9 arrangement, would be the payment period for the notice;  
10 (b) the day that is 7 days after the day the applicant was given  
11 notice of ASIC's decision not to make the arrangement;  
12 (c) the day that is 7 days after the day the application is taken to  
13 have been refused under subsection 1317DAR(4).

14 *Payment period if ASIC refuses to withdraw infringement notice*

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

- 18 (a) the last day of the period that, without the withdrawal, would  
19 be the payment period for the notice;  
20 (b) the day that is 7 days after the day the person was given  
21 notice of ASIC's decision not to withdraw the notice;  
22 (c) the day that is 7 days after the day on which, under  
23 subsection 1317DAS(5), ASIC is taken to have refused to  
24 withdraw the infringement notice.

#### 25 **1317DAQ Extension of time to pay amount**

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

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

- 31 (a) if a person makes an application in accordance with  
32 subsection (1); or  
33 (b) on ASIC's own initiative.

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

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- 1 (3) ASIC must do each of the following within 14 days after an  
2 application in accordance with subsection (1) is made:  
3 (a) grant or refuse to grant an extension of the payment period  
4 for the infringement notice;  
5 (b) give the applicant notice in writing of ASIC's decision.
- 6 (4) If ASIC does not comply with subsection (3):  
7 (a) ASIC is taken to have refused to grant an extension of the  
8 payment period for the infringement notice; and  
9 (b) the refusal is taken to have occurred on the last day of the 14  
10 day period.
- 11 (5) ASIC may extend the payment period more than once under  
12 subsection (2).

## 13 **1317DAR Payment by instalments**

- 14 (1) A person to whom an infringement notice has been given may,  
15 within 28 days after the infringement notice is given, apply to  
16 ASIC to make an arrangement to pay the amount payable under the  
17 infringement notice by instalments.
- 18 (2) ASIC may, in writing, make an arrangement for a person to pay the  
19 amount payable under an infringement notice by instalments:  
20 (a) if a person makes an application in accordance with  
21 subsection (1); or  
22 (b) on ASIC's own initiative.  
23 ASIC may do so before or after the end of the payment period.
- 24 (3) ASIC must do each of the following within 14 days after an  
25 application in accordance with subsection (1) is made:  
26 (a) decide to make, or refuse to make, an arrangement for the  
27 applicant to pay the amount payable under the infringement  
28 notice by instalments;  
29 (b) give the applicant notice in writing of ASIC's decision;  
30 (c) if ASIC decides to make the arrangement, specify in the  
31 notice:  
32 (i) the day by which each instalment is to be paid; and  
33 (ii) the amount of each instalment.

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- 1 (4) If ASIC does not comply with subsection (3):  
2 (a) ASIC is taken to have refused to make an arrangement for the  
3 applicant to pay the amount payable under the infringement  
4 notice by instalments; and  
5 (b) the refusal is taken to have occurred on the last day of the 14  
6 day period.
- 7 (5) ASIC may vary an arrangement for a person to pay the amount  
8 payable under an infringement notice by instalments.
- 9 (6) If:  
10 (a) a person does not pay all of the instalments in accordance  
11 with an arrangement made under this section; and  
12 (b) the person is prosecuted, or proceedings seeking a pecuniary  
13 penalty order are brought, for the alleged contravention;  
14 ASIC must refund to the person the amount of any instalments  
15 paid.

## 16 **1317DAS Withdrawal of an infringement notice**

### 17 *Representations seeking withdrawal of notice*

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

### 21 *Withdrawal of notice*

- 22 (2) ASIC may withdraw an infringement notice given to a person:  
23 (a) if the person makes representations to ASIC in accordance  
24 with subsection (1); or  
25 (b) on ASIC's own initiative.  
26 ASIC may do so before or after the end of the payment period.
- 27 (3) ASIC must, within 14 days after a representation is made in  
28 accordance with subsection (1):  
29 (a) decide to withdraw, or refuse to withdraw, the infringement  
30 notice; and  
31 (b) if ASIC decides to withdraw the notice—give the applicant a  
32 withdrawal notice in accordance with subsection (6); and
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- 1 (c) if ASIC decides to refuse to withdraw the notice—give the  
2 applicant notice of that fact.
- 3 (4) When deciding whether to withdraw, or refuse to withdraw, an  
4 infringement notice, ASIC:
- 5 (a) must take into account any written representations seeking  
6 the withdrawal that were given by the person to ASIC; and  
7 (b) may take into account the following:
- 8 (i) whether a court has previously imposed a penalty on the  
9 person for a contravention of a provision of this Act;  
10 (ii) the circumstances of the alleged contravention;  
11 (iii) whether the person has paid an amount, stated in an  
12 earlier infringement notice, for a contravention of a  
13 provision of this Act;  
14 (iv) any other matter ASIC considers relevant.
- 15 (5) If ASIC does not comply with subsection (3):
- 16 (a) ASIC is taken to have refused to make an arrangement for the  
17 applicant to pay the amount payable under the infringement  
18 notice by instalments; and  
19 (b) the refusal is taken to have occurred on the last day of the 14  
20 day period.

## 21 *Notice of withdrawal*

- 22 (6) The withdrawal notice must state:
- 23 (a) the person's name and address; and  
24 (b) the day the infringement notice was given; and  
25 (c) the identifying number of the infringement notice; and  
26 (d) that the infringement notice is withdrawn; and  
27 (e) that:
- 28 (i) if the provision is an offence provision and does not also  
29 constitute a civil penalty provision—the person may be  
30 prosecuted in a court for the alleged contravention; or  
31 (ii) if the provision is an offence provision and can also  
32 constitute a civil penalty provision—the person may be  
33 prosecuted in a court, or proceedings seeking a  
34 pecuniary penalty order may be brought, in relation to  
35 the alleged contravention; or

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

4 *Refund of amount if infringement notice withdrawn*

- 5 (7) If:  
6 (a) ASIC withdraws the infringement notice; and  
7 (b) the person has already paid all or part of the amount stated in  
8 the notice;  
9 ASIC must refund to the person an amount equal to the amount  
10 paid.

## 11 **1317DAT Effect of payment of amount**

- 12 (1) If the person to whom an infringement notice for an alleged  
13 contravention of a provision is given pays the amount stated in the  
14 notice before the end of the payment period for the notice:  
15 (a) any liability of the person for the alleged contravention is  
16 discharged; and  
17 (b) if the provision is an offence provision and does not also  
18 constitute a civil penalty provision—the person may not be  
19 prosecuted in a court for the alleged contravention; and  
20 (c) if the provision is an offence provision and can also  
21 constitute a civil penalty provision—the person may not be  
22 prosecuted in a court, and proceedings seeking a pecuniary  
23 penalty order may not be brought, in relation to the alleged  
24 contravention; and  
25 (d) if the provision is a civil penalty provision—proceedings  
26 seeking a pecuniary penalty order may not be brought in  
27 relation to the alleged contravention; and  
28 (e) the person is not regarded as having admitted guilt or liability  
29 for the alleged contravention; and  
30 (f) if the provision is an offence provision—the person is not  
31 regarded as having been convicted of the alleged offence.  
32 (2) Subsection (1) does not apply if the notice has been withdrawn.

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1 **1317DAU Effect of this Part**

2 This Part does not:

- 3 (a) require an infringement notice to be given to a person for an  
4 alleged contravention of a provision subject to an  
5 infringement notice under this Part; or  
6 (b) affect the liability of a person for an alleged contravention of  
7 a provision subject to an infringement notice under this Part  
8 if:  
9 (i) the person does not comply with an infringement notice  
10 given to the person for the contravention; or  
11 (ii) an infringement notice is not given to the person for the  
12 contravention; or  
13 (iii) an infringement notice is given to the person for the  
14 contravention and is subsequently withdrawn; or  
15 (c) prevent the giving of 2 or more infringement notices to a  
16 person for an alleged contravention of a provision subject to  
17 an infringement notice under this Part; or  
18 (d) limit a court's discretion to determine the amount of a  
19 penalty to be imposed on a person who is found to have  
20 contravened a provision subject to an infringement notice  
21 under this Part.

22 **100 Section 1317DA**

23 Repeal the section, substitute:

24 **1317DA Definitions**

25 In this Act:

26 *corporation/scheme civil penalty provision* means a provision  
27 specified as such in column 3 of the table in subsection 1317E(1).

28 *financial services civil penalty provision* means a provision  
29 specified as such in column 3 of the table in subsection 1317E(1).

30 **101 After section 1317DA**

31 Insert:

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## 1317DB Attempt and involvement in contravention treated in same way as actual contravention

A person who:

- (a) attempts to contravene a civil penalty provision; or
  - (b) is involved in a contravention of a civil penalty provision;
- is taken to have *contravened* that provision.

## 102 Subsection 1317E(1)

Repeal the subsection, substitute:

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, it must make a declaration of contravention. The provisions specified in column 1 of the following table are *civil penalty provisions*.

Civil penalty provisions		
Column 1 provisions that are civil penalty provisions	Column 2 brief description of what the provisions are about	Column 3 categorisation of the provisions
subsections 180(1), 181(1) and (2), 182(1) and (2) and 183(1) and (2)	officers' duties	corporation/scheme
subsections 188(1) and (2)	responsibilities of secretaries etc. for corporate contraventions	corporation/scheme
subsection 209(2)	related parties rules	corporation/scheme
subsections 254L(2), 256D(3), 259F(2) and 260D(2)	share capital transactions	corporation/scheme
subsections 344(1) and (1A)	requirements for financial reports	corporation/scheme
subsection 588G(2)	insolvent trading	corporation/scheme
subsection 601ED(8)	obligation to be registered if operating certain managed investment schemes	corporation/scheme
subsection 601FC(5)	duties of responsible entity	corporation/scheme
subsection 601FD(3)	duties of officers of	corporation/scheme

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
	responsible entity	
subsection 601FE(3)	duties of employees of responsible entity	corporation/scheme
subsection 601FG(2)	acquisition of interest in scheme by responsible entity	corporation/scheme
subsection 601JD(3)	duties of members	corporation/scheme
subsection 601UAA(2)	duties of officers of licensed trustee company	corporation/scheme
subsection 601UAB(2)	duties of employees of licensed trustee company	corporation/scheme
subsection 670A(4)	misstatements in, or omissions from, takeover and compulsory acquisition and buy-out documents	uncategorised
subsections 674(2), 674(2A), 675(2) and 675(2A)	continuous disclosure	financial services
subsection 727(6)	offering securities without a current disclosure document	uncategorised
subsection 728(4)	misstatement in, or omission from, disclosure document	uncategorised
subsection 791A(3)	need for an Australian market licence	uncategorised
subsection 792A(2)	general obligations of market licensees	uncategorised
subsection 792B(6)	market licensee to notify ASIC of certain matters	uncategorised
subsection 798H(1)	complying with market integrity rules	uncategorised
subsection 820A(3)	need for an Australian CS facility licence	uncategorised
subsection 821A(2)	general obligations of CS facility licensees	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
subsection 821B(5)	CS facility licensee to notify ASIC of certain matters	uncategorised
subsection 853F(3)	obligations on disqualified individuals	uncategorised
section 901E	complying with derivative transaction rules	uncategorised
section 903D	complying with derivative trade repository rules	uncategorised
subsection 904A(2)	general obligations of derivative trade repository licensees	uncategorised
subsection 904C(1A)	obligation to notify ASIC of inability to meet obligations under section 904A	uncategorised
subsection 905A(3)	need to hold a licence to operate a derivative trade repository	uncategorised
subsection 908CF(1)	complying with financial benchmark rules or compelled financial benchmark rules	uncategorised
subsections 908DA(1) and (2) and 908DB(1) and (2)	manipulating financial benchmarks	uncategorised
subsection 911A(5B)	need for an Australian financial services licence	uncategorised
subsection 911B(4)	providing financial services on behalf of a person who carries on a financial services business	uncategorised
subsection 912A(5A)	general obligations of a financial services licensee	uncategorised
subsection 912D(3)	financial services licensee to notify ASIC of certain matters	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
subsection 920C(4)	need to comply with a banning order	uncategorised
subsection 922M(5)	need to comply with obligation to notify ASIC	uncategorised
subsection 941A(3)	obligation on financial services licensee to give a Financial Services Guide if financial service provided to person as a retail client	uncategorised
subsection 941B(4)	obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client	uncategorised
subsection 946A(4)	obligation to give client a Statement of Advice	uncategorised
subsection 952E(9)	giving a defective disclosure document or statement (whether or not known to be defective)	uncategorised
subsection 952H(3)	financial services licensee failing to ensure authorised representative gives disclosure documents or statements as required	uncategorised
subsections 961K(1) and (2)	financial services licensee responsible for breach of certain best interests duties	uncategorised
section 961L	financial services licensee to ensure compliance with certain best interests duties	uncategorised
subsection 961Q(1)	authorised representative responsible for breach of certain best interests duties	uncategorised
section 962P	charging ongoing fee after	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
	termination of ongoing fee arrangement	
subsection 962S(1)	fee recipient must give fee disclosure statement	uncategorised
subsections 963E(1) and (2)	financial services licensee responsible for breach of ban on conflicted remuneration	financial services
section 963F	financial services licensee must ensure representatives do not accept conflicted remuneration	financial services
subsection 963G(1)	authorised representative must not accept conflicted remuneration	financial services
section 963J	employer must not pay employees conflicted remuneration	financial services
section 963K	financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative	financial services
subsection 964A(1)	platform operator must not accept volume-based shelf-space fees	financial services
subsections 964D(1) and (2)	financial services licensee responsible for breach of asset-based fees on borrowed amounts	financial services
subsection 964E(1)	authorised representative must not charge asset-based fees on borrowed amounts	financial services
section 965	anti-avoidance of Part 7.7A provisions	financial services
subsection 981B(3)	obligation to pay money into	uncategorised

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
	an account	
subsection 981C(2)	various matters relating to accounts maintained for the purposes of section 981B	uncategorised
subsection 981M(1)	complying with client money reporting rules	uncategorised
subsection 985E(1)	issuing or increasing limit of margin lending facility without having made assessment etc.	financial services
subsection 985H(1)	failure to assess a margin lending facility as unsuitable	financial services
subsection 985J(1)	failure to give assessment to retail client if requested before issue of facility or increase in limit	financial services
subsection 985J(2)	failure to give assessment to retail client if requested after issue of facility or increase in limit	financial services
subsection 985J(4)	demanding payment to give assessment to retail client	financial services
subsection 985K(1)	issuing or increasing limit of margin lending facility if unsuitable	financial services
section 985L	making issue of margin lending facility conditional on retail client agreeing to receive communications through agent	financial services
subsection 985M(1)	failure to notify of margin call where there is no agent	financial services
subsection 985M(2)	failure to notify of margin call where there is an agent	financial services

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
subsection 993D(4)	failure to pay loan money into an account as required	financial services
subsection 1012A(5)	obligation to give Product Disclosure Statement— personal advice recommending particular financial product	financial services
subsection 1012B(6)	obligation to give Product Disclosure Statement— situations related to issue of financial products	financial services
subsection 1012C(11)	obligation to give Product Disclosure Statement— offers related to sale of financial products	financial services
subsection 1017BA(4B)	trustee of regulated superannuation funds— obligation to make product dashboard publicly available	financial services
subsection 1017BB(5A)	trustee of registrable superannuation entities— obligation to make information relating to investment of assets publicly available	financial services
subsection 1020A(5)	offers etc. relating to certain managed investment schemes not to be made in certain circumstances	financial services
subsection 1021E(8)	preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective)	financial services

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<b>Civil penalty provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>provisions that are civil penalty provisions</b>	<b>brief description of what the provisions are about</b>	<b>categorisation of the provisions</b>
subsection 1021G(3)	financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required	financial services
section 1041A	market manipulation	financial services
subsection 1041B(1)	false trading and market rigging—creating a false or misleading appearance of active trading etc.	financial services
subsection 1041C(1)	false trading and market rigging—artificially maintaining etc. market price	financial services
section 1041D	dissemination of information about illegal transactions	financial services
subsections 1043A(1) and (2)	insider trading	financial services
subsections 1211B(1) and (2)	contravening the Passport Rules	uncategorised
subsection 1309(12)	false information	uncategorised
subclause 29(6) of Schedule 4	disclosure for proposed demutualisation	corporation/scheme

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

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

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

## **102A At the end of subsection 1317E(2)**

Add:

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- 1 ; (f) if the contravention is of subsection 670A(4), 727(6), 728(4)  
2 or 1309(12)—the corporation, registered scheme or notified  
3 foreign passport fund to which the conduct related.

## 4 **103 Section 1317G**

5 Repeal the section, substitute:

### 6 **1317G Pecuniary penalty orders**

- 7 (1) A Court may order a person to pay to the Commonwealth a  
8 pecuniary penalty in relation to the contravention of a civil penalty  
9 provision if:
- 10 (a) a declaration of contravention of the civil penalty provision  
11 by the person has been made under section 1317E; and
- 12 (b) if the contravention is of a corporation/scheme civil penalty  
13 provision, the contravention:
- 14 (i) materially prejudices the interests of the corporation,  
15 scheme or fund, or its members; or
- 16 (ii) materially prejudices the corporation's ability to pay its  
17 creditors; or
- 18 (iii) is serious; and
- 19 (c) if the contravention is of a financial services civil penalty  
20 provision that is not a Part 7.7A civil penalty provision, the  
21 contravention:
- 22 (i) materially prejudices the interests of acquirers or  
23 disposers of the relevant financial products; or
- 24 (ii) materially prejudices the issuer of the relevant financial  
25 products or, if the issuer is a corporation, scheme or  
26 fund, the members of that corporation, scheme or fund;  
27 or
- 28 (iii) is serious; and
- 29 (d) if the contravention is of subsection 1211B(1) or (2)  
30 (complying with the Passport Rules for this jurisdiction), the  
31 contravention:
- 32 (i) materially prejudices the interests of the passport fund  
33 or its members; or
- 34 (ii) is serious.

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

3                   (2) An order made under subsection (1) is a ***pecuniary penalty order***.

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

6                   (3) The ***pecuniary penalty applicable*** to the contravention of a civil  
7                   penalty provision by an individual is the greater of:

- 8                   (a) 5,000 penalty units; and  
9                   (b) the benefit derived or detriment avoided by the individual  
10                  because of the contravention, multiplied by 3.

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

13                  (4) The ***pecuniary penalty applicable*** to the contravention of a civil  
14                  penalty provision by a body corporate is the greater of:

- 15                  (a) 50,000 penalty units; and  
16                  (b) the benefit derived or detriment avoided by the body  
17                  corporate because of the contravention, multiplied by 3; and  
18                  (c) either:  
19                  (i) 10% of the annual turnover of the body corporate for the  
20                  12 month period ending at the end of the month in  
21                  which the body corporate contravened, or began to  
22                  contravene, the civil penalty provision; or  
23                  (ii) if the amount worked out under subparagraph (i) is  
24                  greater than an amount equal to 1 million penalty  
25                  units—1 million penalty units.

