

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2023: FMI
resolution authority**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	The day after this Act receives the Royal Assent.	

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Schedule 1—Financial markets infrastructure: resolution authority

Part 1—Crisis resolution

Corporations Act 2001

1 Section 9

Insert:

approved netting arrangement has the same meaning as in the *Payment Systems and Netting Act 1998*.

close-out netting contract has the same meaning as in the *Payment Systems and Netting Act 1998*.

external administrator has the same meaning as in Schedule 2.

market netting contract has the same meaning as in the *Payment Systems and Netting Act 1998*.

2 Section 9 (after paragraph (h) of the definition of *property*)

Insert:

(ha) in Part 7.3B (crisis resolution for CS facility licensees)—has a meaning affected by subsection 833A(4); and

3 Section 9

Insert:

statutory management has the meaning given by subsection 832B(5).

statutory manager of a body corporate means:

(a) if the Reserve Bank is in control of the body corporate's business under Part 7.3B—the Reserve Bank; and

(b) each person appointed by the Reserve Bank to take control of a body corporate's business under Part 7.3B.

Note: See section 836B for when there are 2 or more statutory managers of a body corporate.

4 Subsection 198G(9) (definition of *external administrator*)

Repeal the definition.

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5 After subsection 459P(1)

Insert:

Note: The Reserve Bank may also apply under this section to the Court for an order if a condition in section 831A is satisfied in relation to a CS facility licensee: see section 849A.

6 Subparagraph 588FL(1)(a)(v)

Omit “and”.

7 After subparagraph 588FL(1)(a)(v)

Insert:

(vi) section 840A or Division 8 of Part 7.3B begins to apply to a body corporate; and

8 Subsection 600J(5)

Repeal the subsection.

9 After section 794A

Insert:

794AA ASIC’s power to give directions—crisis resolution

(1) If the Reserve Bank, under subsection 849B(1), requests ASIC to give a direction to a market licensee under this subsection to do, or to refrain from doing, specified things, ASIC may give the licensee a written direction to do, or to refrain from doing, those things.

(2) Without limiting subsection (1), the specified things may include:

(a) suspending dealings in a specified financial product or class of financial products; or

(b) taking:

(i) any actions; or

(ii) one or more specified actions;

relating to dealings in a specified financial product or class of financial products.

Example: Under paragraph (b), a direction could require the licensee to take actions to:

(a) limit the kinds of dealings that are allowed in a financial product or class of financial products; or

(b) require participants in a market to act in a specified manner in relation to dealings in a financial product or class of financial products.

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1 (3) The licensee must comply with the direction.

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

4 (4) If the licensee fails to comply with the direction, ASIC may apply
5 to the Court for, and the Court may make, an order that the licensee
6 comply with the direction.

7 *Variations and revocations*

8 (5) If the Reserve Bank, under subsection 849B(1), requests ASIC to
9 vary a direction given to a market licensee under subsection (1) of
10 this section, ASIC may vary the direction by giving written notice
11 to the licensee.

12 (6) ASIC may revoke a direction given to a market licensee under
13 subsection (1) by giving written notice to the licensee.

14 *Notifying other affected persons*

15 (7) As soon as practicable after:
16 (a) directing a market licensee under subsection (1) to do a thing
17 mentioned in subsection (2); or
18 (b) varying or revoking such a direction;
19 ASIC must give written notice of the direction, variation or
20 revocation to the operator of each clearing and settlement facility
21 with which the market licensee has clearing and settlement
22 arrangements for transactions effected through the market.

23 **10 After subsection 798G(5)**

24 Insert:

25 *Crisis resolution*

26 (5A) Despite subsection (3), ASIC may make a market integrity rule
27 without the consent of the Minister if the Reserve Bank, under
28 subsection 849B(1), requests ASIC to make the rule.

29 (5B) However, if ASIC does so, ASIC must:
30 (a) provide the Minister, on the following day, with a copy of the
31 request; and
32 (b) amend or revoke the rule in accordance with any written
33 directions of the Minister.

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11 At the end of subsection 798G(6)

Add:

; (c) a direction given under paragraph (5B)(b).

12 After section 798J

Insert:

798JA Directions by ASIC—crisis resolution

- (1) If the Reserve Bank, under subsection 849B(1), requests ASIC to:
- (a) give a direction to an entity under this subsection to suspend dealings in a financial product or class of financial products;
 - or
 - (b) give some other direction to an entity under this subsection in relation to dealings in a financial product or class of financial products;

ASIC may give the direction, in writing, to the entity.

Note: ASIC may also, at the request of the Reserve Bank, give directions to entities that are market licensees under section 794AA. A failure to comply with a direction under that section is an offence (see subsection 1311(1)).

- (2) The entity must comply with the direction.
- (3) If the entity fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the entity comply with the direction.

Variations and revocations

- (4) If the Reserve Bank, under subsection 849B(1), requests ASIC to vary a direction given to an entity under subsection (1) of this section, ASIC may vary the direction by giving written notice to the entity.
- (5) ASIC may revoke a direction given to an entity under subsection (1) of this section by giving written notice to the entity.

Directions are not legislative instruments

- (6) A direction given under subsection (1), a variation under subsection (4), or a revocation under subsection (5) is not a legislative instrument.

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13 Subsection 822E(1)

After “(overseas clearing and settlement facilities)”, insert “or to a change to the operating rules of a licensed CS facility that the licensee was directed to make under section 844A”.

14 Before Part 7.4

Insert:

Part 7.3B—Crisis resolution for CS facility licensees

Division 1—Preliminary

830A Simplified outline of this Part

The Reserve Bank may take actions under this Part that are reasonably appropriate to manage or respond to a CS facility licensee in crisis.

A CS facility licensee is in crisis if certain conditions are met in relation to the licensee (see section 831A). These conditions relate to acts or events that are likely to pose a threat to:

- (a) the stability of the financial system in Australia; or
- (b) the continuity of clearing and settlement facility services that are critical to the functioning of the financial system in Australia.

Some of the conditions relate to related bodies corporate of the CS facility licensee.

The actions the Reserve Bank may take include:

- (a) placing the licensee, or a related body corporate that is incorporated in Australia, under statutory management; and
- (b) compulsorily transferring all or part of the shares of, or business of, the licensee, or a related body corporate that is incorporated in Australia, to another body corporate; and
- (c) directing the licensee, or a related body corporate that is incorporated in Australia, to do or refrain from doing an act or thing.

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1 If a body corporate is under statutory management or subject to a
2 transfer, a moratorium applies to the body corporate.

3 The Reserve Bank, on request, may exercise some of its functions
4 and powers under this Part to assist foreign regulators to manage or
5 respond to an overseas clearing and settlement facility licensee in
6 crisis.

7 **830B Object of this Part**

8 The object of this Part is to provide for the effective management
9 and resolution of threats posed to:

- 10 (a) the stability of the financial system in Australia; or
11 (b) the continuity of clearing and settlement facility services that
12 are critical to the functioning of the financial system in
13 Australia;

14 that arise from, or in relation to, CS facility licensees.

15 **Division 2—Crisis resolution for CS facility licensees**

16 **831A Reserve Bank may exercise crisis resolution powers if certain** 17 **conditions are satisfied**

- 18 (1) The Reserve Bank may take action in accordance with this Part in
19 relation to a CS facility licensee if any of the following conditions
20 are satisfied in relation to the licensee:
- 21 (a) the licensee requests the Reserve Bank to take action and the
22 Reserve Bank reasonably believes that an event relating to
23 the licensee is likely to pose a threat to:
- 24 (i) the stability of the financial system in Australia; or
25 (ii) the ability of the licensee to continue to provide one or
26 more clearing and settlement facility services that are
27 critical to the functioning of the financial system in
28 Australia;
- 29 (b) the licensee contravenes a direction issued under Part 7.3 by
30 the Reserve Bank and the Reserve Bank reasonably believes
31 that the contravention is likely to pose a threat to:
- 32 (i) the stability of the financial system in Australia; or
33 (ii) the ability of the licensee to continue to provide one or
34 more clearing and settlement facility services that are
35 critical to the functioning of the financial system in
36 Australia;