26                  *Meaning of benefit derived or detriment avoided*

27                  (5) The ***benefit derived or detriment avoided*** by a person because of a  
28                  contravention of a civil penalty provision is the sum of:

- 29                  (a) the total value of all benefits that the person obtained that are  
30                  reasonably attributable to the contravention; and  
31                  (b) the total value of all detriments that the person avoided that  
32                  are reasonably attributable to the contravention.

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1 *Civil enforcement of penalty*

2 (6) The penalty is a debt payable to ASIC on behalf of the  
3 Commonwealth.

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

8 *Contrary intention*

9 (8) This section applies in relation to a contravention of a civil penalty  
10 provision by an individual or a body corporate unless there is a  
11 contrary intention under this Act in relation to the pecuniary  
12 penalty applicable to the contravention.

## 13 **1317GAA Continuing contraventions of civil penalty provisions**

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

16 (a) within a particular period; or

17 (b) before a particular time;

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

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

23 (a) within a particular period; or

24 (b) before a particular time;

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

## 28 **1317GAB State of mind**

29 (1) In proceedings for a pecuniary penalty order against a person for a  
30 contravention of a civil penalty provision, it is not necessary to  
31 prove:

32 (a) the person's intention; or

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# EXPOSURE DRAFT

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- 1 (b) the person's knowledge; or  
2 (c) the person's recklessness; or  
3 (d) the person's negligence; or  
4 (e) any other state of mind of the person.
- 5 (2) Subsection (1) does not apply to the extent that the proceedings  
6 relate to attempting to contravene a civil penalty provision, or  
7 being involved in a contravention of a civil penalty provision.
- 8 (3) Subsection (1) does not affect the operation of section 1317GAC  
9 (which is about mistake of fact).
- 10 (4) Subsection (1) does not apply to the extent that the civil penalty  
11 provision, or a provision that relates to the civil penalty provision,  
12 expressly provides otherwise.

## 13 **1317GAC Mistake of fact**

- 14 (1) A person is not liable to have a pecuniary penalty order made  
15 against the person for a contravention of a civil penalty provision  
16 if:  
17 (a) at or before the time of the conduct constituting the  
18 contravention, the person:  
19 (i) considered whether or not facts existed; and  
20 (ii) was under a mistaken but reasonable belief about those  
21 facts; and  
22 (b) had those facts existed, the conduct would not have  
23 constituted a contravention of the civil penalty provision.
- 24 (2) For the purposes of subsection (1), a person may be regarded as  
25 having considered whether or not facts existed if:  
26 (a) the person had considered, on a previous occasion, whether  
27 those facts existed in the circumstances surrounding that  
28 occasion; and  
29 (b) the person honestly and reasonably believed that the  
30 circumstances surrounding the present occasion were the  
31 same, or substantially the same, as those surrounding the  
32 previous occasion.

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- 1 (3) A person who wishes to rely on subsection (1) or (2) in  
2 proceedings for a pecuniary penalty order bears an evidential  
3 burden in relation to that matter.

4 **1317GAD Exceptions etc. to civil penalty provisions—burden of**  
5 **proof**

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

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

15 **1317GAE Civil penalty provisions contravened by employees, agents**  
16 **or officers**

17 If an element of a civil penalty provision is done by an employee,  
18 agent or officer of a body corporate acting:

- 19 (a) within the actual or apparent scope of the employee's,  
20 agent's, or officer's employment; or  
21 (b) within the employee's, agent's, or officer's actual or apparent  
22 authority;

23 the element must also be attributed to the body corporate.

24 **1317GAF Relinquishing the benefit derived or detriment avoided**  
25 **from contravening a civil penalty provision**

26 *Relinquishment order*

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

- 32 (2) The Court may make a relinquishment order:
-

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Amendments **Part 1**

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- 1 (a) on its own initiative, during proceedings before the Court; or  
2 (b) on application by ASIC.

3 *Relinquishment order may be made even if penalty for offence*  
4 *imposed or pecuniary penalty order made*

- 5 (3) To avoid doubt, a court may make a relinquishment order in  
6 relation to the contravention of a civil penalty provision even if:  
7 (a) a pecuniary penalty order could be, or has been, made in  
8 relation to the contravention of the civil penalty provision; or  
9 (b) the conduct that constitutes the contravention of the civil  
10 penalty provision would also constitute the commission of an  
11 offence and a penalty could be, or has been, imposed for the  
12 commission of that offence.

13 *Civil enforcement of relinquishment order*

- 14 (4) The amount payable under a relinquishment order is a debt payable  
15 to ASIC on behalf of the Commonwealth.  
16 (5) ASIC or the Commonwealth may enforce a relinquishment order  
17 as if it were an order made in civil proceedings against the person  
18 to recover a debt due by the person. The debt arising from the order  
19 is taken to be a judgment debt.

20 **1317GAG Preference must be given to compensate persons who**  
21 **suffer damage as a result of contravention**

- 22 (1) This section applies if a Court considers that it is appropriate to:  
23 (a) make a pecuniary penalty order against a person in relation to  
24 a contravention of a civil penalty provision; or  
25 (b) make a relinquishment order against a person in relation to a  
26 contravention of a civil penalty provision; or  
27 (c) impose a fine against a person in relation to a commission of  
28 an offence constituted by the same conduct as the conduct  
29 constituting the contravention of the pecuniary penalty order.  
30 (2) In making the pecuniary penalty order or relinquishment order or  
31 imposing the fine, the Court:  
32 (a) must consider the effect that making the order or imposing  
33 the fine would have on the amount available to pay
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1 compensation to which persons might reasonably be expected  
2 to be entitled under section 961M, 1317H, 1317HA,  
3 1317HB, 1317HC or 1317HE; and

4 (b) give preference to making an appropriate amount available  
5 for compensation under those sections.

6 (3) If the Court gives preference to making an appropriate amount  
7 available for compensation under paragraph (2)(b), the Court may  
8 also make such orders as the Court thinks fit for the purpose of  
9 ensuring that the amount remains available for the payment of  
10 compensation under section 961M, 1317H, 1317HA, 1317HB,  
11 1317HC or 1317HE.

## 12 **104 Paragraph 1317P(2)(a)**

13 After “an infringement notice is issued”, insert “under  
14 section 1317DAC”.

## 15 **105 Paragraph 1364(2)(w)**

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

## 18 **106 Subsection 1364(2) (note)**

19 Repeal the note, substitute:

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

## 22 **107 Paragraph 1369(1)(a)**

23 Omit “section 1313”, substitute “Part 9.4AB”.

## 24 **108 Subsection 1369(2)**

25 Omit “section 1311”, substitute “sections 1311B and 1311C”.

## 26 **109 Subsection 1369(3)**

27 Omit “section 1313”, substitute “Part 9.4AB”.

## 28 **110 Subsection 30-1(5) of Schedule 2 (penalty)**

29 Repeal the penalty, substitute:

30 Penalty: 20 penalty units.

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1 **111 Subsection 35-5(2) of Schedule 2 (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: 30 penalty units.

4 **112 Subsection 65-40(3) of Schedule 2 (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: 20 penalty units.

7 **113 Subsection 70-10(4) of Schedule 2 (penalty)**

8 Repeal the penalty, substitute:

9 Penalty: 20 penalty units.

10 **114 Subsection 70-25(4) of Schedule 2 (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: 20 penalty units.

13 **115 Subsection 70-85(2) of Schedule 2 (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: 3 months imprisonment.

16 **116 Subsection 105-1(3) of Schedule 2**

17 Omit “50 penalty units for an individual or 250 penalty units for a body  
18 corporate”, substitute “50 penalty units for an individual or 500 penalty  
19 units for a body corporate”.

20 **117 Schedule 3**

21 Repeal the Schedule, substitute:

22 **Schedule 3—Penalties**

23 Note: See sections 1311 to 1311D.  
24  
25

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**Penalties**

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**Provision****Penalty**

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Section 111AU

5 years imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 113(1)	1 year imprisonment
Subsection 113(3)	20 penalty units
Subsection 115(1)	20 penalty units
Subsection 117(5)	30 penalty units
Subsection 123(3)	30 penalty units
Subsection 136(5)	20 penalty units
Subsection 139(1)	20 penalty units
Subsections 142(1) and (2)	60 penalty units
Subsection 143(1)	20 penalty units
Subsections 144(1) and (2)	30 penalty units
Subsections 145(1) and (3)	60 penalty units
Subsection 146(1)	60 penalty units
Subsections 148(2), (3), (4) and (5)	30 penalty units
Subsection 150(2)	20 penalty units
Subsection 151(2)	20 penalty units
Subsections 153(1) and (2)	30 penalty units
Subsection 156(1)	30 penalty units
Subsection 157(2)	20 penalty units
Subsection 158(2)	120 penalty units
Subsections 161A(2) and (3)	30 penalty units
Subsection 162(3)	20 penalty units
Subsection 163(5)	30 penalty units
Subsection 165(2)	120 penalty units
Section 168	30 penalty units
Subsection 170(3)	30 penalty units
Subsections 172(1), (1A) and (2)	30 penalty units
Subsections 173(1), (3) and (9)	30 penalty units
Subsection 174(1)	30 penalty units
Subsection 177(1)	50 penalty units
Subsection 177(1AA)	50 penalty units
Subsection 178A(1)	60 penalty units

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 178C(1)	60 penalty units
Subsection 184(1)	10 years imprisonment
Subsection 184(2)	10 years imprisonment
Subsection 184(3)	10 years imprisonment
Subsection 191(1)	30 penalty units
Subsection 195(1)	20 penalty units
Subsection 199B(1)	20 penalty units
Subsection 200B(1)	180 penalty units
Subsection 200C(1)	180 penalty units
Section 200D	180 penalty units
Subsection 201D(1)	30 penalty units
Subsection 201D(2)	20 penalty units
Subsections 201R(2) and (3)	30 penalty units
Subsection 202B(1)	20 penalty units
Subsections 203D(3) and (5)	20 penalty units
Subsections 204A(1) and (2)	20 penalty units
Subsections 204C(1) and (2)	20 penalty units
Subsections 205B(1), (2), (4) and (5)	120 penalty units
Subsections 205C(1) and (2)	30 penalty units
Subsection 205E(2)	30 penalty units
Subsection 205F(1)	30 penalty units
Subsection 205G(9)	2 years imprisonment
Subsection 205G(10)	30 penalty units
Subsection 206A(1)	5 years imprisonment
Subsections 206J(4), (6) and (7)	60 penalty units
Subsection 206K(4)	60 penalty units
Subsections 206L(3) and (4)	60 penalty units
Subsection 206M(2)	60 penalty units
Subsection 209(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty

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Part 1 Amendments

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
	units
Section 224	5 years imprisonment
Subsections 225(3), (4) and (5)	20 penalty units
Subsection 235(1)	120 penalty units
Section 237	6 months imprisonment
Section 242	3 months imprisonment
Subsection 246B(3)	20 penalty units
Subsection 246D(6)	20 penalty units
Subsections 246F(1) and (3)	20 penalty units
Subsection 246G(1)	20 penalty units
Subsection 247C(1)	20 penalty units
Subsections 249E(3) and (4)	20 penalty units
Subsection 249K(1)	20 penalty units
Subsection 249Z(1)	20 penalty units
Subsections 249L(1) and (2)	30 penalty units
Subsections 250BB(2), (3) and (4)	20 penalty units
Subsection 250BD(1)	5 years imprisonment
Subsections 250N(1) and (2)	3 months imprisonment
Subsections 250P(3) and (4)	3 months imprisonment
Subsection 250PA(3)	30 penalty units
Subsections 250PA(4) and (6)	20 penalty units
Subsection 250PA(9)	30 penalty units
Subsection 250R(2)	30 penalty units
Subsection 250R(7)	5 years imprisonment
Subsections 250RA(1) and (3)	20 penalty units
Subsection 250S(1)	20 penalty units
Subsection 250SA(1)	20 penalty units
Subsection 250T(1)	20 penalty units
Subsection 250T(4)	30 penalty units
Subsection 250W(5)	20 penalty units
Subsections 251A(1) to (5)	30 penalty units
Subsections 251B(1), (3) and (4)	20 penalty units



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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsections 252C(3) and (4)	20 penalty units
Subsection 252H(1)	20 penalty units
Subsection 252X(1)	20 penalty units
Subsection 252Y(5)	20 penalty units
Subsections 253M(1), (2) and (3)	30 penalty units
Subsections 253N(1), (3) and (4)	20 penalty units
Subsection 254H(4)	20 penalty units
Subsection 254L(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 254N(2)	20 penalty units
Subsection 254Q(13)	20 penalty units
Section 254SA	2 years imprisonment
Section 254T	2 years imprisonment
Subsections 254X(1) and (2)	60 penalty units
Subsection 254Y(1)	20 penalty units
Subsection 256D(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 259B(6)	20 penalty units
Subsection 259D(4)	20 penalty units
Subsection 259F(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 260D(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units

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Part 1 Amendments

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 283AA(1)	60 penalty units
Subsection 283AA(3)	6 months imprisonment
Subsection 283AB(1)	60 penalty units
Subsection 283AC(1)	60 penalty units
Subsection 283AC(2)	60 penalty units
Subsection 283BH(1)	5 years imprisonment
Section 283BI	6 months imprisonment
Section 283CE	6 months imprisonment
Subsection 286(3)	2 years imprisonment
Subsection 286(4)	60 penalty units
Subsection 287(2)	60 penalty units
Subsection 288(1)	60 penalty units
Subsection 289(2)	60 penalty units
Subsection 294(1)	30 penalty units
Subsection 294B(1)	30 penalty units
Subsection 307A(3)	2 years imprisonment
Subsection 307A(4)	50 penalty units
Subsection 307B(1)	50 penalty units
Subsection 307B(3)	50 penalty units
Subsections 307C(1) and (3)	20 penalty units
Subsections 308(1), (2), (3), (3AA), (3AB), (3A), (3C) and (4)	50 penalty units
Subsections 309(1), (2), (3), (4), (5), (5A) and (6)	50 penalty units
Subsections 311(1), (2) and (3)	1 year imprisonment
Subsection 312(1)	60 penalty units
Subsections 313(1) and (2)	30 penalty units
Subsections 314(1) and (1AB)	30 penalty units
Subsections 314A(1), (3) and (7)	30 penalty units
Subsections 316(2) and (3)	30 penalty units
Subsections 316A(3) and (4)	30 penalty units
Subsection 317(1)	30 penalty units

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Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsections 318(1), (3) and (4)	60 penalty units
Subsections 319(1) and (1AA)	120 penalty units
Subsection 320(1)	120 penalty units
Subsections 321(1) and (1AA)	30 penalty units
Subsections 322(1), (1A) and (2)	30 penalty units
Subsection 323(1)	60 penalty units
Subsection 323B(1)	60 penalty units
Subsection 323D(3)	30 penalty units
Section 324BA	6 months imprisonment
Subsection 324BB(1)	6 months imprisonment
Subsection 324BB(2)	30 penalty units
Subsections 324BC(1) and (2)	6 months imprisonment
Subsection 324BC(3)	30 penalty units
Subsection 324CA(1)	6 months imprisonment
Subsections 324CA(1A) and (2)	30 penalty units
Subsection 324CB(1)	6 months imprisonment
Subsections 324CB(1A), (2) and (4)	30 penalty units
Subsection 324CC(1)	6 months imprisonment
Subsections 324CC(1A), (2) and (4)	30 penalty units
Subsection 324CE(1)	6 months imprisonment
Subsections 324CE(1A) and (2)	30 penalty units
Subsection 324CF(1)	6 months imprisonment
Subsections 324CF(1A) and (2)	30 penalty units
Subsection 324CG(1)	6 months imprisonment
Subsections 324CG(1A) and (2)	30 penalty units
Subsection 324CG(5)	6 months imprisonment
Subsections 324CG(5A) and (6)	30 penalty units
Section 324CI	6 months imprisonment
Section 324CJ	6 months imprisonment
Section 324CK	6 months imprisonment
Subsections 324CM(1), (2) and (3)	6 months imprisonment

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Schedule 1 Amendment of the Corporations Act 2001

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Section 324DB	6 months imprisonment
Subsection 324DC(1)	6 months imprisonment
Subsection 324DC(2)	30 penalty units
Subsections 324DD(1) and (2)	6 months imprisonment
Subsection 324DD(3)	30 penalty units
Subsection 327A(3)	6 months imprisonment
Subsections 327B(1) and (3)	6 months imprisonment
Subsection 327C(3)	6 months imprisonment
Subsection 328A(4)	6 months imprisonment
Subsection 328B(2)	6 months imprisonment
Subsection 328C(3)	6 months imprisonment
Subsection 328D(3)	6 months imprisonment
Subsections 331AAA(1) and (3)	6 months imprisonment
Subsections 331AAB(1) and (2)	6 months imprisonment
Subsection 332A(2)	20 penalty units
Subsection 332A(3)	20 penalty units
Subsection 342B(1)	30 penalty units
Subsection 344(2)	10 years imprisonment
Subsections 346C(1) and (2)	60 penalty units
Subsection 347A(1)	20 penalty units
Subsections 347B(1) and (2)	20 penalty units
Subsection 348D(1)	60 penalty units
Subsection 349A(1)	60 penalty units
Subsections 428(1), (2), (2B) and (2C)	20 penalty units
Paragraph 429(2)(b)	50 penalty units
Subsection 437D(5)	6 months imprisonment
Subsection 438B(4)	(a) if the offence relates to a contravention of a provision other than subsection 438B(2A)—120 penalty units; and (b) if the offence relates to a contravention of subsection 438B(2A)—20 penalty units

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 438C(5)	120 penalty units
Subsection 446C(4)	60 penalty units
Subsection 448B(1)	60 penalty units
Subsection 448C(1)	60 penalty units
Subsections 450E(1) and (2)	20 penalty units
Subsection 475(9)	(a) if the offence relates to a contravention of a provision other than subsection 475(4)—60 penalty units; and (b) if the offence relates to a contravention of subsection 475(4)—50 penalty units
Subsection 486A(8)	2 years imprisonment
Section 494	1 year imprisonment
Subsections 496(4), (5), (6), (7) and (8)	20 penalty units
Subsection 497(1)	3 months imprisonment
Subsection 497(4)	50 penalty units
Subsection 497(7)	20 penalty units
Subsection 530A(6)	120 penalty units
Subsection 530B(3)	1 year imprisonment
Subsection 530B(6)	120 penalty units
Subsections 532(1), (2), (8) and (9)	30 penalty units
Subsection 541(1)	30 penalty units
Subsection 588G(3)	5 years imprisonment
Subsection 590(1)	2 years imprisonment
Subsection 590(5)	1 year imprisonment
Subsection 592(1)	120 penalty units
Subsection 592(6)	240 penalty units
Subsection 595(1)	30 penalty units
Subsection 596(1)	2 years imprisonment
Subsection 596AB(1)	10 years imprisonment
Subsection 596F(3)	2 years imprisonment
Subsections 597(6), (7), (10A) and (13)	2 years imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 597A(3)	2 years imprisonment
Subsection 601AD(5)	20 penalty units
Subsection 601BC(5)	30 penalty units
Subsections 601BH(1) and (2)	20 penalty units
Subsection 601BJ(3)	20 penalty units
Subsection 601BK(1)	20 penalty units
Subsection 601BP(1)	20 penalty units
Subsection 601BR(1)	20 penalty units
Subsections 601CW(9) and (10)	30 penalty units
Subsection 601CZB(1)	30 penalty units
Section 601CZC	30 penalty units
Subsection 601DD(1)	20 penalty units
Subsection 601DE(1)	30 penalty units
Subsection 601DH(1)	20 penalty units
Subsection 601ED(5)	5 years imprisonment
Subsection 601FD(4)	10 years imprisonment
Subsection 601FE(4)	10 years imprisonment
Subsection 601FF(3)	5 years imprisonment
Subsection 601FG(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 601FL(4)	2 years imprisonment
Subsection 601FM(3)	2 years imprisonment
Subsection 601FQ(6)	2 years imprisonment
Subsection 601HD(1)	60 penalty units
Subsections 601HG(1) and (3)	20 penalty units
Subsections 601HG(4), (4A) and (4B)	1 year imprisonment
Subsection 601HG(6)	60 penalty units
Subsection 601HG(7)	20 penalty units
Subsection 601JA(3)	2 years imprisonment

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 601JA(4)	60 penalty units
Subsection 601JB(5)	60 penalty units
Subsection 601JB(6)	20 penalty units
Subsection 601JD(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 601KA(3)	60 penalty units
Subsection 601SBB(1)	50 penalty units
Subsection 601SBC(2)	50 penalty units
Subsection 601SCB(1)	50 penalty units
Subsection 601SCB(2)	50 penalty units
Subsection 601SCB(3)	1 year imprisonment
Subsection 601SCD(1)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Section 601TAA	1 year imprisonment
Subsection 601TAB(1)	1 year imprisonment
Subsection 601TBA(2)	1 year imprisonment
Subsection 601UAA(1)	10 years imprisonment
Subsection 601UAB(1)	10 years imprisonment
Section 601VAB	2 years imprisonment
Subsection 601VBD(8)	1 year imprisonment
Subsection 601VCC(2)	2 years imprisonment
Subsection 601WBE(5)	50 penalty units
Section 601WCF	1 year imprisonment
Section 601WCG	1 year imprisonment
Subsection 601WDA(1)	2 years imprisonment
Subsection 601WDA(2)	2 years imprisonment
Subsection 601WDA(3)	2 years imprisonment

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Schedule 1 Amendment of the Corporations Act 2001

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Section 601XAB	1 year imprisonment
Subsection 606(4A)	5 years imprisonment
Subsection 606(4B)	60 penalty units
Subsection 622(1)	60 penalty units
Subsection 623(1)	60 penalty units
Subsection 624(2)	60 penalty units
Subsections 630(2), (3) and (4)	60 penalty units
Subsection 631(1)	240 penalty units
Subsection 631(2)	5 years imprisonment
Subsection 633(1) (table items 4, 5, 7, 8, 9, 11, 12, 13 and 14)	60 penalty units
Subsection 635(1) (table items 5, 7, 8, 10, 11, 12, 13 and 14)	60 penalty units
Subsection 636(3)	60 penalty units
Subsection 636(4)	20 penalty units
Subsection 637(1)	60 penalty units
Subsection 637(2)	20 penalty units
Subsection 638(1)	60 penalty units
Subsection 638(3)	60 penalty units
Subsection 638(5)	60 penalty units
Subsection 638(6)	20 penalty units
Subsection 639(1)	60 penalty units
Subsection 639(2)	20 penalty units
Subsection 640(1)	60 penalty units
Subsection 641(1)	60 penalty units
Section 643	6 months imprisonment
Section 644	6 months imprisonment
Subsections 647(1), (2) and (3)	60 penalty units
Subsection 648A(1)	60 penalty units
Subsections 648E(1) and (2)	60 penalty units
Subsections 648G(5) and (9)	120 penalty units
Subsection 649C(2)	60 penalty units

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 650B(3)	60 penalty units
Subsections 650E(5) and (6)	60 penalty units
Subsection 650F(3)	60 penalty units
Subsection 651A(4)	60 penalty units
Subsection 651C(1)	60 penalty units
Subsection 652C(3)	60 penalty units
Subsection 654A(1)	60 penalty units
Subsection 654C(1)	60 penalty units
Subsection 654C(3)	60 penalty units
Subsection 657F(1)	60 penalty units
Subsections 661B(1) and (2)	20 penalty units
Subsection 661D(1)	60 penalty units
Subsection 662A(1)	60 penalty units
Subsection 663A(1)	60 penalty units
Subsections 664D(1), (2) and (3)	60 penalty units
Subsections 664E(2), (3) and (4)	60 penalty units
Subsection 665A(2)	60 penalty units
Subsection 666A(1)	60 penalty units
Subsections 666B(2) and (3)	60 penalty units
Subsection 667A(3)	60 penalty units
Subsection 668A(1)	60 penalty units
Subsection 668A(2)	20 penalty units
Subsections 668A(3) and (4)	60 penalty units
Subsection 668B(1)	60 penalty units
Subsection 670A(3)	5 years imprisonment
Subsections 670C(1), (2) and (3)	60 penalty units
Subsection 671B(8)	2 years imprisonment
Subsection 671B(9)	60 penalty units
Subsection 672B(1)	60 penalty units
Subsections 672DA(1), (2), (3), (3A), (4), (6), (7), (8) and (9)	30 penalty units
Subsections 672DA(2), (3) and (4)	20 penalty units

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# EXPOSURE DRAFT

## Schedule 1 Amendment of the Corporations Act 2001

### Part 1 Amendments

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsections 672DA(6), (7), (8) and (9)	30 penalty units
Subsection 674(2)	5 years imprisonment
Subsection 674(5)	2 years imprisonment
Subsection 675(2)	5 years imprisonment
Subsection 708AA(10)	2 years imprisonment
Subsection 708A(9)	2 years imprisonment
Subsection 721(5)	5 years imprisonment
Subsection 722(1)	60 penalty units
Subsection 722(2)	20 penalty units
Subsections 723(1), (2) and (3)	20 penalty units
Subsection 724(1)	60 penalty units
Subsection 725(1)	60 penalty units
Section 726	5 years imprisonment
Subsection 727(1)	10 years imprisonment
Subsection 727(2)	5 years imprisonment
Subsection 727(3)	5 years imprisonment
Subsection 727(4)	5 years imprisonment
Subsection 728(3)	10 years imprisonment
Subsection 730(1)	120 penalty units
Subsection 734(1)	60 penalty units
Subsection 734(2)	60 penalty units
Subsection 735(1)	30 penalty units
Subsection 736(1)	60 penalty units
Subsection 738L(3)	5 years imprisonment
Subsections 738M(1), (2) and (3)	20 penalty units
Subsection 738N(4)	6 months imprisonment
Subsection 738P(1)	6 months imprisonment
Subsection 738Q(1)	50 penalty units
Subsection 738Q(5)	1 year imprisonment
Subsection 738Q(7)	6 months imprisonment
Subsections 738R(1) and (2)	5 years imprisonment

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsections 738V(1), (2) and (3)	50 penalty units
Subsections 738X(2) and (3)	50 penalty units
Subsection 738X(7)	30 penalty units
Subsection 738Y(4)	5 years imprisonment
Subsections 738ZA(1), (3), (4), (5), (6), (8) and (9)	1 year imprisonment
Subsections 738ZB(2), (3) and (4)	50 penalty units
Subsection 738ZC(1)	30 penalty units
Subsection 738ZE(2)	5 years imprisonment
Section 738ZF	5 years imprisonment
Subsection 738ZG(1)	30 penalty units
Subsection 791A(1)	5 years imprisonment
Section 791B	5 years imprisonment
Subsection 792B(1)	2 years imprisonment
Subsection 792B(2)	2 years imprisonment
Subsection 792B(3)	2 years imprisonment
Subsection 792B(4)	2 years imprisonment
Subsection 792B(5)	2 years imprisonment
Subsection 792C(1)	2 years imprisonment
Subsection 792D(1)	2 years imprisonment
Section 792E	2 years imprisonment
Subsection 792F(1)	2 years imprisonment
Subsection 792F(2)	50 penalty units
Subsection 792F(3)	2 years imprisonment
Subsection 792G(1)	2 years imprisonment
Subsection 792G(2)	2 years imprisonment
Section 792I	50 penalty units
Subsection 793D(3)	2 years imprisonment
Subsection 794B(3)	2 years imprisonment
Subsection 794D(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and

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# EXPOSURE DRAFT

## Schedule 1 Amendment of the Corporations Act 2001

### Part 1 Amendments

<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
	(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 794E(2)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 798C(3)	2 years imprisonment
Subsection 798C(6)	2 years imprisonment
Subsection 798D(4)	2 years imprisonment
Subsection 798DA(4)	2 years imprisonment
Subsection 820A(1)	5 years imprisonment
Section 820B	5 years imprisonment
Subsection 821B(1)	2 years imprisonment
Subsection 821B(2)	2 years imprisonment
Subsection 821B(3)	2 years imprisonment
Subsection 821B(4)	2 years imprisonment
Subsection 821BA(1)	2 years imprisonment
Subsection 821C(1)	2 years imprisonment
Subsection 821C(3)	2 years imprisonment
Section 821D	2 years imprisonment
Subsection 821E(1)	2 years imprisonment
Subsection 821E(2)	2 years imprisonment
Subsection 821E(3)	2 years imprisonment
Subsection 822D(3)	2 years imprisonment
Subsection 823B(3)	2 years imprisonment
Subsection 823D(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty

# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
	units for each day, or part of a day, in respect of which the offence is committed
Subsection 823E(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Section 850C	4 years imprisonment
Subsection 851D(8)	2 years imprisonment
Subsection 852B(2)	4 years imprisonment
Subsection 853F(1)	5 years imprisonment
Subsection 853F(2)	5 years imprisonment
Subsection 854A(4)	2 years imprisonment
Subsection 892B(1)	5 years imprisonment
Subsection 892B(3)	5 years imprisonment
Subsection 892H(1)	5 years imprisonment
Subsection 892H(2)	5 years imprisonment
Subsection 892H(3)	5 years imprisonment
Subsection 892H(6)	1 year imprisonment
Subsection 892H(7)	1 year imprisonment
Subsection 892K(2)	5 years imprisonment
Subsections 904B(1) and (5)	1,000 penalty units
Subsections 904C(1) and (3)	100 penalty units
Subsection 904D(2)	100 penalty units
Section 904E	100 penalty units
Subsection 904G(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed

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# EXPOSURE DRAFT

## Schedule 1 Amendment of the Corporations Act 2001

### Part 1 Amendments

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 904H(3)	100 penalty units
Subsection 904K(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 905A(2)	(a) for an individual—2 years imprisonment, or 500 penalty units, or both; and (b) for a body corporate—5,000 penalty units
Section 907A	2 years imprisonment
Subsection 911A(1)	5 years imprisonment
Subsection 911B(1)	5 years imprisonment
Section 911C	2 years imprisonment
Subsection 912C(3)	2 years imprisonment
Subsection 912D(1B)	2 years imprisonment
Subsection 912D(2)	1 year imprisonment
Subsection 912E(1)	2 years imprisonment
Subsection 912F(1)	20 penalty units
Subsection 916A(3A)	2 years imprisonment
Subsection 916B(2A)	2 years imprisonment
Subsection 916B(5A)	1 year imprisonment
Subsection 916C(3)	2 years imprisonment
Subsection 916D(2A)	2 years imprisonment
Subsection 916F(1)	2 years imprisonment
Subsection 916F(1A)	6 months imprisonment
Subsection 916F(3)	60 penalty units
Subsection 916G(2)	1 year imprisonment
Subsection 916G(3)	1 year imprisonment
Subsection 920C(3)	5 years imprisonment

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 922M(3)	50 penalty units
Subsection 923A(1)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923B(1)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923C(1)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; or (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923C(2)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 942B(8)	1 year imprisonment
Subsection 942C(8)	1 year imprisonment
Section 942E	2 years imprisonment
Section 943F	2 years imprisonment
Subsection 946AA(4)	50 penalty units
Subsections 946B(3A) and (9)	50 penalty units
Subsection 949A(2)	2 years imprisonment
Subsection 949A(5)	5 years imprisonment

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# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 949B(2)	1 year imprisonment
Subsection 949B(4)	1 year imprisonment
Subsection 952C(1)	50 penalty units
Subsection 952C(3)	5 years imprisonment
Subsection 952D(1)	10 years imprisonment
Subsection 952D(2)	10 years imprisonment
Subsection 952E(6)	2 years imprisonment
Subsection 952F(2)	10 years imprisonment
Subsection 952F(3)	10 years imprisonment
Subsection 952F(4)	10 years imprisonment
Subsection 952G(2)	240 penalty units
Subsection 952G(4)	240 penalty units
Subsection 952G(6)	2 years imprisonment
Subsection 952H(2)	5 years imprisonment
Subsection 952I(1)	30 penalty units
Subsection 952I(2)	30 penalty units
Subsection 952I(3)	30 penalty units
Subsection 952I(4)	30 penalty units
Subsection 952J(1)	30 penalty units
Section 952K	5 years imprisonment
Subsection 952L(1)	10 years imprisonment
Subsection 952L(2)	5 years imprisonment
Subsection 952L(3)	5 years imprisonment
Section 952M	5 years imprisonment
Subsection 982C(1)	2 years imprisonment
Subsection 982C(2)	2 years imprisonment
Section 982D	2 years imprisonment
Section 983C	6 months imprisonment
Subsection 984B(1)	(a) if the offence relates only to a contravention of the requirements referred to in paragraph 984B(1)(a)— 50 penalty units; and

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
	(b) otherwise—2 years imprisonment
Subsection 985D(1)	50 penalty units
Subsection 985J(1)	50 penalty units
Subsection 985J(2)	50 penalty units
Subsection 985J(4)	50 penalty units
Subsection 985K(1)	2 years imprisonment
Subsection 988A(1)	5 years imprisonment
Subsection 989B(1)	5 years imprisonment
Subsection 989B(2)	5 years imprisonment
Subsection 989B(3)	5 years imprisonment
Subsection 989CA(3)	2 years imprisonment
Subsection 989CA(4)	50 penalty units
Subsection 990B(1)	5 years imprisonment
Subsection 990B(2)	5 years imprisonment
Subsection 990B(6)	6 months imprisonment
Subsection 990D(1)	2 years imprisonment
Subsection 990D(2)	2 years imprisonment
Paragraph 990F(a)	2 years imprisonment
Subsection 990I(3)	2 years imprisonment
Subsection 990K(1)	1 year imprisonment
Subsection 991B(2)	1 year imprisonment
Subsection 991E(1)	1 year imprisonment
Subsection 991E(3)	1 year imprisonment
Subsection 991F(1)	6 months imprisonment
Subsection 991F(2)	6 months imprisonment
Subsection 991F(3)	6 months imprisonment
Subsection 992A(1)	6 months imprisonment
Subsection 992A(3)	6 months imprisonment
Subsection 992AA(1)	6 months imprisonment
Subsection 993B(1)	50 penalty units
Subsection 993B(3)	10 years imprisonment

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# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1017E(3)	5 years imprisonment
Subsection 1017E(4)	5 years imprisonment
Subsection 1017F(2)	2 years imprisonment
Subsection 1017G(1)	5 years imprisonment
Subsection 1018A(1)	2 years imprisonment
Subsection 1018A(2)	2 years imprisonment
Subsection 1018B(1)	2 years imprisonment
Subsection 1020AB(3)	6 months imprisonment
Subsection 1020AC(2)	6 months imprisonment
Subsection 1020AD(2)	6 months imprisonment
Section 1020AE	6 months imprisonment
Subsection 1020AI(3)	50 penalty units
Subsection 1020AI(5)	2 years imprisonment
Subsection 1020AI(7)	5 years imprisonment
Section 1020AJ	2 years imprisonment
Subsection 1020A(4)	5 years imprisonment
Subsection 1020BAA(1)	5 years imprisonment
Subsection 1020B(2)	(a) for a first offence—6 months imprisonment; and (b) for a further offence—2 years imprisonment
Subsection 1020E(8)	2 years imprisonment
Subsection 1020E(9)	2 years imprisonment
Subsection 1021C(1)	50 penalty units
Subsection 1021C(3)	5 years imprisonment
Subsection 1021D(1)	10 years imprisonment
Subsection 1021D(2)	10 years imprisonment
Subsection 1021E(5)	2 years imprisonment
Subsection 1021F(1)	5 years imprisonment
Subsection 1021FA(1)	5 years imprisonment
Subsection 1021FA(2)	2 years imprisonment
Subsection 1021FB(1)	5 years imprisonment

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# EXPOSURE DRAFT

## Schedule 1 Amendment of the Corporations Act 2001

### Part 1 Amendments

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

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Subsection 1021P(6)	50 penalty units
Section 1041A	10 years imprisonment
Subsection 1041B(1)	10 years imprisonment
Subsection 1041C(1)	10 years imprisonment
Section 1041D	10 years imprisonment
Subsection 1041E(1)	10 years imprisonment
Subsection 1041F(1)	10 years imprisonment
Section 1041G	10 years imprisonment
Subsection 1043A(1)	10 years imprisonment
Subsection 1043A(2)	10 years imprisonment
Subsection 1052B(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1052BA(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1052C(6)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1070B(1)	30 penalty units
Subsection 1070C(1)	30 penalty units
Subsection 1070D(3)	30 penalty units
Subsection 1071B(2)	30 penalty units

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# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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<b>Penalties</b>	
<b>Provision</b>	<b>Penalty</b>
Section 1071E	30 penalty units
Subsection 1072E(11)	30 penalty units
Subsection 1072H(1)	30 penalty units
Subsection 1072H(3)	30 penalty units
Subsection 1072H(4)	30 penalty units
Subsection 1072H(5)	30 penalty units
Subsection 1072H(6)	30 penalty units
Subsection 1101B(10)	2 years imprisonment
Subsection 1101C(1)	1 year imprisonment
Subsection 1101C(2)	1 year imprisonment
Subsection 1101C(3)	1 year imprisonment
Subsection 1101E(1)	2 years imprisonment
Subsection 1101F(1A)	2 years imprisonment
Subsection 1101F(1)	2 years imprisonment
Section 1101G	1 year imprisonment
Subsection 1200N(7)	2 years imprisonment
Subsection 1200N(8)	2 years imprisonment
Subsection 1200Q(1)	5 years imprisonment
Subsection 1200Q(2)	5 years imprisonment
Section 1200S	2 years imprisonment
Subsection 1200U(6)	2 years imprisonment
Subsection 1200U(7)	2 years imprisonment
Subsection 1212C(1)	60 penalty units
Subsection 1215D(2)	2 years imprisonment
Subsection 1215D(3)	2 years imprisonment
Subsection 1215D(4)	2 years imprisonment
Subsections 1274(1) and (2)	1 year imprisonment
Subsections 1274(9), (13) and (16)	120 penalty units
Subsections 1299F(1), (3) and (5)	30 penalty units
Subsection 1299G(1)	20 penalty units
Subsection 1299G(4)	30 penalty units

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# EXPOSURE DRAFT

Amendment of the Corporations Act 2001 **Schedule 1**  
Amendments **Part 1**

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

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

3 **118 Subclause 25(5) of Schedule 4 (penalty)**

4 Repeal the penalty, substitute:

5 Penalty: 2 years imprisonment.

6 **119 Subclause 29(7) of Schedule 4 (penalty)**

7 Repeal the penalty, substitute:

# EXPOSURE DRAFT

Schedule 1 Amendment of the Corporations Act 2001

Part 1 Amendments

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

5 **120 Subclause 33(1) of Schedule 4 (penalty)**

6 Repeal the penalty, substitute:

7 Penalty: 6 months imprisonment.

8 **121 Paragraph 36(2)(i) of Schedule 4**

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

10 **122 Paragraph 36(2)(j) of Schedule 4**

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



# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

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

### Part 1—Amendments

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

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

Repeal the definition, substitute:

***contravention:***

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

(b) in relation to a civil penalty provision—has a meaning affected by subsection 12GBA(1B).