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- 1 (c) the licensee notifies the Reserve Bank that:
- 2 (i) the licensee has ceased, intends to cease or is likely to
- 3 cease providing one or more clearing and settlement
- 4 facility services that are critical to the functioning of the
- 5 financial system in Australia; or
- 6 (ii) in the absence of external support, the licensee is likely
- 7 to be unable to continue to provide one or more clearing
- 8 and settlement facility services in a way that causes or
- 9 promotes stability in the Australian financial system; or
- 10 (iii) in the absence of external support, the licensee is likely
- 11 to be unable to continue to provide one or more clearing
- 12 and settlement facility services that are critical to the
- 13 functioning of the financial system in Australia;
- 14 (d) the Reserve Bank reasonably believes that, in the absence of
- 15 external support, the licensee is likely to be unable to:
- 16 (i) continue to provide one or more clearing and settlement
- 17 facility services in a way that causes or promotes
- 18 stability in the Australian financial system; or
- 19 (ii) continue to provide one or more clearing and settlement
- 20 facility services that are critical to the functioning of the
- 21 financial system in Australia;
- 22 (e) the licensee notifies the Reserve Bank that:
- 23 (i) the licensee's financial viability is at risk or is likely to
- 24 be at risk; or
- 25 (ii) in the absence of external support, the licensee's
- 26 financial viability is likely to be at risk;
- 27 (f) the Reserve Bank reasonably believes that, in the absence of
- 28 external support, the licensee's financial viability is likely to
- 29 be at risk;
- 30 (g) an external administrator of the licensee has been appointed;
- 31 (h) the licensee notifies the Reserve Bank that it is considering
- 32 appointing an external administrator of the licensee;
- 33 (i) the Reserve Bank reasonably believes that a person is
- 34 seeking to have an external administrator of the licensee
- 35 appointed;
- 36 (j) an external administrator of a related body corporate of the
- 37 licensee has been appointed, or a similar appointment has
- 38 been made under a foreign law, and the Reserve Bank
- 39 reasonably believes that the appointment is likely to pose a
- 40 threat to:
- 41 (i) the stability of the financial system in Australia; or
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- 1 (ii) the ability of the licensee to continue to provide one or
2 more clearing and settlement facility services that are
3 critical to the functioning of the financial system in
4 Australia;
- 5 (k) a related body corporate of the licensee, that is incorporated
6 in Australia, notifies the Reserve Bank that it is considering
7 appointing an external administrator of itself and the Reserve
8 Bank reasonably believes that the appointment is likely to
9 pose a threat to:
- 10 (i) the stability of the financial system in Australia; or
11 (ii) the ability of the licensee to continue to provide one or
12 more clearing and settlement facility services that are
13 critical to the functioning of the financial system in
14 Australia;
- 15 (l) the Reserve Bank reasonably believes that a person is
16 seeking to have an external administrator of a related body
17 corporate of the licensee appointed, or a person is seeking to
18 make a similar appointment under a foreign law, and the
19 Reserve Bank reasonably believes that the appointment is
20 likely to pose a threat to:
- 21 (i) the stability of the financial system in Australia; or
22 (ii) the ability of the licensee to continue to provide one or
23 more clearing and settlement facility services that are
24 critical to the functioning of the financial system in
25 Australia;
- 26 (m) the licensee, or a related body corporate of the licensee that is
27 incorporated in Australia, is doing or not doing any act or
28 thing, and the Reserve Bank reasonably believes this is likely
29 to pose a threat to:
- 30 (i) the stability of the financial system in Australia; or
31 (ii) the ability of the licensee to continue to provide one or
32 more clearing and settlement facility services that are
33 critical to the functioning of the financial system in
34 Australia.
- 35 (2) Subsection (1) does not limit:
- 36 (a) Division 8 (temporary suspension of termination rights); or
37 (b) Division 9 (cross-border crisis resolution).
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EXPOSURE DRAFT

1 Division 3—Statutory management

2 Subdivision A—Statutory management of body corporate in 3 relation to CS facility licensee in crisis

4 832A Statutory manager takes control of body corporate

5 (1) The Reserve Bank may take either or both of the actions in
6 subsection (2), if the Reserve Bank considers taking the action is
7 reasonably appropriate to manage or respond to a condition in
8 section 831A being satisfied in relation to a CS facility licensee.

9 (2) The actions are:

- 10 (a) taking control of the business of the licensee as statutory
11 manager of the licensee; and
12 (b) appointing one or more persons to take control of the
13 business of the licensee, as statutory manager of the licensee.

14 Note: Section 836B deals with when there are 2 or more statutory managers
15 of a body corporate (for example, when the Reserve Bank decides that
16 both itself and another person are to take control as statutory
17 manager).

18 (3) The Reserve Bank may take either or both of the actions in
19 subsection (4), if:

- 20 (a) a statutory manager has taken control of the business of a CS
21 facility licensee, or the Reserve Bank intends that a statutory
22 manager will take control of the business of a CS facility
23 licensee; and
24 (b) the Reserve Bank considers taking the action is reasonably
25 appropriate to manage or respond to a condition in
26 section 831A being satisfied in relation to the licensee.

27 (4) The actions are:

- 28 (a) taking control of the business of a related body corporate of
29 the licensee, that is incorporated in Australia, as statutory
30 manager of the related body corporate; and
31 (b) appointing one or more persons to take control of the
32 business of a related body corporate of the licensee, that is
33 incorporated in Australia, as statutory manager of the related
34 body corporate.

35 Note: Section 836B deals with when there are 2 or more statutory managers
36 of a body corporate (for example, when the Reserve Bank decides that
37 both itself and another person are to take control as statutory
38 manager).

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1 (5) If the Reserve Bank decides to take an action under subsection (1)
2 or (3), the Reserve Bank must give the following, in writing, notice
3 that a statutory manager will take, or is taking, control of the body
4 corporate's business:

- 5 (a) the body corporate;
6 (b) if the body is under external administration—the external
7 administrator.

8 Note: The appointment of the external administrator is terminated when a
9 statutory manager takes control of the body corporate's business: see
10 section 836A.

11 *Consultation*

12 (6) The Reserve Bank must consult ASIC before taking action under
13 subsection (1) or (3). However, a failure to consult ASIC does not
14 invalidate the action.

15 *Limits on individual exercise of powers*

16 (7) At the time a statutory manager (other than the Reserve Bank) is
17 appointed, the Reserve Bank may give the statutory manager a
18 notice, in writing, specifying any limits or conditions on the
19 manager performing functions or exercising powers individually.

20 (8) A notice under subsection (7) must also be given to each other
21 statutory manager of the body corporate (other than the Reserve
22 Bank) at that time.

23 *Termination of statutory manager*

24 (9) The Reserve Bank may, in writing, terminate the appointment of a
25 statutory manager if the Reserve Bank considers that it is no longer
26 reasonably appropriate for the statutory manager to remain in
27 control of the body corporate's business to manage or respond to
28 the condition in section 831A being satisfied in relation to a CS
29 facility licensee, including because the condition is no longer
30 satisfied in relation to the licensee.

31 Note: The Reserve Bank may also decide under subsection (1) or (3) to take
32 control of the body corporate's business or appoint another statutory
33 manager to do so.

34 *Instruments are not legislative instruments*

35 (10) An instrument under subsection (5), (7) or (9) is not a legislative
36 instrument.

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1 832B When a statutory manager is in control

- 2 (1) A statutory manager takes control of a body corporate's business:
- 3 (a) at the time specified in the notice given under
- 4 subsection 832A(5) as the time when the statutory manager
- 5 takes control of the business (which must not be earlier than
- 6 the notice is given); or
- 7 (b) if the notice given under that subsection does not specify a
- 8 time as the time when the statutory manager takes control of
- 9 the business—at the time the notice is given.
- 10 (2) A statutory manager is no longer in control of a body corporate's
- 11 business:
- 12 (a) if the statutory manager is the Reserve Bank—at the time the
- 13 Reserve Bank considers that it is no longer reasonably
- 14 appropriate for it to remain in control of the body corporate's
- 15 business to manage or respond to the condition in
- 16 section 831A being satisfied, including because the condition
- 17 is no longer satisfied in relation to the licensee; or
- 18 (b) at the time the Reserve Bank terminates the appointment of
- 19 the statutory manager.
- 20 (3) If, under paragraph (2)(a), the Reserve Bank ceases to be in control
- 21 of a body corporate's business, the Reserve Bank must notify the
- 22 body corporate in writing.
- 23 (4) If, under paragraph (2)(b), the Reserve Bank terminates the
- 24 appointment of a statutory manager, the Reserve Bank must, in
- 25 writing, notify:
- 26 (a) the body corporate; and
- 27 (b) the statutory manager.
- 28 (5) While a statutory manager is in control of a body corporate's
- 29 business, the body corporate is under *statutory management*.
- 30 (6) The *Public Governance, Performance and Accountability Act 2013*
- 31 does not apply to a body corporate under statutory management.

32 Subdivision B—Powers of statutory manager

33 833A Role of the statutory manager

- 34 (1) While a statutory manager of a body corporate is in control of the
- 35 business of the body corporate the statutory manager:

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- 1 (a) has control of the body corporate's business, property and
2 affairs; and
3 (b) may carry on that business and manage that property and
4 those affairs; and
5 (c) may terminate or dispose of all or part of that business, and
6 may dispose of any of that property; and
7 (d) may perform any function, and exercise any power, that the
8 body corporate or any of its officers could perform or
9 exercise under the operating rules or procedures of a licensed
10 CS facility of which the body corporate is the licensee or a
11 participant; and
12 (e) may perform any other function, and exercise any other
13 power, that the body corporate or any of its officers could
14 perform or exercise if a statutory manager were not in control
15 of the body corporate's business.