##### **2 Subsection 12BA(1)**

Insert:

***civil penalty provision*** has the meaning given by subsection 12GBA(1A).

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

Omit “12GXA”, substitute “12GX.

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

Repeal the definition.

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

Repeal the definition.

##### **6 Subsection 12BA(1)**

Insert:

# EXPOSURE DRAFT

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

Part 1 Amendments

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

## 3        **7 Subsection 12BA(1)**

4                    Insert:

5                    *pecuniary penalty order* has the meaning given by  
6                    subsection 12GBA(1).

## 7        **8 Subsection 12BA(1)**

8                    Insert:

9                    *relinquishment order* has the meaning given by  
10                    subsection 12GCA(1).

## 11       **9 Subsection 12BA(1)**

12                    Insert:

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

## 15       **10 Subsection 12GBA(1)**

16                    Repeal the subsection, substitute:

17                    (1) If the Court is satisfied that a person has contravened a civil  
18                    penalty provision, the Court may order the person to pay to the  
19                    Commonwealth such pecuniary penalty for the contravention as the  
20                    Court determines to be appropriate. This is a *pecuniary penalty*  
21                    *order*.

22                    (1A) The following provisions are *civil penalty provisions*:

- 23                    (a) a provision of Subdivision C;  
24                    (b) a provision of Subdivision D (other than section 12DA);  
25                    (c) a provision of Subdivision GC.

26                    (1B) A person who:

- 27                    (a) attempts to contravene a civil penalty provision; or  
28                    (b) is involved in a contravention of a civil penalty provision;  
29                    is taken to have *contravened* that provision.
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# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

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## 11 Subsection 12GBA(3)

Repeal the subsection, substitute:

(3) The pecuniary penalty payable under subsection (1) must not exceed the pecuniary penalty applicable to the contravention of the civil penalty provision.

(3A) The *pecuniary penalty applicable* to the contravention of a civil penalty provision by an individual is the greater of:

(a) 5,000 penalty units; and

(b) the benefit derived or detriment avoided by the individual because of the contravention, multiplied by 3.

(3B) The *pecuniary penalty applicable* to the contravention of a civil penalty provision by a body corporate is the greater of:

(a) 50,000 penalty units; and

(b) the benefit derived or detriment avoided by the body corporate because of the contravention multiplied by 3; and

(c) either:

(i) 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or

(ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 1 million penalty units—1 million penalty units.

### *Meaning of benefit derived or detriment avoided*

(3C) The *benefit derived or detriment avoided* by a person because of a contravention of a civil penalty provision is the sum of:

(a) the total value of all benefits that the person obtained that are reasonably attributable to the contravention; and

(b) the total value of all detriments that the person avoided that are reasonably attributable to the contravention.

### *Contrary intention*

(3D) This section applies in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a

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1 contrary intention under this Act in relation to the penalty  
2 applicable to the contravention.

## 3 **12 Subsection 12GBA(4)**

4 Omit “paragraph (1)(a)”, substitute “subsection (1A)”.

## 5 **13 Subsection 12GBB(1)**

6 Repeal the subsection, substitute:

- 7 (1) The Court must not make an order under section 12GBA against a  
8 person in relation to a contravention of a civil penalty provision (a  
9 *consumer protection breach*) if the person has been convicted of  
10 an offence constituted by conduct that is substantially the same as  
11 the conduct constituting the consumer protection breach.

## 12 **14 After section 12GBC**

13 Insert:

### 14 **12GBCA Continuing contraventions of civil penalty provisions**

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

- 17 (a) within a particular period; or  
18 (b) before a particular time;

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

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

- 24 (a) within a particular period; or  
25 (b) before a particular time;

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

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1 **12GBCB State of mind**

- 2 (1) In proceedings for a pecuniary penalty order against a person for a  
3 contravention of a civil penalty provision, it is not necessary to  
4 prove:
- 5 (a) the person's intention; or  
6 (b) the person's knowledge; or  
7 (c) the person's recklessness; or  
8 (d) the person's negligence; or  
9 (e) any other state of mind of the person.
- 10 (2) Subsection (1) does not apply to the extent that the proceedings  
11 relate to attempting to contravene a civil penalty provision, or  
12 being involved in a contravention of a civil penalty provision.
- 13 (3) Subsection (1) does not affect the operation of section 12GBCC  
14 (which is about mistake of fact).
- 15 (4) Subsection (1) does not apply to the extent that the civil penalty  
16 provision, or a provision that relates to the civil penalty provision,  
17 expressly provides otherwise.

18 **12GBCC Mistake of fact**

- 19 (1) A person is not liable to have a pecuniary penalty order made  
20 against the person for a contravention of a civil penalty provision  
21 if:
- 22 (a) at or before the time of the conduct constituting the  
23 contravention, the person:  
24 (i) considered whether or not facts existed; and  
25 (ii) was under a mistaken but reasonable belief about those  
26 facts; and  
27 (b) had those facts existed, the conduct would not have  
28 constituted a contravention of the civil penalty provision.
- 29 (2) For the purposes of subsection (1), a person may be regarded as  
30 having considered whether or not facts existed if:
- 31 (a) the person had considered, on a previous occasion, whether  
32 those facts existed in the circumstances surrounding that  
33 occasion; and

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1 (b) the person honestly and reasonably believed that the  
2 circumstances surrounding the present occasion were the  
3 same, or substantially the same, as those surrounding the  
4 previous occasion.

5 (3) A person who wishes to rely on subsection (1) or (2) in  
6 proceedings for a pecuniary penalty order bears an evidential  
7 burden in relation to that matter.

## 8 **12GBCD Exceptions etc. to civil penalty provisions—burden of** 9 **proof**

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

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

## 19 **12GBCE Civil penalty provisions contravened by employees, agents** 20 **or officers**

21 If an element of a civil penalty provision is done by an employee,  
22 agent or officer of a body corporate acting:

23 (a) within the actual or apparent scope of the employee's,  
24 agent's, or officer's employment; or

25 (b) within the employee's, agent's, or officer's actual or apparent  
26 authority;

27 the element must also be attributed to the body corporate.

## 28 **15 Subsection 12GBD(1) (penalty)**

29 Repeal the penalty, substitute:

30 Penalty: 300 penalty units.

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## 16 Subsection 12GBD(5)

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

## 17 Section 12GCA

Repeal the section, substitute:

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

#### *Relinquishment order*

- (1) A Court may order a person to pay the Commonwealth an amount equal to the benefit derived or detriment avoided by the person because of a contravention of a civil penalty provision. The order is a *relinquishment order*.
- (2) The Court may make a relinquishment order:
  - (a) on its own initiative, during proceedings before the Court; or
  - (b) on application by ASIC.

#### *Relinquishment order may be made even if penalty for offence imposed or pecuniary penalty order made*

- (3) To avoid doubt, a court may make a relinquishment order in relation to the contravention of a civil penalty provision even if:
  - (a) a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision; or
  - (b) the conduct that constitutes the contravention of the civil penalty provision would also constitute the commission of an offence and a penalty could be, or has been, imposed for the commission of that offence.

#### *Civil enforcement of relinquishment order*

- (4) The amount payable under a relinquishment order is a debt payable to ASIC on behalf of the Commonwealth.
- (5) ASIC or the Commonwealth may enforce a relinquishment order as if it were an order made in civil proceedings against the person

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

3 **12GCB Preference must be given to compensate persons who suffer**  
4 **damage as a result of contravention**

- 5 (1) This section applies if a Court considers that it is appropriate to:
- 6 (a) make a pecuniary penalty order against a person in relation to  
7 the contravention of a civil penalty provision; or
- 8 (b) make a relinquishment order against a person in relation to  
9 the contravention of a civil penalty provision; or
- 10 (c) impose a fine against a person in relation to a commission of  
11 an offence constituted by the same conduct as the conduct  
12 constituting a contravention mentioned in paragraph (a) or  
13 (b).
- 14 (2) In making the pecuniary penalty order or relinquishment order or  
15 imposing the fine, the Court:
- 16 (a) must consider the effect that making the order or imposing  
17 the fine would have on the amount available to pay  
18 compensation to persons who might reasonably be expected  
19 to be entitled to recover compensation for loss or damage  
20 suffered as a result of the contravention; and
- 21 (b) give preference to making an appropriate amount available  
22 for compensation.
- 23 (3) If the Court gives preference to making an appropriate amount  
24 available for compensation under paragraph (2)(b), the Court may  
25 also make such orders as the Court thinks fit for the purpose of  
26 ensuring that the amount remains available for the payment of  
27 compensation.

28 **18 Subsection 12GI(5)**

29 Repeal the subsection, substitute:

- 30 (5) If, in proceedings under section 12GBA against a person other than  
31 a body corporate, it appears to the Court that the person has, or  
32 may have, engaged in conduct in contravention of a civil penalty  
33 provision but that the person acted honestly and reasonably and,  
34 having regard to all the circumstances of the case, ought fairly to
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1 be excused, the Court may relieve the person either wholly or  
2 partly from liability to pay a pecuniary penalty under that section.

## 3 **19 Subsection 12GN(5)**

4 Repeal the subsection, substitute:

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

8 Penalty: 200 penalty units.

## 9 **20 Subdivision GB of Division 2 of Part 2**

10 Repeal the Subdivision, substitute:

### 11 **Subdivision GB—Infringement notices**

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

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

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

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

21 (4) ASIC may give a person a single infringement notice relating to  
22 multiple contraventions of a single provision if:

23 (a) the provision requires the person to do a thing within a  
24 particular period or before a particular time; and

25 (b) the person fails or refuses to do that thing within that period  
26 or before that time; and

27 (c) the failure or refusal occurs on more than 1 day; and

28 (d) each contravention is constituted by the failure or refusal on  
29 one of those days.

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

## 5 **12GXA Provision subject to an infringement notice**

6 The following provisions are *subject to an infringement notice*  
7 under this Subdivision:

- 8 (a) a provision of Subdivision C;  
9 (b) a provision of Subdivision D, other than section 12DA or  
10 12DE, subsection 12DG(1) or section 12DI or 12DM;  
11 (c) a provision of Subdivision GC.

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

- 13 (1) An infringement notice must:  
14 (a) be identified by a unique number; and  
15 (b) state the day on which it is given; and  
16 (c) state the name of the person to whom the notice is given; and  
17 (d) state the name and contact details of the person who gave the  
18 notice; and  
19 (e) give brief details of the alleged contravention, or each alleged  
20 contravention, to which the notice relates, including:  
21 (i) the provision that was allegedly contravened; and  
22 (ii) the maximum penalty that a court could impose for each  
23 contravention, if the provision were contravened; and  
24 (iii) the time (if known) and day of, and the place of, each  
25 alleged contravention; and  
26 (f) state the amount that is payable under the notice; and  
27 (g) give an explanation of how payment of the amount is to be  
28 made; and  
29 (h) state that the payment period for the notice will be 28 days,  
30 beginning on the day on which the notice is given, unless the  
31 period is extended, an arrangement is made for payment by  
32 instalments or the notice is withdrawn; and

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- 1 (i) state that, if the person to whom the notice is given pays the  
2 amount within the payment period, then (unless the notice is  
3 withdrawn):
- 4 (i) if the provision is an offence provision and does not also  
5 constitute a civil penalty provision—the person will not  
6 be liable to be prosecuted in a court for the alleged  
7 contravention; or
- 8 (ii) if the provision is an offence provision that can also  
9 constitute a civil penalty provision—the person is not  
10 liable to be prosecuted in a court, and proceedings  
11 seeking a pecuniary penalty order will not be brought, in  
12 relation to the alleged contravention; or
- 13 (iii) if the provision is a civil penalty provision—  
14 proceedings seeking a pecuniary penalty order will not  
15 be brought in relation to the alleged contravention; and
- 16 (j) state that payment of the amount is not an admission of guilt  
17 or liability; and
- 18 (k) state that the person may apply to ASIC to have the period in  
19 which to pay the amount extended or for an arrangement to  
20 pay the amount by instalments; and
- 21 (l) state that the person may choose not to pay the amount and, if  
22 the person does so:
- 23 (i) if the provision is an offence provision and does not also  
24 constitute a civil penalty provision—the person may be  
25 prosecuted in a court for the alleged contravention; or
- 26 (ii) if the provision is an offence provision and can also  
27 constitute a civil penalty provision—the person may be  
28 prosecuted in a court, or proceedings seeking a  
29 pecuniary penalty order may be brought, in relation to  
30 the alleged contravention; or
- 31 (iii) if the provision is a civil penalty provision—  
32 proceedings seeking a pecuniary penalty order may be  
33 brought in relation to the alleged contravention; and
- 34 (m) set out how the notice can be withdrawn; and
- 35 (n) state that if the notice is withdrawn:
- 36 (i) if the provision is an offence provision and does not also  
37 constitute a civil penalty provision—the person may be  
38 prosecuted in a court for the alleged contravention; or
-

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- 1 (ii) if the provision is an offence provision and can also  
2 constitute a civil penalty provision—the person may be  
3 prosecuted in a court, or proceedings seeking a  
4 pecuniary penalty order may be brought, in relation to  
5 the alleged contravention; or  
6 (iii) if the provision is a civil penalty provision—  
7 proceedings seeking a pecuniary penalty order may be  
8 brought in relation to the alleged contravention; and  
9 (o) state that the person may make written representations to  
10 ASIC seeking the withdrawal of the notice.
- 11 (2) The amount to be stated in the notice for the purposes of  
12 paragraph (1)(f) must be equal to the number of penalty units  
13 worked out using the following table:  
14

<b>Number of penalty units</b>		
<b>Item</b>	<b>If the infringement notice is for an alleged contravention of ...</b>	<b>the number of penalty units is ...</b>
1	a provision of Subdivision C or D (other than section 12DA or 12DE, subsection 12DG(1) or section 12DI or 12DM)	(a) if the person is a body corporate—60; or (b) if the person is not a body corporate—12.
2	section 12GYB	(a) if the person is a body corporate—30; or (b) if the person is not a body corporate—6.
3	section 12GYC	(a) if the person is a body corporate—50; or (b) if the person is not a body corporate—10.

## 15 **12GXC Payment period**

16 *Usual payment period*

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

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1 *Payment period extended under section 12GXD*

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

4 (3) If, under section 12GXD, ASIC refuses to extend the payment  
5 period for the notice, the *payment period* ends on the later of the  
6 following days:

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

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

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

13 *Instalments*

14 (4) If, under section 12GXE, ASIC makes an arrangement for the  
15 amount payable under the notice to be paid by instalments, the  
16 *payment period* ends on the earlier of the following days:

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

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

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

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

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

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

31 *Payment period if ASIC refuses to withdraw infringement notice*

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

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- 1 (a) the last day of the period that, without the withdrawal, would  
2 be the payment period for the notice;
- 3 (b) the day that is 7 days after the day the person was given  
4 notice of ASIC's decision not to withdraw the notice;
- 5 (c) the day that is 7 days after the day on which, under  
6 subsection 12GXF(5), ASIC is taken to have refused to  
7 withdraw the infringement notice.

## 8 **12GXD Extension of time to pay amount**

- 9 (1) A person to whom an infringement notice has been given may,  
10 during the payment period for the notice, apply to ASIC for an  
11 extension of the payment period for the notice.
- 12 (2) ASIC may, in writing, extend the payment period for an  
13 infringement notice:
- 14 (a) if a person makes an application in accordance with  
15 subsection (1); or
- 16 (b) on ASIC's own initiative.  
17 ASIC may do so before or after the end of the payment period.
- 18 (3) ASIC must do each of the following within 14 days after an  
19 application in accordance with subsection (1) is made:
- 20 (a) grant or refuse to grant an extension of the payment period  
21 for the infringement notice;
- 22 (b) give the applicant notice in writing of ASIC's decision.
- 23 (4) If ASIC does not comply with subsection (3):
- 24 (a) ASIC is taken to have refused to grant an extension of the  
25 payment period for the infringement notice; and
- 26 (b) the refusal is taken to have occurred on the last day of the 14  
27 day period.
- 28 (5) ASIC may extend the payment period more than once under  
29 subsection (2).

## 30 **12GXE Payment by instalments**

- 31 (1) A person to whom an infringement notice has been given may,  
32 within 28 days after the infringement notice is given, apply to
-

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- 1 ASIC to make an arrangement to pay the amount payable under the  
2 infringement notice by instalments.
- 3 (2) ASIC may, in writing, make an arrangement for a person to pay the  
4 amount payable under an infringement notice by instalments:
- 5 (a) if a person makes an application in accordance with  
6 subsection (1); or  
7 (b) on ASIC's own initiative.
- 8 ASIC may do so before or after the end of the payment period.
- 9 (3) ASIC must do each of the following within 14 days after an  
10 application in accordance with subsection (1) is made:
- 11 (a) decide to make, or refuse to make, an arrangement for the  
12 applicant to pay the amount payable under the infringement  
13 notice by instalments;
- 14 (b) give the applicant notice in writing of ASIC's decision;
- 15 (c) if ASIC decides to make the arrangement, specify in the  
16 notice:
- 17 (i) the day by which each instalment is to be paid; and  
18 (ii) the amount of each instalment.
- 19 (4) If ASIC does not comply with subsection (3):
- 20 (a) ASIC is taken to have refused to make an arrangement for the  
21 applicant to pay the amount payable under the infringement  
22 notice by instalments; and  
23 (b) the refusal is taken to have occurred on the last day of the 14  
24 day period.
- 25 (5) ASIC may vary an arrangement for a person to pay the amount  
26 payable under an infringement notice by instalments.
- 27 (6) If:
- 28 (a) a person does not pay all of the instalments in accordance  
29 with an arrangement made under this section; and  
30 (b) the person is prosecuted, or proceedings seeking a pecuniary  
31 penalty order are brought, for the alleged contravention;
- 32 ASIC must refund to the person the amount of any instalments  
33 paid.

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1 **12GXF Withdrawal of an infringement notice**

2 *Representations seeking withdrawal of notice*

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

6 *Withdrawal of notice*

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

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

12 (3) ASIC must, within 14 days after a representation is made in  
13 accordance with subsection (1):  
14 (a) decide to withdraw, or refuse to withdraw, the infringement  
15 notice; and  
16 (b) if ASIC decides to withdraw the notice—give the applicant a  
17 withdrawal notice in accordance with subsection (6); and  
18 (c) if ASIC decides to refuse to withdraw the notice—give the  
19 applicant notice of that fact.

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

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

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- 1 (a) ASIC is taken to have refused to withdraw the infringement  
2 notice; and  
3 (b) the refusal is taken to have occurred on the last day of the 14  
4 day period.

5 *Notice of withdrawal*

- 6 (6) The withdrawal notice must state:  
7 (a) the person's name and address; and  
8 (b) the day the infringement notice was given; and  
9 (c) the identifying number of the infringement notice; and  
10 (d) that the infringement notice is withdrawn; and  
11 (e) that:  
12 (i) if the provision is an offence provision and does not also  
13 constitute a civil penalty provision—the person may be  
14 prosecuted in a court for the alleged contravention; or  
15 (ii) if the provision is an offence provision and can also  
16 constitute a civil penalty provision—the person may be  
17 prosecuted in a court, or proceedings seeking a  
18 pecuniary penalty order may be brought, in relation to  
19 the alleged contravention; or  
20 (iii) if the provision is a civil penalty provision—  
21 proceedings seeking a pecuniary penalty order may be  
22 brought in relation to the alleged contravention.

23 *Refund of amount if infringement notice withdrawn*

- 24 (7) If:  
25 (a) ASIC withdraws the infringement notice; and  
26 (b) the person has already paid the amount stated in the notice;  
27 ASIC must refund to the person an amount equal to the amount  
28 paid.

29 **12GXG Effect of payment of amount**

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

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- 1 (a) any liability of the person for the alleged contravention is  
2 discharged; and
- 3 (b) if the provision is an offence provision and does not also  
4 constitute a civil penalty provision—the person may not be  
5 prosecuted in a court for the alleged contravention; and
- 6 (c) if the provision is an offence provision and can also  
7 constitute a civil penalty provision—the person may not be  
8 prosecuted in a court, and proceedings seeking a pecuniary  
9 penalty order may not be brought, in relation to the alleged  
10 contravention; and
- 11 (d) if the provision is a civil penalty provision—proceedings  
12 seeking a pecuniary penalty order may not be brought in  
13 relation to the alleged contravention; and
- 14 (e) the person is not regarded as having admitted guilt or liability  
15 for the alleged contravention; and
- 16 (f) if the provision is an offence provision—the person is not  
17 regarded as having been convicted of the alleged offence.
- 18 (2) Subsection (1) does not apply if the notice has been withdrawn.

## 12GXH Effect of this Subdivision

- 19 **12GXH Effect of this Subdivision**
- 20 This Subdivision does not:
- 21 (a) require an infringement notice to be given to a person for an  
22 alleged contravention of a provision subject to an  
23 infringement notice under this Subdivision; or
- 24 (b) affect the liability of a person for an alleged contravention of  
25 a provision subject to an infringement notice under this  
26 Subdivision if:
- 27 (i) the person does not comply with an infringement notice  
28 given to the person for the contravention; or
- 29 (ii) an infringement notice is not given to the person for the  
30 contravention; or
- 31 (iii) an infringement notice is given to the person for the  
32 contravention and is subsequently withdrawn; or
- 33 (c) prevent the giving of 2 or more infringement notices to a  
34 person for an alleged contravention of a provision subject to  
35 an infringement notice under this Subdivision; or
-

# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

Schedule 2

Amendments Part 1

---

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

5 **21 Subsection 22(2) (penalty)**

6 Repeal the penalty, substitute:

7 Penalty: 30 penalty units.

8 **22 Subsection 25(2) (penalty)**

9 Repeal the penalty, substitute:

10 Penalty: 30 penalty units.

11 **23 Subsection 26(1) (penalty)**

12 Repeal the penalty, substitute:

13 Penalty: 30 penalty units.

14 **24 Subsection 39A(2) (penalty)**

15 Repeal the penalty, substitute:

16 Penalty: 3 months imprisonment.

17 **25 Subsection 39C(8) (penalty)**

18 Repeal the penalty, substitute:

19 Penalty: 3 months imprisonment.

20 **26 Subsection 47(2) (penalty)**

21 Repeal the penalty, substitute:

22 Penalty: 30 penalty units.

23 **27 Subsection 56(3) (penalty)**

24 Repeal the penalty, substitute:

25 Penalty: 30 penalty units.

# EXPOSURE DRAFT

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

**Part 1** Amendments

---

1 **28 Subsection 63(1) (penalty)**  
2 Repeal the penalty, substitute:  
3 Penalty: 2 years imprisonment.

4 **29 Subsection 63(2) (penalty)**  
5 Repeal the penalty, substitute:  
6 Penalty: 120 penalty units.

7 **30 Subsection 63(3) (penalty)**  
8 Repeal the penalty, substitute:  
9 Penalty: 3 months imprisonment.

10 **31 Subsection 63(4) (penalty)**  
11 Repeal the penalty, substitute:  
12 Penalty: 20 penalty units.

13 **32 Subsection 64(1) (penalty)**  
14 Repeal the penalty, substitute:  
15 Penalty: 5 years imprisonment.

16 **33 Subsection 64(2) (penalty)**  
17 Repeal the penalty, substitute:  
18 Penalty: 2 years imprisonment.

19 **34 Subsection 65(1) (penalty)**  
20 Repeal the penalty, substitute:  
21 Penalty: 2 years imprisonment.

22 **35 Subsection 65(2) (penalty)**  
23 Repeal the penalty, substitute:  
24 Penalty: 1 year imprisonment.

# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

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1 **36 Subsection 66(1) (penalty)**  
2 Repeal the penalty, substitute:  
3 Penalty: 2 years imprisonment.

4 **37 Subsection 66(2) (penalty)**  
5 Repeal the penalty, substitute:  
6 Penalty: 120 penalty units.

7 **38 Subsection 67(1) (penalty)**  
8 Repeal the penalty, substitute:  
9 Penalty: 5 years imprisonment.

10 **39 Subsection 69(3) (penalty)**  
11 Repeal the penalty, substitute:  
12 Penalty: 3 months imprisonment.

13 **40 Subsection 75(5) (penalty)**  
14 Repeal the penalty, substitute:  
15 Penalty: 60 penalty units.

16 **41 Subsection 91(3) (penalty)**  
17 Repeal the penalty, substitute:  
18 Penalty: 120 penalty units.

19 **42 After Part 3A**  
20 Insert:

# EXPOSURE DRAFT

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

Part 1 Amendments

---

## Part 3B—Criminal penalties

### 93C Penalty for committing an offence

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

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

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

- (a) for an offence for which a fine is stated—the fine stated; and
- (b) for an offence for which a term of imprisonment is stated—either the term of imprisonment, the fine worked out under this section, or both.

(2) If:

- (a) a term of imprisonment is stated as the penalty for an offence; and
- (b) the term of imprisonment is less than 10 years; the fine mentioned in paragraph (1)(b) is worked out using the individual fine formula.

(3) The *individual fine formula* is:

Term of imprisonment,  
expressed in months  $\times 10$

(4) If:

- (a) a term of imprisonment is stated as the penalty for an offence; and
- (b) the term of imprisonment is 10 years or more; the fine mentioned in paragraph (1)(b) is the greater of:
  - (c) 4,500 penalty units; and
  - (d) an amount equal to the benefit derived or detriment avoided by the individual because of the offence, multiplied by 3.

(5) The *benefit derived or detriment avoided* by an individual because of an offence is the sum of:

# EXPOSURE DRAFT

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- 
- 1 (a) the total value of all benefits that the individual obtained that  
2 are reasonably attributable to the commission of the offence;  
3 and  
4 (b) the total value of all detriments that the individual avoided  
5 that are reasonably attributable to the commission of the  
6 offence.
- 7 (6) This section applies in relation to an offence committed by an  
8 individual unless there is a contrary intention under this Act in  
9 relation to the penalty applicable to the offence.

## 10 93E Penalty applicable to an offence committed by a body corporate

- 11 (1) The *penalty applicable* to an offence committed by a body  
12 corporate is:  
13 (a) for an offence for which a fine is stated—the fine stated  
14 multiplied by 10; and  
15 (b) for an offence for which a term of imprisonment is stated—  
16 the fine worked out under this section.
- 17 (2) If:  
18 (a) a term of imprisonment is stated as the penalty for an  
19 offence; and  
20 (b) the term of imprisonment is less than 10 years;  
21 the fine mentioned in paragraph (1)(b) is worked out by  
22 multiplying the number of penalty units worked out using the  
23 individual fine formula by 10.
- 24 (3) If:  
25 (a) a term of imprisonment is stated as the penalty for an  
26 offence; and  
27 (b) the term of imprisonment is 10 years or more;  
28 the fine mentioned in paragraph (1)(b) is the greater of:  
29 (c) 45,000 penalty units; and  
30 (d) the benefit derived or detriment avoided by the body  
31 corporate because of the offence, multiplied by 3; and  
32 (e) 10% of the annual turnover of the body corporate for the 12  
33 month period ending at the end of the month in which the  
34 body corporate committed, or began committing, the offence.

# EXPOSURE DRAFT

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

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- 1 (4) The *benefit derived or detriment avoided* by a body corporate  
2 because of an offence is the sum of:  
3 (a) the total value of all benefits that the body corporate obtained  
4 that are reasonably attributable to the commission of the  
5 offence; and  
6 (b) the total value of all detriments that the body corporate  
7 avoided that are reasonably attributable to the commission of  
8 the offence.
- 9 (5) This section applies in relation to an offence committed by a body  
10 corporate unless there is a contrary intention under this Act in  
11 relation to the penalty applicable to the offence.

## 12 **93F Where is the penalty for an offence stated?**

13 The penalty *stated* for an offence is the penalty specified for the  
14 provision under which the offence is created, or a provision or  
15 provisions in which that provision is included.

## 16 **93G If no penalty is stated**

- 17 If no penalty is stated for an offence:  
18 (a) the offence is an offence of strict liability; and  
19 (b) the penalty is 20 penalty units.

## 20 **43 Subsection 125(3) (penalty)**

21 Repeal the penalty, substitute:

22 Penalty: 1 year imprisonment.

## 23 **44 Subsections 127(4E), (4EA), (4EB) and (4F) (penalty)**

24 Repeal the penalty, substitute:

25 Penalty: 2 years imprisonment.

## 26 **45 Subsection 198(1) (penalty)**

27 Repeal the penalty, substitute:

28 Penalty: 30 penalty units.

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# EXPOSURE DRAFT

Amendment of the Australian Securities and Investments Commission Act 2001

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1 **46 Subsection 199(1) (penalty)**

2 Repeal the penalty, substitute:

3 Penalty: 3 months imprisonment.

4 **47 Subsection 200(1) (penalty)**

5 Repeal the penalty, substitute:

6 Penalty: 1 year imprisonment.

7 **48 Subsection 200(2) (penalty)**

8 Repeal the penalty, substitute:

9 Penalty: 120 penalty units.

10 **49 Subsection 216(7) (penalty)**

11 Repeal the penalty, substitute:

12 Penalty: 30 penalty units.

13 **50 Subsection 219(4) (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: 3 months imprisonment.

16 **51 Subsection 220(1) (penalty)**

17 Repeal the penalty, substitute:

18 Penalty: 3 months imprisonment.

19 **52 Subsection 220(2) (penalty)**

20 Repeal the penalty, substitute:

21 Penalty: 30 penalty units.

22 **53 Subsection 225A(9) (penalty)**

23 Repeal the penalty, substitute:

24 Penalty: 20 penalty units.

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# EXPOSURE DRAFT

Schedule 3 Amendment of the National Consumer Credit Protection Act 2009

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

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

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

#### *National Consumer Credit Protection Act 2009*

##### 1 Subsection 5(1)

Insert:

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

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

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

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

Repeal the definition, substitute:

*contravention*:

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

# EXPOSURE DRAFT

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

### 3 **3 Subsection 5(1)**

4 Insert:

5 *individual fine formula* is the formula in subsection 288C(3).

6 *infringement notice* means a notice given under section 288K.

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

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

10 *relinquishment order* means an order made under  
11 subsection 180B(1).

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

### 15 **4 At the end of section 47**

16 Add:

17 *Civil penalty for non-compliance*

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

20 Civil penalty: 5,000 penalty units.

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

### 24 **5 Subsection 167(2)**

25 Omit “(but not more than the amount specified in subsection (3))”,  
26 substitute “(but not more than the amount specified in section 167A)”.

### 27 **6 Subsection 167(3)**

28 Repeal the subsection.

# EXPOSURE DRAFT

Schedule 3 Amendment of the National Consumer Credit Protection Act 2009

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

---

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

Add:

### 167A Determining amount of pecuniary penalty

#### *Maximum pecuniary penalty*

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

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

- (2) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
- (a) the penalty stated for the civil penalty provision; and
  - (b) the benefit derived or detriment avoided by the individual because of the contravention, multiplied by 3.

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

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

- (3) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greater of:
- (a) the penalty stated for the civil penalty provision, multiplied by 10; and
  - (b) the benefit derived or detriment avoided by the body corporate because of the contravention, multiplied by 3; and
  - (c) either:
    - (i) 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 1 million penalty units—1 million penalty units.

# EXPOSURE DRAFT

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## *Meaning of benefit derived or detriment avoided*

- (4) The *benefit derived or detriment avoided* by a person because of a contravention of a civil penalty provision is the sum of:
- (a) the total value of all benefits that the person obtained that are reasonably attributable to the contravention; and
  - (b) the total value of all detriments that the person avoided that are reasonably attributable to the contravention.

## *Contrary intention*

- (5) This section applies in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the pecuniary penalty applicable to the offence.

## **8 Section 169**

Repeal the section, substitute:

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

A person who:

- (a) attempts to contravene a civil penalty provision; or
  - (b) is involved in a contravention of a civil penalty provision;
- is taken to have *contravened* that provision.

## **9 At the end of Division 3 of Part 4-1**

Add:

### **175A Continuing contraventions of civil penalty provisions**

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

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- 1 (2) A person who contravenes a civil penalty provision that requires an  
2 act or thing to be done:  
3 (a) within a particular period; or  
4 (b) before a particular time;  
5 commits a separate contravention of that provision in respect of  
6 each day during which the contravention occurs (including the day  
7 the relevant pecuniary penalty order is made or any later day).

## 8 **175B State of mind**

- 9 (1) In proceedings for a pecuniary penalty order against a person for a  
10 contravention of a civil penalty provision, it is not necessary to  
11 prove:  
12 (a) the person's intention; or  
13 (b) the person's knowledge; or  
14 (c) the person's recklessness; or  
15 (d) the person's negligence; or  
16 (e) any other state of mind of the person.
- 17 (2) Subsection (1) does not apply to the extent that the proceedings  
18 relate to attempting to contravene a civil penalty provision, or  
19 being involved in a contravention of a civil penalty provision.
- 20 (3) Subsection (1) does not affect the operation of section 175C (which  
21 is about mistake of fact).
- 22 (4) Subsection (1) does not apply to the extent that the civil penalty  
23 provision, or a provision that relates to the civil penalty provision,  
24 expressly provides otherwise.

## 25 **175C Mistake of fact**

- 26 (1) A person is not liable to have a pecuniary penalty order made  
27 against the person for a contravention of a civil penalty provision  
28 if:  
29 (a) at or before the time of the conduct constituting the  
30 contravention, the person:  
31 (i) considered whether or not facts existed; and  
32 (ii) was under a mistaken but reasonable belief about those  
33 facts; and
-

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---

- 1 (b) had those facts existed, the conduct would not have  
2 constituted a contravention of the civil penalty provision.
- 3 (2) For the purposes of subsection (1), a person may be regarded as  
4 having considered whether or not facts existed if:
- 5 (a) the person had considered, on a previous occasion, whether  
6 those facts existed in the circumstances surrounding that  
7 occasion; and
- 8 (b) the person honestly and reasonably believed that the  
9 circumstances surrounding the present occasion were the  
10 same, or substantially the same, as those surrounding the  
11 previous occasion.
- 12 (3) A person who wishes to rely on subsection (1) or (2) in  
13 proceedings for a pecuniary penalty order bears an evidential  
14 burden in relation to that matter.

## 15 **175D Exceptions etc. to civil penalty provisions—burden of proof**

- 16 (1) If, in proceedings for a pecuniary penalty order against a person for  
17 a contravention of a civil penalty provision, the person wishes to  
18 rely on any exception, exemption, excuse, qualification or  
19 justification provided by the law creating the civil penalty  
20 provision, then the person bears an evidential burden in relation to  
21 that matter.
- 22 (2) In subsection (1), *evidential burden*, in relation to a matter, means  
23 the burden of adducing or pointing to evidence that suggests a  
24 reasonable possibility that the matter exists or does not exist.

## 25 **175E Civil penalty provisions contravened by employees, agents or** 26 **officers**

- 27 If an element of a civil penalty provision is done by an employee,  
28 agent or officer of a body corporate acting:
- 29 (a) within the actual or apparent scope of the employee's,  
30 agent's, or officer's employment; or
- 31 (b) within the employee's, agent's, or officer's actual or apparent  
32 authority;
- 33 the element must also be attributed to the body corporate.

# EXPOSURE DRAFT

Schedule 3 Amendment of the National Consumer Credit Protection Act 2009

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

---

1 **10 After section 180A**

2 Insert:

3 **180B Relinquishing the benefit derived from contravening a civil**  
4 **penalty provision**

5 *Relinquishment order*

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

11 (2) The court may make a relinquishment order:

- 12 (a) on its own initiative during proceedings before the court; or  
13 (b) on application by ASIC.

14 *Relinquishment order may be made even if penalty for offence*  
15 *imposed or pecuniary penalty order made*

16 (3) To avoid doubt, the court may make a relinquishment order in  
17 relation to the contravention of a civil penalty provision even if:

- 18 (a) a pecuniary penalty order could be, or has been, made in  
19 relation to the contravention of the civil penalty provision; or  
20 (b) the conduct that constitutes the contravention of the civil  
21 penalty provision would also constitute the commission of an  
22 offence and a penalty could be, or has been, imposed for the  
23 commission of that offence.