16 Note: An expert report on fair value may be required before taking action:
17 see section 849D.

- 18 (2) Nothing in subsection (1) limits the generality of anything else in
19 it.

20 *Limitations*

- 21 (3) This section does not permit the statutory manager to:
- 22 (a) alter the body corporate's constitution, rules or other
23 arrangements for governance other than in accordance with
24 section 833C; or
 - 25 (b) do an act mentioned in subsection 833D(1) other than in
26 accordance with section 833D; or
 - 27 (c) effect a transfer of all or part of the shares in the body
28 corporate or a total or partial transfer of the business of the
29 body corporate, other than in accordance with Division 4
30 (compulsory transfers).

31 *Meaning of property*

- 32 (4) In this Part, **property** of a body corporate includes any PPSA
33 retention of title property of the body corporate.

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

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1 833B Powers to remove director etc.

2 Without limiting section 833A, the statutory manager of a body
3 corporate has power to do any of the following:

- 4 (a) remove from office a director of the body corporate;
- 5 (b) appoint a person as such a director, whether to fill a vacancy
6 or not;
- 7 (c) execute a document, bring or defend proceedings, or do
8 anything else, in the body corporate's name and on its behalf;
- 9 (d) whatever else is necessary for the purposes of this Part.

10 833C Power to alter body corporate's constitution etc.

11 (1) The statutory manager of a body corporate may alter the body
12 corporate's constitution, rules or other arrangements for
13 governance if:

- 14 (a) the alteration is necessary or convenient for enabling or
15 facilitating the performance of the statutory manager's
16 functions and duties, or the exercise of the statutory
17 manager's other powers, under this Part in relation to the
18 body corporate; and
- 19 (b) the statutory manager considers the alteration is reasonably
20 appropriate to manage or respond to the condition in
21 section 831A being satisfied.

22 *This section does not permit transfers of shares or business*

23 (2) This section does not permit the statutory manager to effect a
24 transfer of all or part of the shares in the body corporate or a total
25 or partial transfer of the business of the body corporate, other than
26 in accordance with Division 4 (compulsory transfers).

27 *Exercise of powers despite other laws etc.*

28 (3) A statutory manager may do an act under subsection (1) despite:

- 29 (a) any other provision of this Act; and
 - 30 (b) the body corporate's constitution; and
 - 31 (c) any contract, agreement or arrangement to which the body
32 corporate is party; and
 - 33 (d) any operating rules or procedures of a licensed CS facility of
34 which the body corporate is the licensee or a participant; and
 - 35 (e) any listing rules of a financial market in whose official list
36 the body corporate is included.
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833D Powers to facilitate recapitalisation

- 1
- 2 (1) A statutory manager of a body corporate may do one or more of
- 3 the following acts on terms determined by the statutory manager, at
- 4 the direction of or with the consent of the Reserve Bank:
- 5 (a) issue shares, or rights to acquire shares, in the body;
- 6 (b) cancel shares, or rights to acquire shares, in the body;
- 7 (c) reduce the body corporate's share capital by cancelling any
- 8 paid-up share capital that is not represented by available
- 9 assets;
- 10 (d) sell shares, or rights to acquire shares, in the body;
- 11 (e) vary or cancel rights or restrictions attached to shares in a
- 12 class of shares in the body.

13 Note: An expert report on fair value may be required before taking action:

14 see section 849D.

Notice to members

- 15
- 16 (2) As soon as practicable after the statutory manager does an act
- 17 under subsection (1), the statutory manager must give written
- 18 notice to the persons who were members of the body just before
- 19 the act, identifying the act and explaining its effect on their
- 20 interests as members.
- 21 (3) A contravention of subsection (2) does not affect the validity of
- 22 anything done under subsection (1).

This section does not permit transfers of shares or business

- 23
- 24 (4) This section does not permit the statutory manager to effect a
- 25 transfer of all or part of the shares in the body corporate, or a total
- 26 or partial transfer of the business of the body corporate, other than
- 27 in accordance with Division 4 (compulsory transfers).

Exercise of powers despite other laws etc.

- 28
- 29 (5) A statutory manager may do an act under subsection (1) despite:
- 30 (a) any other provision of this Act; and
- 31 (b) the body corporate's constitution; and
- 32 (c) any contract, agreement or arrangement to which the body
- 33 corporate is party; and
- 34 (d) any operating rules or procedures of a licensed CS facility of
- 35 which the body corporate is the licensee or a participant; and

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(e) any listing rules of a financial market in whose official list the body corporate is included.

833E Statutory manager may request information etc. to be given

(1) A statutory manager of a body corporate may request a person who has, at any time, been an officer of the body corporate to:

(a) attend on the statutory manager; or

(b) give the statutory manager any information relating to the body corporate's business, assets and other property, affairs and financial circumstances that the statutory manager requires; or

(c) allow the statutory manager to inspect and take copies of the body corporate's books;

at the times and in the manner reasonably required by the statutory manager.

(2) A request to give information may include a request to produce books, accounts or documents.

Offence

(3) A person must comply with a request under subsection (1).

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

Information may be given to the Reserve Bank

(4) A statutory manager may give the Reserve Bank any information that the statutory manager receives under this Part.

Note: The secrecy provision in section 79A of the *Reserve Bank Act 1959* applies to information and documents obtained by the Reserve Bank under this section (either as statutory manager under subsection (1) or from a statutory manager under subsection (4)).

833F Statutory manager acts as body corporate's agent

When performing a function, or exercising a power, as the statutory manager of a body corporate, the statutory manager is taken to be acting as the body corporate's agent.

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1 Subdivision C—Effect of statutory manager assuming control

2 834A Exercise of powers while body corporate under statutory 3 management

4 *Powers of officers while body corporate under statutory* 5 *management*

- 6 (1) While a body corporate is under statutory management, an officer
7 of the body must not perform or exercise a function or power of
8 that office.

9 *Offence*

- 10 (2) A person commits an offence if:
11 (a) the person is an officer of a body corporate; and
12 (b) the body corporate is under statutory management; and
13 (c) the person purports to perform or exercise a function or
14 power of that office.

15 *Exceptions*

- 16 (3) Subsections (1) and (2) do not apply to the extent that the officer of
17 the body corporate is acting:
18 (a) with the written approval of the statutory manager of the
19 body corporate or the Reserve Bank; or
20 (b) in circumstances in which, despite the fact that the body
21 corporate is under statutory management, the officer is
22 permitted by this Act to act.

23 Note: In proceedings to determine whether a person has committed an
24 offence under subsection (2), a defendant bears an evidential burden
25 in relation to the matters in subsection (3), see subsection 13.3(3) of
26 the *Criminal Code*.

27 *Reserve Bank may revoke or vary the approval*

- 28 (4) If a statutory manager (other than the Reserve Bank) gives written
29 approval for the purposes of paragraph (3)(a), the statutory
30 manager must immediately notify the Reserve Bank.
31 (5) The Reserve Bank may decide to revoke or vary the approval. The
32 Reserve Bank's decision takes effect from the time the officer is
33 notified of the decision.

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Functions and powers of statutory manager prevail in case of conflict

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2
- 3 (6) If subsection (3) applies and there is a conflict between a function
4 or power of the statutory manager of the body corporate and a
5 function or power of the officer in relation to the body corporate,
6 the statutory manager's function or power prevails.

7 *Effect of section*

- 8 (7) This section does not remove an officer of a body corporate from
9 office.
- 10 (8) For the purposes of this section, a person is not an officer of a body
11 corporate merely because the person is a managing controller,
12 appointed under a power contained in an instrument, of property of
13 the body corporate.
- 14 (9) Nothing in this section affects a secured creditor's right to realise
15 or otherwise deal with a security interest.

16 **834B Only statutory manager can deal with body corporate's**
17 **property**

- 18 (1) This section applies if:
19 (a) a body corporate under statutory management purports to
20 enter into a transaction or dealing affecting property of the
21 body corporate; or
22 (b) a person purports on behalf of a body corporate under
23 statutory management to enter into a transaction or dealing
24 affecting property of the body corporate.
- 25 (2) The transaction or dealing is void unless:
26 (a) the statutory manager entered into it on the body corporate's
27 behalf; or
28 (b) the statutory manager or the Reserve Bank consented to it in
29 writing before it was entered into; or
30 (c) it was entered into under an order of the Court.
- 31 (3) Subsection (2) does not apply to a payment made:
32 (a) by an Australian ADI out of an account kept by the body
33 corporate with the ADI; and
34 (b) in good faith and in the ordinary course of the ADI's banking
35 business; and

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- 1 (c) after the statutory management began and on or before the
2 day on which statutory manager gives to the ADI written
3 notice that the body corporate is under statutory
4 management.
- 5 (4) Subsection (2) has effect subject to an order that the Court makes
6 after the purported transaction or dealing.
- 7 (5) If, because of subsection (2), the transaction or dealing is void, or
8 would be void apart from subsection (4), an officer or employee of
9 the body corporate who:
- 10 (a) purported to enter into the transaction or dealing on the body
11 corporate's behalf; or
- 12 (b) was in any other way, by act or omission, directly or
13 indirectly, knowingly concerned in, or party to, the
14 transaction or dealing;
- 15 contravenes this subsection.
- 16 Note: Failure to comply with this subsection is an offence: see
17 subsection 1311(1).

18 **834C Order for compensation where officer involved in void** 19 **transaction**

- 20 (1) If:
- 21 (a) a court finds a person guilty of an offence constituted by a
22 contravention of subsection 834B(5) (including such an
23 offence that is taken to have been committed because of
24 section 11.2 of the *Criminal Code*); and
- 25 (b) the court is satisfied that the body corporate or another
26 person has suffered loss or damage because of the act or
27 omission constituting the offence;
- 28 the court may (whether or not it imposes a penalty) order the
29 first-mentioned person to pay compensation to the body corporate
30 or other person, as the case may be, of such amount as the order
31 specifies.
- 32 Note: Section 73A defines when a court is taken to find a person guilty of an
33 offence.
- 34 (2) An order under subsection (1) may be enforced as if it were a
35 judgment of the court.

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-
- 1 (3) The power of a court under section 1318 to relieve a person from
2 liability as mentioned in that section extends to relieving a person
3 from liability to be ordered under this section to pay compensation.

4 **834D Effect of things done during statutory management of body** 5 **corporate**

6 A payment made, transaction entered into, or any other act or thing
7 done, in good faith, by the statutory manager of a body corporate
8 under statutory management or with the consent of the statutory
9 manager or the Reserve Bank:

- 10 (a) is valid and effectual for the purposes of this Act; and
11 (b) is not liable to be set aside in a winding up of the body
12 corporate.

13 **834E Effect of statutory management on body corporate's members**

14 *Transfer of shares*

- 15 (1) A transfer of shares in a body corporate that is made during the
16 statutory management of the body corporate is void except if:
17 (a) both:
18 (i) the statutory manager or the Reserve Bank gives written
19 consent to the transfer; and
20 (ii) that consent is unconditional; or
21 (b) all of the following subparagraphs apply:
22 (i) the statutory manager or the Reserve Bank gives written
23 consent to the transfer;
24 (ii) that consent is subject to one or more specified
25 conditions;
26 (iii) those conditions have been satisfied; or
27 (c) the transfer is done to give effect to an action under section
28 833D (recapitalisation actions) by the statutory manager; or
29 (d) the transfer is done to give effect to a transfer under
30 Division 4 (compulsory transfers).

31 *Alteration in the status of members*

- 32 (2) An alteration in the status of members of a body corporate that is
33 made during the statutory management of the body corporate is
34 void except if:
35 (a) both:

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-
- 1 (i) the statutory manager or the Reserve Bank gives written
2 consent to the alteration; and
3 (ii) that consent is unconditional; or
4 (b) all of the following subparagraphs apply:
5 (i) the statutory manager or the Reserve Bank gives written
6 consent to the alteration;
7 (ii) that consent is subject to one or more specified
8 conditions;
9 (iii) those conditions have been satisfied; or
10 (c) the alteration is done to give effect to an action under section
11 833D (recapitalisation actions) by the statutory manager; or
12 (d) the alteration is done to give effect to a transfer under
13 Division 4 (compulsory transfers).
- 14 (3) The statutory manager and the Reserve Bank must not give consent
15 for the purposes of paragraph (2)(a) or (b) if the alteration would
16 contravene Part 2F.2.

17 **Subdivision D—Additional duties of statutory manager**

18 **835A Reporting to Reserve Bank**

19 *Duty to report to the Reserve Bank on request*

- 20 (1) If requested by the Reserve Bank, a statutory manager of a body
21 corporate (other than the Reserve Bank) must give the Reserve
22 Bank a written report showing how the control of the body
23 corporate's business is being carried out.
- 24 (2) The report must be given to the Reserve Bank within a reasonable
25 time after the request.

26 *Duty to report to the Reserve Bank on termination of appointment*

- 27 (3) If the Reserve Bank terminates the appointment of a statutory
28 manager of a body corporate, the statutory manager of the body
29 corporate must give to the Reserve Bank a written report showing
30 how the control of the body corporate's business was carried out
31 over the period the statutory manager was in control.
- 32 (4) The report must be given to the Reserve Bank within a reasonable
33 time after the termination.

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1 835B Reserve Bank may give directions to statutory manager

2 *Duty to follow directions by the Reserve Bank*

- 3 (1) The Reserve Bank may give a statutory manager of a body
4 corporate a direction relating to the control of the body corporate's
5 business, and may vary such a direction.
- 6 (2) A statutory manager who is given a direction, or a varied direction,
7 under subsection (1) must:
- 8 (a) comply with the direction; or
9 (b) immediately request the Reserve Bank to vary the direction
10 and provide the Reserve Bank with information relating to
11 the control of the body corporate's business that is relevant to
12 its request.
- 13 (3) If the Reserve Bank refuses to vary the direction, the statutory
14 manager must comply with the direction.

15 835C Consent to take action that may affect financial system 16 stability in Australia

17 If a statutory manager of a body corporate (other than the Reserve
18 Bank) considers that an action that the statutory manager proposes
19 to take is an action that is likely to pose a threat to:

- 20 (a) the stability of the financial system in Australia; or
21 (b) the continuity of one or more clearing and settlement facility
22 services that are critical to the functioning of the financial
23 system in Australia.

24 the statutory manager must, before taking the action:

- 25 (c) notify the Reserve Bank as soon as practicable; and
26 (d) obtain the Reserve Bank's written consent.

27 Subdivision E—Other matters

28 836A Effect on external administration

29 *Termination of existing external administrator*

- 30 (1) The appointment of an external administrator of a body corporate
31 is terminated when a statutory manager takes control of the body
32 corporate's business.

EXPOSURE DRAFT

-
- 1 (2) Failure to give an external administrator notice under section 832A
2 does not affect the operation of this section.

3 *External administrator may only be appointed with approval*
4 *during statutory management*

- 5 (3) While a body corporate is under statutory management, an external
6 administrator of the body corporate must not be appointed unless
7 the Reserve Bank approves the appointment.

8 *Invalid acts*

- 9 (4) If:
10 (a) a person who ceased to be the external administrator of a
11 body corporate under subsection (1); or
12 (b) a purported external administrator of the body corporate
13 appointed in contravention of subsection (3);
14 purports to act in relation to the body corporate's business, those
15 acts are invalid and of no effect.

16 **836B Appointment of 2 or more statutory managers of body** 17 **corporate**

18 If there are 2 or more statutory managers of a body corporate:

- 19 (a) the functions and powers of a statutory manager of the body
20 corporate may be performed or exercised by any one of them,
21 or by any 2 or more of them together, subject to any limits or
22 conditions specified in notices given under subsection
23 832A(7); and
24 (b) a reference in this Act to a statutory manager, or to the
25 statutory manager, of the body corporate, is a reference to
26 whichever one or more of those statutory managers as the
27 case requires.

28 **836C Costs of statutory management**

- 29 (1) The Reserve Bank's costs (including costs in the nature of
30 remuneration and expenses) of:
31 (a) being in control of a body corporate's business as statutory
32 manager; or
33 (b) having a statutory manager in control of a body corporate's
34 business;

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1 are payable from the body corporate's funds and are a debt due to
2 the Reserve Bank.

- 3 (2) Despite anything contained in this Act or any other law relating to
4 the winding up of companies, debts due to the Reserve Bank by a
5 body corporate under subsection (1) have priority in a winding-up
6 of the body corporate over all other unsecured debts.

7 **836D Time for doing act does not run while act prevented by this** 8 **Division**

9 If:

- 10 (a) for any purpose (for example, the purposes of a law,
11 agreement or instrument) an act must or may be done within
12 a particular period or before a particular time; and
13 (b) this Part prevents the act from being done within that period
14 or before that time;

15 the period is extended, or the time is deferred, because of this
16 section, according to how long this Part prevented the act from
17 being done.

18 **836E Annual general meeting need not be held**

19 Despite section 250N and section 601BR, a body corporate need
20 not hold an annual general meeting within a particular period if, at
21 the end of that period, the body corporate is under statutory
22 management.

23 **836F Dealing with property subject to circulating security interests**

24 *Scope*

- 25 (1) This section applies if a security interest in property (the *secured*
26 *property*) of a body corporate under statutory management was a
27 circulating security interest when the interest arose, but has stopped
28 being a circulating security interest because:
29 (a) in the case of a PPSA security interest—the property has
30 stopped being a circulating asset (within the meaning of the
31 *Personal Property Securities Act 2009*); or
32 (b) in the case of a security interest that was a floating charge
33 when it arose—the floating charge has since become a fixed
34 or specific charge.