24 *Civil enforcement of relinquishment order*

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

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



# EXPOSURE DRAFT

Amendment of the National Consumer Credit Protection Act 2009 **Schedule 3**  
Amendments of the infrastructure provisions for civil penalties, offences and  
infringement notices **Part 1**

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1 **11 Section 181**

2 Repeal the section, substitute:

3 **181 Preference must be given to compensate consumers**

4 (1) This section applies if the court considers that it is appropriate to:

5 (a) make a pecuniary penalty order against a person in relation to  
6 a contravention of a civil penalty provision; or

7 (b) make a relinquishment order against a person in relation to a  
8 contravention of a civil penalty provision; or

9 (c) impose a fine against a person in relation to a commission of  
10 an offence constituted by the same conduct as the conduct  
11 constituting the contravention of the pecuniary penalty order.

12 (2) In making the pecuniary penalty order or relinquishment order or  
13 imposing the fine, the court:

14 (a) must consider the effect that making the order or imposing  
15 the fine would have on the amount available to pay  
16 compensation to which persons might reasonably be expected  
17 to be entitled under section 178, 179 or 180; and

18 (b) give preference to making an appropriate amount available  
19 for compensation under those sections.

20 (3) If the court gives preference to making an appropriate amount  
21 available for compensation under paragraph (2)(b), the court may  
22 also make such orders as the court thinks fit for the purpose of  
23 ensuring that the amount remains available for the payment of  
24 compensation under section 178, 179 or 180.

25 **12 Subsection 207(2) (penalty)**

26 Repeal the penalty, substitute:

27 Criminal penalty: 20 penalty units.

28 **13 After Part 6-5**

29 Insert:

# EXPOSURE DRAFT

Schedule 3 Amendment of the National Consumer Credit Protection Act 2009

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

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1 **Part 6-5A—Penalties for offences**

2 **Division 1—Introduction**

3 **288A Guide to this Part**

4 This Part is about the penalties applicable to offences against this  
5 Act.

6 Division 2 includes rules about the penalties applicable to offences  
7 committed by individuals or bodies corporate. These penalties are  
8 worked out in relation to the penalty stated for the offence.

9 **Division 2—Penalty for committing an offence**

10 **288B Penalty for committing an offence**

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

14 **288C Penalty applicable to an offence committed by an individual**

- 15 (1) The *penalty applicable* to an offence committed by an individual  
16 is:
- 17 (a) for an offence for which a fine is stated—the fine stated; and  
18 (b) for an offence for which a term of imprisonment is stated—  
19 either the term of imprisonment, the fine worked out under  
20 this section, or both.
- 21 (2) If:
- 22 (a) a term of imprisonment is stated as the penalty for an  
23 offence; and  
24 (b) the term of imprisonment is less than 10 years;  
25 the fine mentioned in paragraph (1)(b) is the number of penalty  
26 units worked out using the individual fine formula.
- 27 (3) The *individual fine formula* is:
-

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- 1 Term of imprisonment,  $\times 10$   
expressed in months
- 2 (4) If:
- 3 (a) a term of imprisonment is stated as the penalty for an  
4 offence; and
- 5 (b) the term of imprisonment is 10 years or more;
- 6 the fine mentioned in paragraph (1)(b) is the greater of:
- 7 (c) 4,500 penalty units; and
- 8 (d) an amount equal to the benefit derived or detriment avoided  
9 by the individual because of the offence, multiplied by 3.
- 10 (5) In this section, the *benefit derived or detriment avoided* by an  
11 individual because of an offence is the sum of:
- 12 (a) the total value of all benefits that the individual obtained that  
13 are reasonably attributable to the commission of the offence;  
14 and
- 15 (b) the total value of all detriments that the individual avoided  
16 that are reasonably attributable to the commission of the  
17 offence.
- 18 Note: See section 14 in relation to contraventions by partners in a  
19 partnership and section 15 in relation to contraventions by multiple  
20 trustees.
- 21 (6) This section applies in relation to an offence committed by an  
22 individual unless there is a contrary intention under this Act in  
23 relation to the penalty applicable to the offence.

## 24 **288D Penalty applicable to an offence committed by a body** 25 **corporate**

- 26 (1) The *penalty applicable* to an offence committed by a body  
27 corporate is:
- 28 (a) for an offence for which a fine is stated—the fine stated,  
29 multiplied by 10; and
- 30 (b) for an offence for which a term of imprisonment is stated—  
31 the fine worked out under this section.
- 32 (2) If:

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- 1 (a) a term of imprisonment is stated as the penalty for an  
2 offence; and  
3 (b) the term of imprisonment is less than 10 years;  
4 the fine mentioned in paragraph (1)(b) is worked out by  
5 multiplying the number of penalty units worked out using the  
6 individual fine formula by 10.
- 7 (3) If:  
8 (a) a term of imprisonment is stated as the penalty for an  
9 offence; and  
10 (b) the term of imprisonment is 10 years or more;  
11 the fine mentioned in paragraph (1)(b) is the greater of:  
12 (c) 45,000 penalty units; and  
13 (d) the benefit derived or detriment avoided by the body  
14 corporate because of the offence, multiplied by 3; and  
15 (e) 10% of the annual turnover of the body corporate for the 12  
16 month period ending at the end of the month in which the  
17 body corporate committed, or began committing, the offence.
- 18 (4) The *benefit derived or detriment avoided* by a body corporate  
19 because of an offence is the sum of:  
20 (a) the total value of all benefits that the body corporate obtained  
21 that are reasonably attributable to the commission of the  
22 offence; and  
23 (b) the total value of all detriments that the body corporate  
24 avoided that are reasonably attributable to the commission of  
25 the offence.
- 26 (5) This section applies in relation to an offence committed by a body  
27 corporate unless there is a contrary intention under this Act in  
28 relation to the penalty applicable to the offence.

## 288E Where is the penalty for an offence stated?

30 The penalty *stated* for an offence is the penalty, pecuniary or  
31 otherwise, specified in any provision of this Act for the offence.

## 288F If no penalty is stated

32 If no penalty is stated for an offence:  
33

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# EXPOSURE DRAFT

Amendment of the National Consumer Credit Protection Act 2009 **Schedule 3**  
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- 1 (a) the offence is an offence of strict liability; and  
2 (b) the penalty is 20 penalty units.

## 3 **Part 6-5B—Infringement notices**

### 4 **Division 1—Introduction**

#### 5 **288J Guide to this Part**

6 This Part is about the use of infringement notices where ASIC  
7 reasonably believes that a provision has been contravened.

8 Division 2 authorises ASIC to give an infringement notice in  
9 relation to a contravention of certain provisions. A person who is  
10 given an infringement notice can choose to pay an amount as an  
11 alternative to having court proceedings brought against the person  
12 for the contravention. If the person does not choose to pay the  
13 amount, proceedings can be brought against the person for the  
14 contravention.

### 15 **Division 2—Infringement notices**

#### 16 **288K When an infringement notice may be given**

- 17 (1) If ASIC believes on reasonable grounds that a person has  
18 contravened a provision subject to an infringement notice under  
19 this Part, ASIC may give the person an infringement notice for the  
20 alleged contravention.
- 21 (2) The infringement notice must be given within 12 months after the  
22 day on which the contravention is alleged to have taken place.
- 23 (3) A single infringement notice must relate only to a single  
24 contravention of a single provision unless subsection (4) applies.
- 25 (4) ASIC may give a person a single infringement notice relating to  
26 multiple contraventions of a single provision if:  
27 (a) the provision requires the person to do a thing within a  
28 particular period or before a particular time; and

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- 1 (b) the person fails or refuses to do that thing within that period  
2 or before that time; and  
3 (c) the failure or refusal occurs on more than 1 day; and  
4 (d) each contravention is constituted by the failure or refusal on  
5 one of those days.
- 6 (5) If an alleged contravention would, if proved, constitute both a  
7 contravention of a civil penalty provision and of an offence  
8 provision, the infringement notice must relate to the alleged  
9 contravention of the offence provision.

## 10 **288L Provision subject to an infringement notice**

11 The following provisions are *subject to an infringement notice*  
12 under this Part:

- 13 (a) strict liability offences against this Act;  
14 (b) prescribed civil penalty provisions.

## 15 **288M Matters to be included in an infringement notice**

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

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- 1 period is extended, an arrangement is made for payment by  
2 instalments or the notice is withdrawn; and
- 3 (i) state that, if the person to whom the notice is given pays the  
4 amount within the payment period, then (unless the notice is  
5 withdrawn):
- 6 (i) if the provision is an offence provision and does not also  
7 constitute a civil penalty provision—the person will not  
8 be liable to be prosecuted in a court for the alleged  
9 contravention; or
- 10 (ii) if the provision is an offence provision that can also  
11 constitute a civil penalty provision—the person is not  
12 liable to be prosecuted in a court, and proceedings  
13 seeking a pecuniary penalty order will not be brought, in  
14 relation to the alleged contravention; or
- 15 (iii) if the provision is a civil penalty provision—  
16 proceedings seeking a pecuniary penalty order will not  
17 be brought in relation to the alleged contravention; and
- 18 (j) state that payment of the amount is not an admission of guilt  
19 or liability; and
- 20 (k) state that the person may apply to ASIC to have the period in  
21 which to pay the amount extended or for an arrangement to  
22 pay the amount by instalments; and
- 23 (l) state that the person may choose not to pay the amount and, if  
24 the person does so:
- 25 (i) if the provision is an offence provision and does not also  
26 constitute a civil penalty provision—the person may be  
27 prosecuted in a court for the alleged contravention; or
- 28 (ii) if the provision is an offence provision and can also  
29 constitute a civil penalty provision—the person may be  
30 prosecuted in a court, or proceedings seeking a  
31 pecuniary penalty order may be brought, in relation to  
32 the alleged contravention; or
- 33 (iii) if the provision is a civil penalty provision—  
34 proceedings seeking a pecuniary penalty order may be  
35 brought in relation to the alleged contravention; and
- 36 (m) set out how the notice can be withdrawn; and
- 37 (n) state that if the notice is withdrawn:
-

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- 1 (i) if the provision is an offence provision and does not also  
2 constitute a civil penalty provision—the person may be  
3 prosecuted in a court for the alleged contravention; or  
4 (ii) if the provision is an offence provision and can also  
5 constitute a civil penalty provision—the person may be  
6 prosecuted in a court, or proceedings seeking a  
7 pecuniary penalty order may be brought, in relation to  
8 the alleged contravention; or  
9 (iii) if the provision is a civil penalty provision—  
10 proceedings seeking a pecuniary penalty order may be  
11 brought in relation to the alleged contravention; and  
12 (o) state that the person may make written representations to  
13 ASIC seeking the withdrawal of the notice.
- 14 (2) The amount to be stated in the notice for the purposes of  
15 paragraph (1)(f) is:
- 16 (a) for a single contravention of an offence provision—one-fifth  
17 of the maximum penalty that a court could impose on the  
18 person for the contravention; and  
19 (b) for multiple contraventions of an offence provision—the  
20 amount worked out under paragraph (a) for a single  
21 contravention multiplied by the number of contraventions;  
22 and  
23 (c) for a single contravention of a civil penalty provision—50  
24 penalty units for an individual and 250 penalty units for a  
25 body corporate; and  
26 (d) for multiple contraventions of a civil penalty provision—the  
27 amount worked out under paragraph (c) for a single  
28 contravention multiplied by the number of contraventions.

## 29 **288N Payment period**

30 *Usual payment period*

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



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1

## *Payment period extended under section 288P*

2

(2) If, under section 288P, ASIC extends the payment period for the notice, the **payment period** is as extended.

3

4

(3) If ASIC refuses an application under subsection 288P(1) for an extension of the payment period for the notice, the **payment period** ends on the later of the following days:

5

6

7

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

8

9

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

10

11

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 288P(4).

12

13

## *Instalments*

14

(4) If, under section 288Q, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the **payment period** ends on the earlier of the following days:

15

16

17

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

18

19

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

20

21

22

(5) If ASIC refuses an application made under subsection 288Q(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the **payment period** ends on the earlier of the following days:

23

24

25

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

26

27

28

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

29

30

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 288Q(4).

31

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- 1                                    *Payment period if ASIC refuses to withdraw infringement notice*
- 2                                    (6) If ASIC refuses a representation made under subsection 288R(1)
- 3                                    for the notice to be withdrawn, the *payment period* ends on the
- 4                                    later of the following days:
- 5                                    (a) the last day of the period that, without the withdrawal, would
- 6                                    be the payment period for the notice;
- 7                                    (b) the day that is 7 days after the day the person was given
- 8                                    notice of ASIC's decision not to withdraw the notice;
- 9                                    (c) the day that is 7 days after the day on which, under
- 10                                    subsection 288R(5), ASIC is taken to have refused to
- 11                                    withdraw the infringement notice.

## 12                                    **288P Extension of time to pay amount**

- 13                                    (1) A person to whom an infringement notice has been given may,
- 14                                    during the payment period for the notice, apply to ASIC for an
- 15                                    extension of the payment period for the notice.
- 16                                    (2) ASIC may, in writing, extend the payment period for an
- 17                                    infringement notice:
- 18                                    (a) if a person makes an application in accordance with
- 19                                    subsection (1); or
- 20                                    (b) on ASIC's own initiative.
- 21                                    ASIC may do so before or after the end of the payment period.
- 22                                    (3) ASIC must do each of the following within 14 days after an
- 23                                    application in accordance with subsection (1) is made:
- 24                                    (a) grant or refuse to grant an extension of the payment period
- 25                                    for the infringement notice;
- 26                                    (b) give the applicant notice in writing of ASIC's decision.
- 27                                    (4) If ASIC does not comply with subsection (3):
- 28                                    (a) ASIC is taken to have refused to grant an extension of the
- 29                                    payment period for the infringement notice; and
- 30                                    (b) the refusal is taken to have occurred on the last day of the 14
- 31                                    day period.
- 32                                    (5) ASIC may extend the payment period more than once under
- 33                                    subsection (2).

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## 1 **288Q Payment by instalments**

- 2 (1) A person to whom an infringement notice has been given may,  
3 within 28 days after the infringement notice is given, apply to  
4 ASIC to make an arrangement to pay the amount payable under the  
5 infringement notice by instalments.
- 6 (2) ASIC may, in writing, make an arrangement for a person to pay the  
7 amount payable under an infringement notice by instalments:  
8 (a) if a person makes an application in accordance with  
9 subsection (1); or  
10 (b) on ASIC's own initiative.  
11 ASIC may do so before or after the end of the payment period.
- 12 (3) ASIC must do each of the following within 14 days after an  
13 application in accordance with subsection (1) is made:  
14 (a) decide to make, or refuse to make, an arrangement for the  
15 applicant to pay the amount payable under the infringement  
16 notice by instalments;  
17 (b) give the applicant notice in writing of ASIC's decision;  
18 (c) if ASIC decides to make the arrangement, specify in the  
19 notice:  
20 (i) the day by which each instalment is to be paid; and  
21 (ii) the amount of each instalment.
- 22 (4) If ASIC does not comply with subsection (3):  
23 (a) ASIC is taken to have refused to make an arrangement for the  
24 applicant to pay the amount payable under the infringement  
25 notice by instalments; and  
26 (b) the refusal is taken to have occurred on the last day of the 14  
27 day period.
- 28 (5) ASIC may vary an arrangement for a person to pay the amount  
29 payable under an infringement notice by instalments.
- 30 (6) If:  
31 (a) a person does not pay all of the instalments in accordance  
32 with an arrangement made under this section; and  
33 (b) the person is prosecuted, or proceedings seeking a pecuniary  
34 penalty order are brought, for the alleged contravention;
-

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

## 3 **288R Withdrawal of an infringement notice**

### 4 *Representations seeking withdrawal of notice*

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

### 8 *Withdrawal of notice*

9 (2) ASIC may withdraw an infringement notice given to a person:

10 (a) if the person makes representations to ASIC in accordance  
11 with subsection (1); or

12 (b) on ASIC's own initiative.

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

14 (3) ASIC must, within 14 days after a representation is made in  
15 accordance with subsection (1):

16 (a) decide to withdraw, or refuse to withdraw, the infringement  
17 notice; and

18 (b) if ASIC decides to withdraw the notice—give the person to  
19 whom the notice was issued a withdrawal notice in  
20 accordance with subsection (6); and

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

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

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

27 (b) may take into account the following:

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

30 (ii) the circumstances of the alleged contravention;

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

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1 (iv) any other matter ASIC considers relevant.

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

3 (a) ASIC is taken to have refused to withdraw the infringement  
4 notice; and

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

7 *Notice of withdrawal*

8 (6) The withdrawal notice must state:

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

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

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

12 (d) that the infringement notice is withdrawn; and

13 (e) that:

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

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

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

25 *Refund of amount if infringement notice withdrawn*

26 (7) If:

27 (a) ASIC withdraws the infringement notice; and

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

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

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1     **288S Effect of payment of amount**

- 2             (1) If the person to whom an infringement notice for an alleged  
3             contravention of a provision is given pays the amount stated in the  
4             notice before the end of the payment period for the notice:
- 5                 (a) any liability of the person for the alleged contravention is  
6                 discharged; and
- 7                 (b) if the provision is an offence provision and does not also  
8                 constitute a civil penalty provision—the person may not be  
9                 prosecuted in a court for the alleged contravention; and
- 10                (c) if the provision is an offence provision and can also  
11                constitute a civil penalty provision—the person may not be  
12                prosecuted in a court, and proceedings seeking a pecuniary  
13                penalty order may not be brought, in relation to the alleged  
14                contravention; and
- 15                (d) if the provision is a civil penalty provision—proceedings  
16                seeking a pecuniary penalty order may not be brought in  
17                relation to the alleged contravention; and
- 18                (e) the person is not regarded as having admitted guilt or liability  
19                for the alleged contravention; and
- 20                (f) if the provision is an offence provision—the person is not  
21                regarded as having been convicted of the alleged offence.
- 22             (2) Subsection (1) does not apply if the notice has been withdrawn.

23     **288T Effect of this Part**

- 24             This Part does not:
- 25                 (a) require an infringement notice to be given to a person for an  
26                 alleged contravention of a provision subject to an  
27                 infringement notice under this Part; or
- 28                 (b) affect the liability of a person for an alleged contravention of  
29                 a provision subject to an infringement notice under this Part  
30                 if:
- 31                         (i) the person does not comply with an infringement notice  
32                         given to the person for the contravention; or
- 33                         (ii) an infringement notice is not given to the person for the  
34                         contravention; or
-

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- 1 (iii) an infringement notice is given to the person for the  
2 contravention and is subsequently withdrawn; or  
3 (c) prevent the giving of 2 or more infringement notices to a  
4 person for an alleged contravention of a provision subject to  
5 an infringement notice under this Part; or  
6 (d) limit a court's discretion to determine the amount of a  
7 penalty to be imposed on a person who is found to have  
8 contravened a provision subject to an infringement notice  
9 under this Part.