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

4 Note 2: For the meaning of *circulating asset*, see section 340 of the *Personal*
5 *Property Securities Act 2009*.

6 *Security interest in circulating asset*

- 7 (2) Subject to section 836G in the case of a PPSA security interest, the
8 statutory manager may deal with any of the secured property in any
9 way the body corporate could deal with the secured property
10 immediately before it stopped being a circulating asset.

11 *Floating charge*

- 12 (3) Subject to section 836G, in the case of a security interest that was a
13 floating charge when it arose, the statutory manager may deal with
14 any of the secured property as if the security interest were still a
15 floating charge.

16 Note: Section 836G deals with the disposal of encumbered property by a
17 statutory manager.

18 **836G When statutory manager may dispose of encumbered** 19 **property**

- 20 (1) The statutory manager of a body corporate under statutory
21 management must not dispose of:
22 (a) property of the body corporate that is subject to a security
23 interest; or
24 (b) property (other than PPSA retention of title property) that is
25 used or occupied by, or is in the possession of, the body
26 corporate but of which someone else is the owner or lessor.

27 Note: PPSA retention of title property is subject to a PPSA security interest,
28 and so is covered by paragraph (a) (see the definition of *PPSA*
29 *retention of title property* in section 51F).

- 30 (2) Subsection (1) does not prevent a disposal:
31 (a) in the ordinary course of the body corporate's business; or
32 (b) with the written consent of the secured party, owner or lessor,
33 as the case may be; or
34 (c) at the direction of or with the consent of the Reserve Bank.
- 35 (3) If:
36 (a) a body corporate is under statutory management; and

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-
- 1 (b) property of the body corporate is subject to a security
2 interest; and
3 (c) the statutory manager disposes of the property;
4 the disposal extinguishes the security interest.
- 5 (4) For the purposes of paragraph (2)(a), if:
6 (a) property is used or occupied by, or is in the possession of, a
7 body corporate; and
8 (b) another person is the owner of the property; and
9 (c) either:
10 (i) the property is PPSA retention of title property; or
11 (ii) the property is subject to a retention of title clause under
12 a contract; and
13 (d) the owner demands the return of the property;
14 a disposal of the property that occurs after the demand is made
15 does not mean that the disposal is not in the ordinary course of the
16 body corporate's business.

836H Proceeds of sale of property

17
18 *Property subject to a possessory security interest*

- 19 (1) If:
20 (a) a body corporate is under statutory management; and
21 (b) property of the body corporate is subject to a possessory
22 security interest; and
23 (c) the statutory manager of the body corporate disposes of the
24 property by way of sale;
25 then:
26 (d) if the net proceeds of sale equals or exceeds the total of the
27 debts secured by:
28 (i) the possessory security interest; and
29 (ii) any other security interest in the property, where the
30 debt secured by the security interest has a priority that is
31 equal to or higher than the priority of the debt secured
32 by the possessory security interest;
33 the statutory manager of the body corporate must:
34 (iii) set aside so much of the net proceeds as equals the total
35 of those debts; and
36 (iv) apply the amount so set aside in paying those debts; or

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-
- 1 (e) if the net proceeds of sale fall short of the total of the debts
2 secured by:
3 (i) the possessory security interest; and
4 (ii) any other security interest in the property, where the
5 debt secured by the security interest has a priority that is
6 equal to or higher than the priority of the debt secured
7 by the possessory security interest;
8 then:
9 (iii) the statutory manager must set aside the net proceeds;
10 and
11 (iv) the statutory manager must apply the amount so set
12 aside in paying those debts in order of priority, on the
13 basis that if the amount is insufficient to fully pay debts
14 of the same priority, they must be paid proportionately;
15 and
16 (v) if any of those debts is not fully paid—so much of the
17 debt as remains unpaid may be recovered from the body
18 corporate as an unsecured debt.

19 *PPSA retention of title property*

- 20 (2) If the statutory manager of a body corporate disposes of PPSA
21 retention of title property of the body corporate by way of sale,
22 then the statutory manager must apply the net proceeds of the sale
23 in the same way as a secured party is required, under section 140 of
24 the *Personal Property Securities Act 2009*, to apply an amount,
25 personal property or proceeds of collateral received by the secured
26 party as a result of enforcing a security interest in the property.

27 Note: PPSA retention of title property does not include property that is
28 subject to a retention of title clause (see section 9, definitions of *PPSA*
29 *retention of title property* and *retention of title clause*).
30 Subsection (3) deals with property that is subject to a retention of title
31 clause.

32 *Property subject to a retention of title clause*

- 33 (3) If:
34 (a) a body corporate is under statutory management; and
35 (b) property is used or occupied by, or is in the possession of, the
36 body; and
37 (c) another person is the owner of the property; and
38 (d) the property is subject to a retention of title clause under a
39 contract (the original contract); and

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-
- 1 (e) the statutory manager disposes of the property by way of
2 sale;
- 3 then:
- 4 (f) if the net proceeds of sale equals or exceeds the total of:
5 (i) so much of the purchase price, or other amount, under
6 the original contract as remains unpaid; and
7 (ii) if there are one or more securities over the property—
8 the debts secured by the securities;
- 9 the statutory manager must:
10 (iii) set aside so much of the net proceeds as equals that
11 total; and
12 (iv) apply the amount so set aside in paying that total; or
- 13 (g) if the net proceeds of sale fall short of the total of:
14 (i) so much of the purchase price, or other amount, under
15 the original contract as remains unpaid; and
16 (ii) if there are one or more securities over the property—
17 the debts secured by the securities;
- 18 then:
19 (iii) the statutory manager must set aside the net proceeds;
20 and
21 (iv) the statutory manager must apply the amount so set
22 aside in paying those debts in order of priority, on the
23 basis that if the amount is insufficient to fully pay debts
24 of the same priority, they must be paid proportionately;
25 and
26 (v) if any of those debts is not fully paid—so much of the
27 debt as remains unpaid may be recovered from the body
28 as an unsecured debt.
- 29 Note: Property that is subject to a retention of title clause does not include
30 PPSA retention of title property (see section 9, definitions of *PPSA*
31 *retention of title property* and *retention of title clause*).
32 Subsection (2) deals with PPSA retention of title property.

836J Statutory manager has qualified privilege

34 A person who is or has been the statutory manager of a body
35 corporate has qualified privilege in respect of a statement that the
36 person has made, whether orally or in writing, in the course of
37 performing or exercising any of the person's functions and powers
38 as statutory manager of the body corporate

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836K Protection of persons dealing with statutory manager

- 1
2 (1) Sections 128 and 129 apply in relation to a body corporate under
3 statutory management as if:
4 (a) a reference in those sections to the company, or to an officer
5 of the company, included a reference to the statutory
6 manager of the body corporate; and
7 (b) a reference in those sections to an assumption referred to in
8 section 129 included a reference to an assumption that the
9 statutory manager is:
10 (i) acting within the statutory manager's functions and
11 powers as statutory manager; and
12 (ii) in particular, is complying with this Act.
- 13 (2) The effect that sections 128 and 129 have because of subsection (1)
14 of this section is additional to, and does not prejudice, the effect
15 that sections 128 and 129 otherwise have in relation to a body
16 corporate under statutory management.

Division 4—Compulsory transfer of business or shares

Subdivision A—Compulsory transfer of business or shares of body corporate in relation to CS facility licensee in crisis

837A Compulsory transfer of shares in body corporate

Transfer of all or part of the shares in a CS facility licensee

- 21
22
23 (1) The Reserve Bank may, in writing, make a determination that there
24 is to be a transfer of all or part of the shares in a CS facility
25 licensee (the *target body*) to another body corporate (the *receiving*
26 *body*) if:
27 (a) the Reserve Bank considers the transfer is reasonably
28 appropriate to manage or respond to a condition in
29 section 831A being satisfied in relation to the licensee; and
30 (b) either:
31 (i) the Minister has consented to the transfer; or
32 (ii) the Minister's consent to the transfer is not required (see
33 section 837D); and
34 (c) the Reserve Bank is satisfied that the board of the receiving
35 body has consented to the transfer.

EXPOSURE DRAFT

1 Note: An expert report on fair value may be required before taking action:
2 see section 849D.

3 *Transfer of all or part of the shares in a related body corporate*

- 4 (2) The Reserve Bank may, in writing, make a determination that there
5 is to be a transfer of all or part of the shares in a body corporate
6 (the *target body*) to another body corporate (the *receiving body*) if:
7 (a) the Reserve Bank has made, or intends to make, a
8 determination under subsection (1) that there is to be a
9 transfer of shares in a CS facility licensee to another body
10 corporate; and
11 (b) the Reserve Bank considers transfer to the receiving body is
12 reasonably appropriate to manage or respond to a condition
13 in section 831A being satisfied in relation to the licensee; and
14 (c) the target body is, or before the transfer of shares from the
15 licensee referred to in paragraph (a) was, a related body
16 corporate of the licensee; and
17 (d) the target body is incorporated in Australia; and
18 (e) either:
19 (i) the Minister has consented to the transfer; or
20 (ii) the Minister's consent to the transfer is not required (see
21 section 837D); and
22 (f) the Reserve Bank is satisfied that the board of the receiving
23 body has consented to the transfer.

24 Note: An expert report on fair value may be required before taking action:
25 see section 849D.

26 *Determination*

- 27 (3) A determination under subsection (1) or (2) must include:
28 (a) particulars of the transfer, including:
29 (i) the names of the target body and the receiving body;
30 and
31 (ii) whether it will be a transfer of all or part of the shares;
32 and
33 (iii) if it will be a transfer of part of the shares—an
34 indication of the shares that are to be transferred; and
35 (b) a statement of the reasons why the determination has been
36 made.
- 37 (4) A determination under subsection (1) or (2) is not a legislative
38 instrument.

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Notice

- 1
2 (5) The Reserve Bank must give a copy of a determination under
3 subsection (1) or (2) to the target body and the receiving body.

4 *Consultation*

- 5 (6) The Reserve Bank must consult ASIC and the Australian
6 Competition and Consumer Commission before making a
7 determination under subsection (1) or (2). However, a failure to
8 consult does not invalidate the determination.

9 **837B Compulsory transfer of business of body corporate**

10 *Total or partial transfer of business of CS facility licensee*

- 11 (1) The Reserve Bank may, in writing, make a determination that there
12 is to be a total or partial transfer of business of a CS facility
13 licensee from the licensee (the *target body*) to another body
14 corporate (the *receiving body*) if:
15 (a) the Reserve Bank considers the transfer is reasonably
16 appropriate to manage or respond to a condition in
17 section 831A being satisfied in relation to the licensee; and
18 (b) either:
19 (i) the Minister has consented to the transfer; or
20 (ii) the Minister's consent to the transfer is not required (see
21 section 837D); and
22 (c) the Reserve Bank is satisfied that the board of the receiving
23 body has consented to the transfer.

24 Note: An expert report on fair value may be required before taking action:
25 see section 849D.

26 *Total or partial transfer of business of related body corporate*

- 27 (2) The Reserve Bank may, in writing, make a determination that there
28 is to be a total or partial transfer of business from a body corporate
29 (the *target body*) to another body corporate (the *receiving body*) if:
30 (a) the Reserve Bank has made, or intends to make, a
31 determination under subsection (1) that there is to be a total
32 or partial transfer of business from a CS facility licensee to
33 another body corporate; and

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-
- 1 (b) the Reserve Bank considers the transfer to the receiving body
2 is reasonably appropriate to manage or respond to a condition
3 in section 831A being satisfied in relation to the licensee; and
4 (c) the target body is, or before the transfer of business from the
5 licensee referred to in paragraph (a) was, a related body
6 corporate of the licensee; and
7 (d) the target body is incorporated in Australia; and
8 (e) either:
9 (i) the Minister has consented to the transfer; or
10 (ii) the Minister's consent to the transfer is not required (see
11 section 837D); and
12 (f) the Reserve Bank is satisfied that the board of the receiving
13 body has consented to the transfer.

14 Note: An expert report on fair value may be required before taking action:
15 see section 849D.

16 *Determination*

- 17 (3) A determination under subsection (1) or (2) must include:
18 (a) particulars of the transfer, including:
19 (i) the names of the target body and the receiving body;
20 and
21 (ii) whether it will be a total or a partial transfer; and
22 (iii) if it will be a partial transfer—an indication of the part
23 of the target body's business that is to be transferred;
24 and
25 (b) a statement of the reasons why the determination has been
26 made.
- 27 (4) A determination under subsection (1) or (2) is not a legislative
28 instrument.

29 *Notice*

- 30 (5) The Reserve Bank must give a copy of a determination under
31 subsection (1) or (2) to the target body and the receiving body.

32 *Consultation*

- 33 (6) The Reserve Bank must consult ASIC and the Australian
34 Competition and Consumer Commission before making a
35 determination under subsection (1) or (2). However, a failure to
36 consult does not invalidate the determination.

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837C When consent of receiving body is in force

- 1
- 2 (1) The consent of the board of a receiving body referred to in
3 paragraph 837A(1)(c) or (2)(f) or 837B(1)(c) or (2)(f) remains in
4 force until it is withdrawn by the board with the agreement of the
5 Reserve Bank.
- 6 (2) The Reserve Bank may agree to the consent being withdrawn if the
7 Reserve Bank considers it appropriate to allow the consent to be
8 withdrawn having regard to any of the following:
- 9 (a) circumstances that have arisen since the consent was given;
- 10 (b) circumstances that were in existence at or before the time
11 when the consent was given but that were not known to the
12 receiving body's board when it gave its consent;
- 13 (c) any other relevant matter.

837D Minister's power to decide that consent is not required

- 14
- 15 (1) For the purposes of subparagraph 837A(1)(b)(ii) or (2)(e)(ii) or
16 837B(1)(b)(ii) or (2)(e)(ii), consent to a transfer is not required if
17 the Minister has, in writing, determined that the Minister's consent
18 is not required in relation to:
- 19 (a) the transfer; or
- 20 (b) a class of transfers that includes the transfer.
- 21 (2) The regulations may prescribe criteria to be taken into account by
22 the Minister in deciding whether to make a determination.
- 23 (3) A determination is a legislative instrument if it is expressed to
24 apply in relation to a class of transfers (whether or not it is also
25 expressed to apply in relation to one or more transfers identified
26 otherwise than by reference to membership of a class).
- 27 (4) If subsection (3) does not apply to a determination, the
28 determination is not a legislative instrument.

837E Agreement about how transfer is to be effected

- 29
- 30 (1) If a determination is made under section 837A or 837B that there is
31 to be a transfer, the target body or the receiving body, or both of
32 those bodies, may provide the Reserve Bank with a written
33 statement specifying, or specifying a mechanism for determining,
34 things that are to happen, or that are taken to be the case, in relation
35 to:

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-
- 1 (a) if the determination is made under section 837A—some or
2 all of the shares that are to be transferred; or
3 (b) if the determination is made under section 837B—some or all
4 of the assets and liabilities that are to be transferred.
- 5 (2) The Reserve Bank may, in writing, approve the statement before
6 issuing the certificate of transfer if the Reserve Bank is satisfied
7 that:
8 (a) the statement has been agreed to by the target body and the
9 receiving body; and
10 (b) the matters specified in the statement are appropriate.

11 **837F Determination may impose conditions**

- 12 (1) A determination under section 837A or 837B that there is to be a
13 transfer may impose conditions of either or both of the following
14 kinds:
15 (a) conditions to be complied with by the target body or the
16 receiving body before a certificate of transfer is issued in
17 relation to the transfer;
18 (b) conditions to be complied with by the target body or the
19 receiving body after a certificate of transfer has been issued
20 or has come into force in relation to the transfer.
- 21 (2) The Reserve Bank may, in writing, vary or revoke any condition of
22 a determination if the Reserve Bank is satisfied that the variation or
23 revocation is appropriate. Each body to which the condition applies
24 must be given notice of the revocation or variation in writing.
- 25 (3) The target body or the receiving body may apply in writing to the
26 Reserve Bank to have a condition of a determination that applies to
27 it varied or revoked.
- 28 (4) The Reserve Bank may, by notice in writing given to the body that
29 made the application, approve the variation or revocation if the
30 Reserve Bank is satisfied that the variation or revocation is
31 appropriate. A variation or revocation that is approved by the
32 Reserve Bank has effect accordingly.
- 33 (5) If:
34 (a) a condition is imposed on a body corporate under
35 subsection (1) in relation to a transfer; and
36 (b) a certificate under section 838A that transfer is to take effect
37 is not in force; and

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1 (c) a determination has not been made under section 837G that
2 the transfer is not to take effect;
3 the body corporate must comply with the condition.

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

6 (6) A body corporate does not commit an offence against this Act
7 merely because the body is complying with a condition imposed
8 under subsection (1).

9 Note: A defendant bears an evidential burden in relation to the matter in
10 subsection (6), see subsection 13.3(3) of the *Criminal Code*.

11 **837G Determination that transfer is not to take effect**

12 (1) If:

13 (a) the Reserve Bank has made a determination under section
14 837A or 837B that there is to be a transfer; and

15 (b) the Reserve Bank has not issued a certificate under section
16 838A that the transfer is to take effect; and

17 (c) either:

18 (i) the consent of the board of the receiving body to the
19 transfer has been withdrawn; or

20 (ii) the Reserve Bank decides under subsection (2) of this
21 section that that the transfer should not go ahead;

22 the Reserve Bank must, in writing, issue a certificate stating that
23 the transfer is not to take effect.