## 10 **14 Part 6-6 (heading)**

11 Repeal the heading, substitute:

## 12 **Part 6-6—Offences under this Chapter**

### 13 **15 Section 331**

14 Repeal the section.

### 15 **16 Subsection 18C(3) of the *National Credit Code***

16 Omit “250 penalty units”, substitute “500 penalty units”.

### 17 **17 Subsection 18C(4) of the *National Credit Code***

18 Repeal the subsection, substitute:

- 19 (4) The civil penalty for a contravention of a regulation made for the  
20 purposes of subsection (1) by an individual is 5,000 penalty units.  
21 However, section 167A of the National Credit Act applies in the  
22 same way as it would apply if the regulation contravened were a  
23 civil penalty provision under that Act.

### 24 **18 Subsections 24(1) and (1A) of the *National Credit Code*** 25 **(penalty)**

26 Repeal the penalty, substitute:

27 Civil penalty: 5,000 penalty units.

### 28 **19 Subsection 24(2) of the *National Credit Code***

29 Repeal the subsection (including the note), substitute:

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---

1

## *Offence*

2

(2) A person commits an offence of strict liability if:

3

(a) the person is subject to a requirement under subsection (1) or (1A); and

4

5

(b) the person engages in conduct; and

6

(c) the conduct contravenes the requirement.

7

Criminal penalty: 100 penalty units.

8

## **20 Subsection 30B(3) of the *National Credit Code***

9

Omit “250 penalty units”, substitute “500 penalty units”.

10

## **21 Subsection 30B(4) of the *National Credit Code***

11

Repeal the subsection, substitute:

12

(4) The civil penalty for a contravention of a regulation made for the purposes of subsection (1) by an individual is 5,000 penalty units. However, section 167A of the National Credit Act applies in the same way as it would apply if the regulation contravened were a civil penalty provision under that Act.

13

14

15

16

17

## **22 Subsection 39B(1) of the *National Credit Code***

18

Repeal the subsection, substitute:

19

(1) If there is a default in payment under a small amount credit contract, the credit provider in relation to the contract must not (whether by repayments under the contract or otherwise) recover more than twice the adjusted credit amount in relation to the contract.

20

21

22

23

24

Civil penalty: 5,000 penalty units.

25

## **23 Section 116 of the *National Credit Code***

26

Omit “On application”, substitute “(1) On application”.

27

## **24 Section 116 of the *National Credit Code***

28

Omit “\$500,000”, substitute “5,000 penalty units for an individual”.

---



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1 **25 At the end of section 116 of the *National Credit Code***

2 Add:

3 (2) However, section 167A of the National Credit Act applies in the  
4 same way in relation to the contravention of a key requirement as it  
5 would apply in relation to a civil penalty provision under that Act.

6 **26 Before subsection 154(1) of the *National Credit Code***

7 Insert:

8 *Prohibition on making false or misleading representations*

9 **27 Subsection 154(1) of the *National Credit Code* (penalty)**

10 Repeal the penalty, substitute:

11 Civil penalty: 5,000 penalty units.

12 **28 After subsection 154(1) of the *National Credit Code***

13 Insert:

14 *Offence*

15 (1A) A person commits an offence if:

- 16 (a) the person is subject to a requirement under subsection (1);  
17 and  
18 (b) the person engages in conduct; and  
19 (c) the conduct contravenes the requirement.

20 Criminal penalty: 50 penalty units.

21 **29 Subsection 154(2) of the *National Credit Code***

22 Omit “It is a defence to prosecution for an offence against this section  
23 if”, substitute “For the purposes of subsections (1) and (1A), it is a  
24 defence if”.

25 **30 Subsection 154(3) of the *National Credit Code* (heading)**

26 Repeal the heading, substitute:

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---

1 *Right to recover loss*

2 **31 Section 155 of the *National Credit Code***

3 Repeal the section, substitute:

4 **155 Harassment**

5 *Prohibition on harassment*

6 (1) A credit provider or supplier must not harass a person in  
7 attempting to get that person to apply for credit or to enter into a  
8 credit contract or a related transaction.

9 Civil penalty: 5,000 penalty units.

10 *Offence*

11 (2) A person commits an offence if:  
12 (a) the person is subject to a requirement under subsection (1);  
13 and  
14 (b) the person engages in conduct; and  
15 (c) the conduct contravenes the requirement.

16 Criminal penalty: 100 penalty units.

17 **32 Before subsection 156(1) of the *National Credit Code***

18 Insert:

19 *Prohibition on canvassing credit at home*

20 **33 Subsection 156(1) of the *National Credit Code* (penalty)**

21 Repeal the penalty, substitute:

22 Civil penalty: 5,000 penalty units.

23 **34 After subsection 156(1) of the *National Credit Code***

24 Insert:

---

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1 *Offence*

2 (1A) A person commits an offence if:

3 (a) the person is subject to a requirement under subsection (1);  
4 and

5 (b) the person engages in conduct; and

6 (c) the conduct contravenes the requirement.

7 Criminal penalty: 100 penalty units.

8 **35 Subsections 174(3) and (4) of the *National Credit Code***

9 Repeal the subsections (including the note), substitute:

10 (3) A lessor must not enter into a consumer lease that contravenes a  
11 requirement of this section.

12 Civil penalty: 5,000 penalty units.

13 (4) A lessor commits an offence of strict liability if the lessor enters  
14 into a consumer lease that contravenes a requirement of this  
15 section.

16 Criminal penalty: 100 penalty units.

17 **36 Subsection 179U(1) of the *National Credit Code* (penalty)**

18 Repeal the penalty, substitute:

19 Civil penalty: 5,000 penalty units.

20 **37 After subsection 179U(1) of the *National Credit Code***

21 Insert:

22 (1A) A person commits an offence if:

23 (a) the person is subject to a requirement under subsection (1);  
24 and

25 (b) the person engages in conduct; and

26 (c) the conduct contravenes the requirement.

27 Criminal penalty: 50 penalty units.

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1 **38 Subsection 179U(2) of the *National Credit Code***

2 Omit “It is a defence to prosecution for an offence against this section  
3 if”, substitute “For the purposes of subsections (1) and (1A), it is a  
4 defence if”.

5 **39 Section 179V of the *National Credit Code***

6 Omit “A lessor”, substitute “(1) A lessor”.

7 **40 Section 179V of the *National Credit Code* (penalty)**

8 Repeal the penalty, substitute:

9 Civil penalty: 5,000 penalty units.

10 **41 At the end of section 179V of the *National Credit Code***

11 Add:

12 (2) A person commits an offence if:

- 13 (a) the person is subject to a requirement under subsection (1);  
14 and  
15 (b) the person engages in conduct; and  
16 (c) the conduct contravenes the requirement.

17 Criminal penalty: 100 penalty units.

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Amendment of the National Consumer Credit Protection Act 2009 **Schedule 3**  
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---

1 **Part 2—Amendments of penalties under civil penalty**  
2 **provisions**

3 *National Consumer Credit Protection Act 2009*

4 **42 The whole of the Act (including the *National Credit Code*)**

5 Omit (wherever occurring):

6 Civil penalty: 2,000 penalty units.

7 substitute:

8 Civil penalty: 5,000 penalty units.

# EXPOSURE DRAFT

Schedule 3 Amendment of the National Consumer Credit Protection Act 2009

Part 3 Amendments of penalties under offences

1 **Part 3—Amendments of penalties under offences**

2 *National Consumer Credit Protection Act 2009*

3 **43 Amendments of listed provisions**

4

<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
1	Subsection 29(2)	200 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
2	Subsection 30(3)	50 penalty units, or 1 year imprisonment, or both.	1 year imprisonment.
3	Subsection 31(2)	200 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
4	Subsection 32(2)	50 penalty units, or 1 year imprisonment, or both.	1 year imprisonment.
5	Subsection 49(7)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
6	Subsection 49(8)	10 penalty units.	20 penalty units.
7	Subsection 50(3)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
8	Subsection 50(4)	10 penalty units.	20 penalty units.
9	Subsection 51(3)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
10	Subsection 52(3)	10 penalty units.	20 penalty units.
11	Subsection 69(2)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
12	Subsection 70(2)	100 penalty units, or 2	2 years imprisonment.

# EXPOSURE DRAFT

Amendment of the National Consumer Credit Protection Act 2009 **Schedule 3**  
Amendments of penalties under offences **Part 3**

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<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
		years imprisonment, or both.	
13	Subsection 71(6)	25 penalty units, or 6 months imprisonment, or both.	60 penalty units.
14	Subsection 73(6)	50 penalty units, or 1 year imprisonment, or both.	1 year imprisonment.
15	Subsection 82(2)	100 penalty units, or 2 years imprisonment, or both.	5 years imprisonment.
16	Subsection 88(3)	200 penalty units, or 5 years imprisonment, or both.	5 years imprisonment.
17	Subsection 95(4)	50 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
18	Subsection 98(4)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
19	Subsection 99(4)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
20	Subsection 100(5)	200 penalty units, or 5 years imprisonment, or both.	5 years imprisonment.
21	Subsection 102(4)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
22	Subsection 104(3)	50 penalty units, or 1 year imprisonment, or both.	1 year imprisonment.
23	Subsection 122(2)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
24	Subsection 123(6)	100 penalty units, or 2 years imprisonment, or	2 years imprisonment.

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# EXPOSURE DRAFT

**Schedule 3** Amendment of the National Consumer Credit Protection Act 2009

**Part 3** Amendments of penalties under offences

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<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
		both.	
25	Subsection 124(6)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
26	Subsection 133(6)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
27	Subsection 133BE(3)	10 penalty units.	20 penalty units.
28	Subsection 133BO(4)	10 penalty units.	20 penalty units.
29	Subsection 145(2)	25 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
30	Subsection 146(6)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
31	Subsection 147(6)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
32	Subsection 156(6)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
33	Subsection 160D(2)	100 penalty units, or 2 years imprisonment, or both.	5 years imprisonment.
34	Subsection 218(6)	50 penalty units, or 1 year imprisonment, or both.	120 penalty units.
35	Subsection 220(4)	50 penalty units, or 1 year imprisonment, or both.	120 penalty units.
36	Subsection 225(3)	200 penalty units, or imprisonment for 5 years, or both.	5 years imprisonment.
37	Subsection 225(4)	200 penalty units, or imprisonment for 5 years, or both.	5 years imprisonment.

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# EXPOSURE DRAFT

Amendment of the National Consumer Credit Protection Act 2009 **Schedule 3**  
Amendments of penalties under offences **Part 3**

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<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
38	Subsection 225(6)	5 penalty units.	20 penalty units.
39	Subsection 227(2)	50 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
40	Subsection 228(2)	50 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
41	Subsection 229(2)	50 penalty units, or 6 months imprisonment, or both.	6 months imprisonment.
42	Subsection 240(2)	100 penalty units, or imprisonment for 2 years, or both.	2 years imprisonment.
43	Subsection 256(2)	10 penalty units, or 3 months imprisonment, or both.	30 penalty units.
44	Subsection 259(2)	10 penalty units, or 3 months imprisonment, or both.	30 penalty units.
45	Subsection 260(1)	10 penalty units, or 3 months imprisonment, or both.	30 penalty units.
46	Subsection 282(3)	10 penalty units or 3 months imprisonment or both.	30 penalty units.
47	Subsection 290(1)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
48	Subsection 290(2)	10 penalty units, or 3 months imprisonment, or both.	30 penalty units.
49	Subsection 290(3)	5 penalty units.	20 penalty units.
50	Subsection 291(1)	100 penalty units, or 2 years imprisonment, or both.	5 years imprisonment.
51	Subsection 291(2)	10 penalty units, or 3	2 years imprisonment.

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# EXPOSURE DRAFT

Schedule 3 Amendment of the National Consumer Credit Protection Act 2009

Part 3 Amendments of penalties under offences

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<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
		months imprisonment, or both.	
52	Subsection 292(1)	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
53	Subsection 292(3)	25 penalty units, or 6 months imprisonment, or both.	1 year imprisonment.
54	Subsection 293(1)	50 penalty units, or 1 year imprisonment, or both.	1 year imprisonment.
55	Subsection 293(2)	50 penalty units, or 1 year imprisonment, or both.	120 penalty units.
56	Subsection 294(1)	200 penalty units, or 5 years imprisonment, or both.	5 years imprisonment.
57	Subsection 296(3)	10 penalty units, or 3 months imprisonment, or both.	3 months imprisonment.
58	Subsection 301(4)	25 penalty units, or 6 months imprisonment, or both.	60 penalty units.
59	Subsection 319(3)	50 penalty units, or 1 year imprisonment, or both.	120 penalty units.
60	Subsection 13(6) of the <i>National Credit Code</i>	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.
61	Subsection 172(6) of the <i>National Credit Code</i>	100 penalty units, or 2 years imprisonment, or both.	2 years imprisonment.

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1

# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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1 **Schedule 4—Amendment of the Insurance**  
2 **Contracts Act 1984**

3 **Part 1—Amendments**

4 *Insurance Contracts Act 1984*

5 **1 Subsection 11(1)**

6 Insert:

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

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

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

24 *civil penalty provision*: a subsection of this Act (or a section of this  
25 Act that is not divided into subsections) is *a civil penalty provision*  
26 if:

- 27 (a) the words “civil penalty” and one or more amounts in penalty  
28 units are set out at the foot of the subsection (or section); or  
29 (b) another provision of this Act specifies that the subsection (or  
30 section) is a civil penalty provision.

31 *contravention*:

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

---

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

3 (b) in relation to a civil penalty provision—has a meaning  
4 affected by section 75N.

5 *infringement notice* means a notice given under section 75U.

6 *involved*, in relation to a contravention, has the same meaning as in  
7 the *Corporations Act 2001*.

8 *payment period*, in relation to an infringement notice, has the  
9 meaning given by section 75X.

10 *pecuniary penalty order* has the meaning given by  
11 subsection 75B(4).

12 *subject to an infringement notice*, in relation to an offence  
13 provision or civil penalty provision, has the meaning given by  
14 section 75V.

## 15 2 After subsection 13(2)

16 Insert:

17 (2A) A party to a contract of insurance contravenes this subsection if an  
18 insurer fails to comply with the provision implied in the contract  
19 by subsection (1).

20 Civil penalty: 5,000 penalty units.

## 21 3 At the end of subsection 33C(1)

22 Add:

23 Civil penalty: 5,000 penalty units.

## 24 4 After Part IX

25 Insert:

# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

---

## 1 **Part IXA—Enforcement**

### 2 **Division 1—Civil penalty provisions**

#### 3 **Subdivision A—Obtaining a pecuniary penalty order**

##### 4 **75A Declaration of contravention of civil penalty provision**

###### 5 *Application for declaration of contravention*

- 6 (1) ASIC may apply to the court for a declaration that the person  
7 contravened the provision.
- 8 (2) ASIC must make the application within 6 years of the alleged  
9 contravention.

###### 10 *Declaration of contravention*

- 11 (3) The court must make the declaration if it is satisfied that the person  
12 has contravened the provision.
- 13 (4) The declaration must specify the following:  
14 (a) the court that made the declaration;  
15 (b) the civil penalty provision that was contravened;  
16 (c) the person who contravened the provision;  
17 (d) the conduct that constituted the contravention.

###### 18 *Declaration of contravention conclusive evidence*

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

##### 21 **75B Pecuniary penalty orders**

###### 22 *Application for order*

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

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

---

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

3 *Court may order person to pay pecuniary penalty*

4 (3) If a declaration has been made under section 75A that the person  
5 has contravened the provision, the court may order the person to  
6 pay to the Commonwealth a pecuniary penalty that the court  
7 considers is appropriate (but not more than the amount specified in  
8 section 75C).

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

10 *Determining pecuniary penalty*

11 (5) In determining the pecuniary penalty, the court must take into  
12 account all relevant matters, including:

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

## 20 **75C Determining amount of pecuniary penalty**

21 *Maximum pecuniary penalty*

22 (1) The pecuniary penalty must not be more than the pecuniary penalty  
23 applicable to the contravention of the civil penalty provision.

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

26 (2) The *pecuniary penalty applicable* to the contravention of a civil  
27 penalty provision by an individual is the greater of:

- 28 (a) the penalty stated for the civil penalty provision; and  
29 (b) the benefit derived or detriment avoided by the individual  
30 because of the contravention, multiplied by 3.
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# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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

- 3                    (3) The ***pecuniary penalty applicable*** to the contravention of a civil  
4                    penalty provision by a body corporate is the greater of:
- 5                    (a) the penalty stated for the civil penalty provision, multiplied  
6                    by 10; and
  - 7                    (b) the benefit derived or detriment avoided because of the  
8                    contravention, multiplied by 3; and
  - 9                    (c) either:
    - 10                    (i) 10% of the annual turnover of the body corporate for the  
11                    12 month period ending at the end of the month in  
12                    which the body corporate contravened, or began to  
13                    contravene, the civil penalty provision; or
    - 14                    (ii) if the amount worked out under subparagraph (i) is  
15                    greater than an amount equal to 1 million penalty  
16                    units—1 million penalty units.

17                    *Meaning of benefit derived or detriment avoided*

- 18                    (4) The ***benefit derived or detriment avoided*** by a person because of a  
19                    contravention of a civil penalty provision is the sum of:
- 20                    (a) the total value of all benefits that the person obtained that are  
21                    reasonably attributable to the contravention; and
  - 22                    (b) the total value of all detriments that the person avoided that  
23                    are reasonably attributable to the contravention.

## 24                    **75D Civil enforcement of penalty**

- 25                    (1) A pecuniary penalty is a debt payable to the Commonwealth.
- 26                    (2) The Commonwealth may enforce a pecuniary penalty order as if it  
27                    were an order made in civil proceedings against the person to  
28                    recover a debt due by the person. The debt arising from the order is  
29                    taken to be a judgment debt.

## 30                    **75E Conduct contravening more than one civil penalty provision**

- 31                    (1) If conduct constitutes a contravention of 2 or more civil penalty  
32                    provisions, proceedings may be instituted under this Division

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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1 against a person in relation to the contravention of any one or more  
2 of those provisions.

3 (2) However, the person is not liable to more than one pecuniary  
4 penalty under this Division in relation to the same conduct.

## 5 **75F Multiple contraventions**

6 (1) The court may make a single civil penalty order against a person  
7 for multiple contraventions of a civil penalty provision if  
8 proceedings for the contraventions are founded on the same facts,  
9 or if the contraventions form, or are part of, a series of  
10 contraventions of the same or a similar character.

11 Note: For continuing contraventions of civil penalty provisions, see  
12 section 75P.

13 (2) However, the penalty must not exceed the sum of the maximum  
14 penalties that could be ordered if a separate penalty were ordered  
15 for each of the contraventions.