24 (2) The Reserve Bank may decide that the transfer should not go ahead
25 if the Reserve Bank considers that the transfer is no longer
26 reasonably appropriate to manager or respond to the condition in
27 section 831A being satisfied in relation to a CS facility licensee,
28 including because the condition is no longer satisfied in relation to
29 the licensee.

30 (3) The certificate is not a legislative instrument.

31 *Notice*

32 (4) The Reserve Bank must give a copy of the certificate to the target
33 body and the receiving body.

EXPOSURE DRAFT

1 Subdivision B—Transfer process

2 838A Certificate of transfer

3 (1) If:

- 4 (a) the Reserve Bank has made a determination under section
5 837A or 837B that there is to be a transfer; and
6 (b) the Reserve Bank considers that the transfer should go ahead;
7 and
8 (c) the consent of the board of the receiving body to the transfer
9 remains in force;

10 the Reserve Bank must, in writing, issue a certificate stating that
11 the transfer is to take effect.

12 (2) The certificate of transfer must:

- 13 (a) include the names of:
14 (i) the target body; and
15 (ii) the receiving body; and
16 (b) if the determination is made under section 837A:
17 (i) state whether the transfer is a transfer of all or part of
18 the shares; and
19 (ii) if the transfer is of part of the shares—include a list of
20 the shares that are being transferred to the receiving
21 body; and
22 (c) if the determination is made under section 837B:
23 (i) state whether the transfer is a total or a partial transfer;
24 and
25 (ii) if the transfer is a partial transfer—include, or have
26 attached to it, a list of the assets and liabilities that are
27 being transferred to the receiving body; and
28 (d) state when the certificate is to come into force (either by
29 specifying a date as the date it comes into force, or by
30 specifying that the date it comes into force is a date worked
31 out in accordance with provisions of the certificate).

32 (3) The certificate comes into force in accordance with the statement
33 included in the certificate as required by paragraph (2)(d).

34 (4) The certificate is not a legislative instrument.

EXPOSURE DRAFT

Specification of things that are to happen on transfer etc.

1
2 (5) The certificate may include provisions specifying, or specifying a
3 mechanism for determining, other things that are to happen, or that
4 are taken to be the case, in relation to:

5 (a) if the determination is made under section 837A—some or
6 all of the shares that are to be transferred; or

7 (b) if the determination is made under section 837B—some or all
8 of the assets and liabilities that are to be transferred; or

9 Note: For example, if the target body is the trustee of a trust, the certificate
10 may specify how the trust is to be transferred.

11 *Notice*

12 (6) The Reserve Bank must:

13 (a) give a copy of the certificate to the target body and the
14 receiving body; and

15 (b) publish the notice of the issue of the certificate on its website.

16 **838B Time and effect of transfer of shares**

17 (1) When a certificate issued under section 838A for a transfer of
18 shares comes into force, the shares in the target body that are to be
19 transferred, wherever those shares are located, become shares held
20 by the receiving body without any transfer, conveyance or
21 assignment.

22 (2) Those shares become shares held by the receiving body free from
23 any trust, liability or other encumbrance.

24 *Certificate provisions for things to happen on transfer etc. are*
25 *taken to have happened etc.*

26 (3) If the certificate includes provisions of a kind referred to in
27 paragraph 838A(5)(a), then:

28 (a) if the provisions specify that particular things are to happen
29 or are taken to be the case—those things are, by force of this
30 section, taken to happen, or to be the case, in accordance with
31 those provisions; and

32 (b) if the provisions specify a mechanism for determining things
33 that are to happen or are taken to be the case—things
34 determined in accordance with the mechanism are, by force
35 of this section, taken to happen, or to be the case, as
36 determined in accordance with that mechanism.

EXPOSURE DRAFT

1 *Agreed provisions for things to happen on transfer etc. are taken to*
2 *have happened etc.*

- 3 (4) If the Reserve Bank has approved a statement under subsection
4 837E(2) in relation to the transfer, then:
- 5 (a) if the statement specifies that particular things are to happen
6 or are taken to be the case—those things are, by force of this
7 section, taken to happen, or to be the case, in accordance with
8 the statement; and
 - 9 (b) if the statement specifies a mechanism for determining things
10 that are to happen or are taken to be the case—things
11 determined in accordance with that mechanism are, by force
12 of this section, taken to happen, or to be the case, as
13 determined in accordance with that mechanism.

14 **838C Time and effect of transfer of business**

- 15 (1) When a certificate issued under section 838A for a transfer of
16 business comes into force, the receiving body becomes the
17 successor in law of the target body, to the extent of the transfer. In
18 particular:
- 19 (a) if the transfer is a total transfer—all the assets and liabilities
20 of the target body, wherever those assets and liabilities are
21 located, become assets and liabilities of the receiving body
22 (in the same capacity as they were assets and liabilities of the
23 target body) without any transfer, conveyance or assignment;
24 and
 - 25 (b) if the transfer is a partial transfer—all the assets and
26 liabilities included in the list referred to in
27 subparagraph 838A(2)(c)(ii), wherever those assets and
28 liabilities are located, become assets and liabilities of the
29 receiving body (in the same capacity as they were assets and
30 liabilities of the target body) without any transfer,
31 conveyance or assignment; and
 - 32 (c) to the extent of the transfer, the duties, obligations,
33 immunities, rights and privileges applying to the target body
34 apply to the receiving body.

35 *Certificate provisions for things to happen on transfer etc. are*
36 *taken to have happened etc.*

- 37 (2) If the certificate includes provisions of a kind referred to in
38 paragraph 838A(5)(b), then:

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-
- 1 (a) if the provisions specify that particular things are to happen
2 or are taken to be the case—those things are, by force of this
3 section, taken to happen, or to be the case, in accordance with
4 those provisions; and
5 (b) if the provisions specify a mechanism for determining things
6 that are to happen or are taken to be the case—things
7 determined in accordance with the mechanism are, by force
8 of this section, taken to happen, or to be the case, as
9 determined in accordance with that mechanism.

10 *Agreed provisions for things to happen on transfer etc. are taken to*
11 *have happened etc.*

- 12 (3) If the Reserve Bank has approved a statement under subsection
13 837E(2) in relation to the transfer, then:
14 (a) if the statement specifies that particular things are to happen
15 or are taken to be the case—those things are, by force of this
16 section, taken to happen, or to be the case, in accordance with
17 the statement; and
18 (b) if the statement specifies a mechanism for determining things
19 that are to happen or are taken to be the case—things
20 determined in accordance with that mechanism are, by force
21 of this section, taken to happen, or to be the case, as
22 determined in accordance with that mechanism.

23 **Subdivision C—Other matters**

24 **839A Partial transfer of netting contracts void**

- 25 (1) This section applies if:
26 (a) a certificate under section 838A for a partial transfer of
27 business comes into force; and
28 (b) just before the partial transfer, the target body is a party to:
29 (i) a close-out netting contract; or
30 (ii) a security given over financial property (within the
31 meaning of the *Payment Systems and Netting Act 1998*),
32 in respect of an obligation of the target body under a
33 close-out netting contract; or
34 (iii) a market netting contract; or
35 (iv) a security given over property, in respect of an
36 obligation of the target body under a market netting
37 contract; or

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- 1 (v) an approved netting arrangement; and
2 (c) the partial transfer covers some (but not all) of the following
3 assets and liabilities:
4 (i) the assets and liabilities the body has, under the
5 close-out netting contract, market netting contract or
6 approved netting arrangement, with respect to another
7 party to the contract or arrangement (the *counterparty*);
8 (ii) those assets that are property over which security is
9 given in respect of an obligation of the target body
10 under the close-out netting contract or the market
11 netting contract.

12 Note: The *Payment Systems and Netting Act 1998* affects what the assets
13 and liabilities of a party to a close-out netting contract, market netting
14 contract or approved netting arrangement are taken to include.

- 15 (2) The partial transfer is void:
- 16 (a) to the extent of the assets or liabilities the target body has,
17 just before the partial transfer, under the close-out netting
18 contract, market netting contract or approved netting
19 arrangement, with respect to the counterparty; and
20 (b) if security is given over financial property (within the
21 meaning of the *Payment Systems and Netting Act 1998*) in
22 respect of an obligation of the target body under a close-out
23 netting contract—to the extent that the assets are financial
24 property in the possession or control of one of the following
25 persons just before the partial transfer:
26 (i) the counterparty;
27 (ii) another person (who is not the target body) on behalf of
28 the counterparty, under the terms of an arrangement
29 evidenced in writing; and
30 (c) if security is given over property in respect of an obligation
31 of the target body under a market netting contract—to the
32 extent that the assets are that property.