## 16 **75G Proceedings may be heard together**

17 A court may direct that 2 or more proceedings for civil penalty  
18 orders are to be heard together.

## 19 **75H Civil evidence and procedure rules for pecuniary penalty 20 orders**

21 A court must apply the rules of evidence and procedure for civil  
22 matters when hearing proceedings for a pecuniary penalty order.

## 23 **Subdivision B—Civil proceedings and criminal proceedings**

## 24 **75J Civil proceedings after criminal proceedings**

25 A court may not make a pecuniary penalty order against a person  
26 for a contravention of a civil penalty provision if the person has  
27 been convicted of an offence constituted by conduct that is the  
28 same, or substantially the same, as the conduct constituting the  
29 contravention.



# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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## 1 **75K Criminal proceedings during civil proceedings**

- 2 (1) Proceedings for a pecuniary penalty order against a person for a  
3 contravention of a civil penalty provision are stayed if:  
4 (a) criminal proceedings are commenced or have already been  
5 commenced against the person for an offence; and  
6 (b) the offence is constituted by conduct that is the same, or  
7 substantially the same, as the conduct alleged to constitute  
8 the contravention.
- 9 (2) The proceedings for the order (the *civil proceedings*) may be  
10 resumed if the person is not convicted of the offence. Otherwise:  
11 (a) the civil proceedings are dismissed; and  
12 (b) costs must not be awarded in relation to the civil proceedings.

## 13 **75L Criminal proceedings after civil proceedings**

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

## 19 **75M Evidence given in civil proceedings not admissible in criminal** 20 **proceedings**

- 21 (1) Evidence of information given, or evidence of production of  
22 documents, by an individual is not admissible in criminal  
23 proceedings against the individual if:  
24 (a) the individual previously gave the information or produced  
25 the documents in proceedings for a pecuniary penalty order  
26 against the individual for an alleged contravention of a civil  
27 penalty provision (whether or not the order was made); and  
28 (b) the conduct alleged to constitute the offence is the same, or  
29 substantially the same, as the conduct alleged to constitute  
30 the contravention.
- 31 (2) However, subsection (1) does not apply to criminal proceedings in  
32 relation to the falsity of the evidence given by the individual in the  
33 proceedings for the pecuniary penalty order.

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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1 **Subdivision C—Miscellaneous**

2 **75N Attempt and involvement in contravention treated in same way**  
3 **as actual contravention**

4 A person who:

- 5 (a) attempts to contravene a civil penalty provision; or  
6 (b) is involved in a contravention of a civil penalty provision;  
7 is taken to have *contravened* that provision.

8 **75P Continuing contraventions of civil penalty provisions**

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

- 11 (a) within a particular period; or  
12 (b) before a particular time;

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

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

- 18 (a) within a particular period; or  
19 (b) before a particular time;

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

23 **75Q State of mind**

24 (1) In proceedings for a pecuniary penalty order against a person for a  
25 contravention of a civil penalty provision, it is not necessary to  
26 prove:

- 27 (a) the person's intention; or  
28 (b) the person's knowledge; or  
29 (c) the person's recklessness; or  
30 (d) the person's negligence; or  
31 (e) any other state of mind of the person.
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# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
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- 1 (2) Subsection (1) does not apply to the extent that the proceedings  
2 relate to a contravention of section 75N (which is about ancillary  
3 contravention of civil penalty provisions).
- 4 (3) Subsection (1) does not affect the operation of section 75R (which  
5 is about mistake of fact).
- 6 (4) Subsection (1) does not apply to the extent that the civil penalty  
7 provision, or a provision that relates to the civil penalty provision,  
8 expressly provides otherwise.

## 9 **75R Mistake of fact**

- 10 (1) A person is not liable to have a pecuniary penalty order made  
11 against the person for a contravention of a civil penalty provision  
12 if:
- 13 (a) at or before the time of the conduct constituting the  
14 contravention, the person:
- 15 (i) considered whether or not facts existed; and  
16 (ii) was under a mistaken but reasonable belief about those  
17 facts; and
- 18 (b) had those facts existed, the conduct would not have  
19 constituted a contravention of the civil penalty provision.
- 20 (2) For the purposes of subsection (1), a person may be regarded as  
21 having considered whether or not facts existed if:
- 22 (a) the person had considered, on a previous occasion, whether  
23 those facts existed in the circumstances surrounding that  
24 occasion; and
- 25 (b) the person honestly and reasonably believed that the  
26 circumstances surrounding the present occasion were the  
27 same, or substantially the same, as those surrounding the  
28 previous occasion.
- 29 (3) A person who wishes to rely on subsection (1) or (2) in  
30 proceedings for a pecuniary penalty order bears an evidential  
31 burden in relation to that matter.

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

---

## 75S Exceptions etc. to civil penalty provisions—burden of proof

- (1) If, in proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.
- (2) In subsection (1), *evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## 75T Civil penalty provisions contravened by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting:

- (a) within the actual or apparent scope of the employee's, agent's, or officer's employment; or
- (b) within the employee's, agent's, or officer's actual or apparent authority;
- the element must also be attributed to the body corporate.

## Division 2—Infringement notices

### 75U When an infringement notice may be given

- (1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Division, ASIC may give the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:

# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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- 1 (a) the provision requires the person to do a thing within a  
2 particular period or before a particular time; and  
3 (b) the person fails or refuses to do that thing within that period  
4 or before that time; and  
5 (c) the failure or refusal occurs on more than 1 day; and  
6 (d) each contravention is constituted by the failure or refusal on  
7 one of those days.
- 8 (5) If a single provision can constitute both a civil penalty provision  
9 and an offence provision, the infringement notice must relate to the  
10 provision as an offence provision.

## 11 **75V Provision subject to an infringement notice**

12 The following provisions are *subject to an infringement notice*  
13 under this Division:

- 14 (a) prescribed offences;  
15 (b) prescribed civil penalty provisions.

## 16 **75W Matters to be included in an infringement notice**

- 17 (1) An infringement notice must:  
18 (a) be identified by a unique number; and  
19 (b) state the day on which it is given; and  
20 (c) state the name of the person to whom the notice is given; and  
21 (d) state the name and contact details of the person who gave the  
22 notice; and  
23 (e) give brief details of the alleged contravention, or each alleged  
24 contravention, to which the notice relates, including:  
25 (i) the provision that was allegedly contravened; and  
26 (ii) the maximum penalty that a court could impose for each  
27 contravention, if the provision were contravened; and  
28 (iii) the time (if known) and day of, and the place of, each  
29 alleged contravention; and  
30 (f) state the amount that is payable under the notice; and  
31 (g) give an explanation of how payment of the amount is to be  
32 made; and

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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- 1 (h) state that the payment period for the notice will be 28 days,  
2 beginning on the day on which the notice is given, unless the  
3 period is extended, an arrangement is made for payment by  
4 instalments or the notice is withdrawn; and
- 5 (i) state that, if the person to whom the notice is given pays the  
6 amount within the payment period, then (unless the notice is  
7 withdrawn):
- 8 (i) if the provision is an offence provision and does not also  
9 constitute a civil penalty provision—the person will not  
10 be liable to be prosecuted in a court for the alleged  
11 contravention; or
- 12 (ii) if the provision is an offence provision that can also  
13 constitute a civil penalty provision—the person is not  
14 liable to be prosecuted in a court, and proceedings  
15 seeking a pecuniary penalty order will not be brought, in  
16 relation to the alleged contravention; or
- 17 (iii) if the provision is a civil penalty provision—  
18 proceedings seeking a pecuniary penalty order will not  
19 be brought in relation to the alleged contravention; and
- 20 (j) state that payment of the amount is not an admission of guilt  
21 or liability; and
- 22 (k) state that the person may apply to ASIC to have the period in  
23 which to pay the amount extended or for an arrangement to  
24 pay the amount by instalments; and
- 25 (l) state that the person may choose not to pay the amount and, if  
26 the person does so:
- 27 (i) if the provision is an offence provision and does not also  
28 constitute a civil penalty provision—the person may be  
29 prosecuted in a court for the alleged contravention; or
- 30 (ii) if the provision is an offence provision and can also  
31 constitute a civil penalty provision—the person may be  
32 prosecuted in a court, or proceedings seeking a  
33 pecuniary penalty order may be brought, in relation to  
34 the alleged contravention; or
- 35 (iii) if the provision is a civil penalty provision—  
36 proceedings seeking a pecuniary penalty order may be  
37 brought in relation to the alleged contravention; and
- 38 (m) set out how the notice can be withdrawn; and
- 39 (n) state that if the notice is withdrawn:
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# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
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- 1 (i) if the provision is an offence provision and does not also  
2 constitute a civil penalty provision—the person may be  
3 prosecuted in a court for the alleged contravention; or  
4 (ii) if the provision is an offence provision and can also  
5 constitute a civil penalty provision—the person may be  
6 prosecuted in a court, or proceedings seeking a  
7 pecuniary penalty order may be brought, in relation to  
8 the alleged contravention; or  
9 (iii) if the provision is a civil penalty provision—  
10 proceedings seeking a pecuniary penalty order may be  
11 brought in relation to the alleged contravention; and  
12 (o) state that the person may make written representations to  
13 ASIC seeking the withdrawal of the notice.
- 14 (2) The amount to be stated in the notice for the purposes of  
15 paragraph (1)(f) is:  
16 (a) for a single contravention of an offence provision—half the  
17 maximum penalty that a court could impose on the person for  
18 the contravention; and  
19 (b) for multiple contraventions of an offence provision—the  
20 amount worked out under paragraph (a) for a single  
21 contravention multiplied by the number of contraventions;  
22 and  
23 (c) for a single contravention of a civil penalty provision—12  
24 penalty units for an individual and 60 penalty units for a body  
25 corporate; and  
26 (d) for multiple contraventions of a civil penalty provision—the  
27 amount worked out under paragraph (c) for a single  
28 contravention multiplied by the number of contraventions.

## 29 **75X Payment period**

30 *Usual payment period*

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

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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1

*Payment period extended under section 75Y*

2

(2) If, under section 75Y, ASIC extends the payment period for the notice, the **payment period** is as extended.

3

4

(3) If ASIC refuses an application under subsection 75Y(1) for an extension of the payment period for the notice, the **payment period** ends on the later of the following days:

5

6

7

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

8

9

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

10

11

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 75Y(4).

12

13

*Instalments*

14

(4) If, under section 75Z, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the **payment period** ends on the earlier of the following days:

15

16

17

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

18

19

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

20

21

22

(5) If ASIC refuses an application made under subsection 75Z(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the **payment period** ends on the earlier of the following days:

23

24

25

26

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

27

28

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

29

30

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 75Z(4).

31



# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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1 *Payment period if ASIC refuses to withdraw infringement notice*

- 2 (6) If ASIC refuses a representation made under subsection 75ZA(1)  
3 for the notice to be withdrawn, the *payment period* ends on the  
4 later of the following days:  
5 (a) the last day of the period that, without the withdrawal, would  
6 be the payment period for the notice;  
7 (b) the day that is 7 days after the day the person was given  
8 notice of ASIC's decision not to withdraw the notice;  
9 (c) the day that is 7 days after the day on which, under  
10 subsection 75ZA(5), ASIC is taken to have refused to  
11 withdraw the infringement notice.

## 12 **75Y Extension of time to pay amount**

- 13 (1) A person to whom an infringement notice has been given may,  
14 during the payment period for the notice, apply to ASIC for an  
15 extension of the payment period for the notice.
- 16 (2) ASIC may, in writing, extend the payment period for an  
17 infringement notice:  
18 (a) if a person makes an application in accordance with  
19 subsection (1); or  
20 (b) on ASIC's own initiative.  
21 ASIC may do so before or after the end of the payment period.
- 22 (3) ASIC must do each of the following within 14 days after an  
23 application in accordance with subsection (1) is made:  
24 (a) grant or refuse to grant an extension of the payment period  
25 for the infringement notice;  
26 (b) give the applicant notice in writing of ASIC's decision.
- 27 (4) If ASIC does not comply with subsection (3):  
28 (a) ASIC is taken to have refused to grant an extension of the  
29 payment period for the infringement notice; and  
30 (b) the refusal is taken to have occurred on the last day of the 14  
31 day period.
- 32 (5) ASIC may extend the payment period more than once under  
33 subsection (2).

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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## 75Z Payment by instalments

- 1
- 2 (1) A person to whom an infringement notice has been given may,  
3 within 28 days after the infringement notice is given, apply to  
4 ASIC to make an arrangement to pay the amount payable under the  
5 infringement notice by instalments.
- 6 (2) ASIC may, in writing, make an arrangement for a person to pay the  
7 amount payable under an infringement notice by instalments:  
8 (a) if a person makes an application in accordance with  
9 subsection (1); or  
10 (b) on ASIC's own initiative.  
11 ASIC may do so before or after the end of the payment period.
- 12 (3) ASIC must do each of the following within 14 days after an  
13 application in accordance with subsection (1) is made:  
14 (a) decide to make, or refuse to make, an arrangement for the  
15 applicant to pay the amount payable under the infringement  
16 notice by instalments;  
17 (b) give the applicant notice in writing of ASIC's decision;  
18 (c) if ASIC decides to make the arrangement, specify in the  
19 notice:  
20 (i) the day by which each instalment is to be paid; and  
21 (ii) the amount of each instalment.
- 22 (4) If ASIC does not comply with subsection (3):  
23 (a) ASIC is taken to have refused to make an arrangement for the  
24 applicant to pay the amount payable under the infringement  
25 notice by instalments; and  
26 (b) the refusal is taken to have occurred on the last day of the 14  
27 day period.
- 28 (5) ASIC may vary an arrangement for a person to pay the amount  
29 payable under an infringement notice by instalments.
- 30 (6) If:  
31 (a) a person does not pay all of the instalments in accordance  
32 with an arrangement made under this section; and  
33 (b) the person is prosecuted, or proceedings seeking a pecuniary  
34 penalty order brought, for the alleged contravention;
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# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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

## 3 **75ZA Withdrawal of an infringement notice**

### 4 *Representations seeking withdrawal of notice*

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

### 8 *Withdrawal of notice*

- 9 (2) ASIC may withdraw an infringement notice given to a person:  
10 (a) if the person makes representations to ASIC in accordance  
11 with subsection (1); or  
12 (b) on ASIC's own initiative.  
13 ASIC may do so before or after the end of the payment period.
- 14 (3) ASIC must, within 14 days after a representation is made in  
15 accordance with subsection (1):  
16 (a) decide to withdraw, or refuse to withdraw, the infringement  
17 notice;  
18 (b) if ASIC decides to withdraw the notice—give the applicant a  
19 withdrawal notice in accordance with subsection (6);  
20 (c) if ASIC decides to refuse to withdraw the notice—give the  
21 applicant notice of that fact.
- 22 (4) When deciding whether to withdraw, or refuse to withdraw, an  
23 infringement notice, ASIC:  
24 (a) must take into account any written representations seeking  
25 the withdrawal that were given by the person to ASIC; and  
26 (b) may take into account the following:  
27 (i) whether a court has previously imposed a penalty on the  
28 person for a contravention of a provision of this Act;  
29 (ii) the circumstances of the alleged contravention;  
30 (iii) whether the person has paid an amount, stated in an  
31 earlier infringement notice, for a contravention of a  
32 provision of this Act;  
33 (iv) any other matter ASIC considers relevant.
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# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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

7 *Notice of withdrawal*

- 8 (6) Notice of the withdrawal of the infringement notice must be given  
9 to the person. The withdrawal notice must state:  
10 (a) the person's name and address; and  
11 (b) the day the infringement notice was given; and  
12 (c) the identifying number of the infringement notice; and  
13 (d) that the infringement notice is withdrawn; and  
14 (e) that:  
15 (i) if the provision is an offence provision and does not also  
16 constitute a civil penalty provision—the person may be  
17 prosecuted in a court for the alleged contravention; or  
18 (ii) if the provision is an offence provision and can also  
19 constitute a civil penalty provision—the person may be  
20 prosecuted in a court, or proceedings seeking a  
21 pecuniary penalty order may be brought, in relation to  
22 the alleged contravention; or  
23 (iii) if the provision is a civil penalty provision—  
24 proceedings seeking a pecuniary penalty order may be  
25 brought in relation to the alleged contravention.

26 *Refund of amount if infringement notice withdrawn*

- 27 (7) If:  
28 (a) ASIC withdraws the infringement notice; and  
29 (b) the person has already paid all or part of the amount stated in  
30 the notice;  
31 ASIC must refund to the person an amount equal to the amount  
32 paid.

# EXPOSURE DRAFT

Amendment of the Insurance Contracts Act 1984 **Schedule 4**  
Amendments **Part 1**

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1 **75ZB Effect of payment of amount**

- 2 (1) If the person to whom an infringement notice for an alleged  
3 contravention of a provision is given pays the amount stated in the  
4 notice before the end of the payment period for the notice:
- 5 (a) any liability of the person for the alleged contravention is  
6 discharged; and
  - 7 (b) if the provision is an offence provision and does not also  
8 constitute a civil penalty provision—the person may not be  
9 prosecuted in a court for the alleged contravention; and
  - 10 (c) if the provision is an offence provision and can also  
11 constitute a civil penalty provision—the person may not be  
12 prosecuted in a court, and proceedings seeking a pecuniary  
13 penalty order may not be brought, in relation to the alleged  
14 contravention; and
  - 15 (d) if the provision is a civil penalty provision—proceedings  
16 seeking a pecuniary penalty order may not be brought in  
17 relation to the alleged contravention; and
  - 18 (e) the person is not regarded as having admitted guilt or liability  
19 for the alleged contravention; and
  - 20 (f) if the provision is an offence provision—the person is not  
21 regarded as having been convicted of the alleged offence.
- 22 (2) Subsection (1) does not apply if the notice has been withdrawn.

23 **75ZC Effect of this Division**

- 24 This Division does not:
- 25 (a) require an infringement notice to be given to a person for an  
26 alleged contravention of a provision subject to an  
27 infringement notice under this Division; or
  - 28 (b) affect the liability of a person for an alleged contravention of  
29 a provision subject to an infringement notice under this  
30 Division if:
    - 31 (i) the person does not comply with an infringement notice  
32 given to the person for the contravention; or
    - 33 (ii) an infringement notice is not given to the person for the  
34 contravention; or

# EXPOSURE DRAFT

Schedule 4 Amendment of the Insurance Contracts Act 1984

Part 1 Amendments

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- 1 (iii) an infringement notice is given to the person for the  
2 contravention and is subsequently withdrawn; or  
3 (c) prevent the giving of 2 or more infringement notices to a  
4 person for an alleged contravention of a provision subject to  
5 an infringement notice under this Division; or  
6 (d) limit a court's discretion to determine the amount of a  
7 penalty to be imposed on a person who is found to have  
8 contravened a provision subject to an infringement notice  
9 under this Division.