33 **839B Reserve Bank may provide information to receiving body**

34 The Reserve Bank may, in connection with a determination or a
35 possible determination under section 837A or 837B that there is to
36 be a transfer, provide information (including personal information
37 or confidential commercial information) to the receiving body, or
38 to the possible or proposed receiving body, about:

- 39 (a) if the determination is, or would be, made under section
40 837A:

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- 1 (i) some or all of the shares that are to be, or that may be,
2 transferred; and
3 (ii) the business of the target body; or
4 (b) if the determination is, or would be, made under section
5 837B—some or all of the business that is to be, or that may
6 be, transferred.
- 7 Note: Subsection 79A(7A) of the *Reserve Bank Act 1959* allows conditions
8 to be imposed on a body who is provided information under this
9 section to be complied with by the body in relation to that
10 information.

11 839C Certificates in relation to land and interests in land

- 12 If:
- 13 (a) a body corporate (the *receiving body*) becomes, under this
14 Division, the owner of land, or of an interest in land, that is
15 situated in a State or Territory; and
16 (b) there is lodged with the Registrar of Titles or other
17 appropriate officer of the State or Territory in which the land
18 is situated a certificate that:
19 (i) is issued by the Reserve Bank; and
20 (ii) identifies the land or interest; and
21 (iii) states that the receiving body has, under this Division,
22 become the owner of that land or interest;
- 23 the officer with whom the certificate is lodged may:
- 24 (c) register the matter in the same manner as dealings in land or
25 interests in land of that kind are registered; and
26 (d) deal with, and give effect to, the certificate.

27 839D Certificates in relation to other assets

- 28 (1) If:
- 29 (a) an asset (other than land or an interest in land) becomes,
30 under this Division, an asset of a body corporate (the
31 *receiving body*); and
32 (b) there is lodged with the person or authority who has, under a
33 law of the Commonwealth, a State or a Territory,
34 responsibility for keeping a register in respect of assets of
35 that kind a certificate that:
36 (i) is issued by the Reserve Bank; and
37 (ii) identifies the asset; and

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- 1 (iii) states that the asset has, under this Division, become an
2 asset of the receiving body;
3 that person or authority may:
4 (c) register the matter in the same manner as transactions in
5 relation to assets of that kind are registered; and
6 (d) deal with, and give effect to, the certificate.
- 7 (2) This section does not affect the operation of:
8 (a) other provisions of this Act; or
9 (b) if the regulations prescribe provisions of one or more other
10 Acts—those provisions of those Acts.

11 **839E Documents purporting to be certificates**

12 A document purporting to be a certificate given under this Division
13 is, unless the contrary is established, taken to be such a certificate
14 and to have been properly given.

15 **839F Construction of references in instruments to target body**

16 If a certificate under section 838A for a transfer comes into force, a
17 reference in an instrument of any kind to the target body in relation
18 to:
19 (a) an asset or liability of the target body transferred under this
20 Division; or
21 (b) a share in the target body transferred under this Division;
22 is taken to be a reference to the receiving body.

23 **839G Income or other distribution received by target body**

24 The target body must promptly account to the receiving body for
25 any income or other distribution received by the target body after a
26 certificate of transfer comes into force, if the income or distribution
27 arises from assets transferred to the receiving body under this
28 Division.

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

31 **839H Access to books**

32 The target body must, at the request of the receiving body, give the
33 receiving body access to all books in its possession that relate to
34 assets or liabilities transferred under this Division.

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

839J Relationship of Division with other laws etc.

- (1) Subject to subsection (2), nothing done by or under this Division:
- (a) places a body corporate or other person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
 - (b) places a body corporate or other person in breach of:
 - (i) any law of the Commonwealth or of a State or Territory; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
 - (c) releases any surety, wholly or partly, from all or any of the surety's obligations.
- (2) Nothing in this Division limits the operation of:
- (a) any of the provisions of the *Privacy Act 1988*; or
 - (b) any of the provisions of the *Competition and Consumer Act 2010*; or
 - (c) any of the provisions of the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

839K Reserve Bank's rules may make special provision in relation to compulsory transfer

Compulsory transfer of shares

- (1) The Reserve Bank may, by legislative instrument, make rules in relation to any of the following matters in relation to a transfer of shares, or proposed transfer of shares, under this Division:
- (a) the payment to a holder of shares in a target body under this Division of a purchase price for those shares;
 - (b) the resolution of disputes involving a holder of shares in a target body under this Division (including the resolution of such disputes by the Federal Court);
 - (c) the publication, by the Reserve Bank, the target body and the receiving body, of information relating to a transfer of shares, or proposed transfer of shares, under this Division;

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- 1 (d) the freeing of shares in a target body from any trust, liability
2 or other encumbrance when they become shares held by a
3 receiving body;
4 (e) any matter incidental to:
5 (i) a transfer of shares, or proposed transfer of shares,
6 under this Division; or
7 (ii) any of the other matters mentioned in this subsection.

8 *Compulsory transfer of business*

- 9 (2) The Reserve Bank may, by legislative instrument, make rules in
10 relation to any of the following matters in relation to a transfer of
11 business, or proposed transfer of business, under this Division:
12 (a) the payment to a target body under this Division of a
13 purchase price for a business;
14 (b) the resolution of disputes involving a target body under this
15 Division (including the resolution of such disputes by the
16 Federal Court);
17 (c) the publication, by the Reserve Bank, a target body and a
18 receiving body, of information relating to a transfer of
19 business, or proposed transfer of business, under this
20 Division;
21 (d) the freeing of assets of a target body from any trust, liability
22 or other encumbrance when they become assets of a
23 receiving body;
24 (e) any matter incidental to:
25 (i) a transfer of business, or proposed transfer of business,
26 under this Division; or
27 (ii) any of the other matters mentioned in this subsection.

28 **Division 5—Moratorium on action during statutory**
29 **management or compulsory transfer**

30 **Subdivision A—Circumstances to which moratorium is**
31 **relevant**

32 **840A Circumstances to which moratorium is relevant**

- 33 (1) For the purposes of section 841A, this section begins to apply to a
34 body corporate if:

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- 1 (a) the body corporate begins to be under statutory management;
2 or
3 (b) the Reserve Bank makes a determination under section 837A
4 that there is to be a transfer of shares in the body corporate;
5 or
6 (c) the Reserve Bank makes a determination under section 837B
7 that there is to be a transfer of business of the body corporate.
- 8 (2) This section ceases to apply to a body corporate at the earliest time,
9 occurring after this section begins to apply to the body corporate, at
10 which:
11 (a) the body corporate is not under statutory management; and
12 (b) for each determination (if any) the Reserve Bank has made
13 under section 837A that there is to be a transfer of shares in
14 the body corporate, or under section 837B that there is to be a
15 transfer of business of the body corporate:
16 (i) a certificate under section 838A that the transfer is to
17 take effect is in force; or
18 (ii) a determination under section 837G that the transfer is
19 not to take effect is in force.
- 20 (3) To avoid doubt, subsection (2) does not prevent this section from
21 subsequently beginning to apply to the body corporate again under
22 subsection (1).

23 **Subdivision B—Stay on enforcement rights triggered by** 24 **statutory management or compulsory transfer**

25 **841A Stay on enforcing rights merely because the body corporate is** 26 **under statutory management or subject to a transfer** 27 **determination**

28 *Stay on enforcing rights*

- 29 (1) A right cannot be enforced against a body corporate for:
30 (a) the reason that:
31 (i) the body corporate has come or is under statutory
32 management; or
33 (ii) the Reserve Bank makes or has made a determination
34 under section 837A that there is to be a transfer of
35 shares in the body corporate; or

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- 1 (iii) the Reserve Bank makes or has made a determination
2 under section 837B that there is to be a transfer of
3 business of the body corporate; or
4 (b) the reason of the body corporate's financial position; or
5 (c) a reason that, in substance, is contrary to this subsection or
6 subsection (2);
7 if the right arises for that reason by express provision (however
8 described) of a contract, agreement or arrangement.

9 Note: This result is subject to subsections (8) and (10).

10 Example: A right to terminate a contract will not be enforceable to the extent
11 that those rights are triggered by the body corporate coming under
12 statutory management.

- 13 (2) A right cannot be enforced against a body corporate for a reason
14 that:
15 (a) is prescribed by the regulations for the purposes of this
16 paragraph; and
17 (b) relates to:
18 (i) section 840A applying, or possibly applying, to the
19 body corporate in the future; or
20 (ii) the body corporate's financial position;
21 if the right arises for that reason by express provision (however
22 described) of a contract, agreement or arrangement.

23 Note: This result is subject to subsections (5) and (7).

- 24 (3) However, subsection (2) does not apply at a time if section 840A
25 does not later apply to the body corporate.

26 *Period of the stay*

- 27 (4) The right cannot be enforced as described in subsection (1) during
28 the period (the *stay period*):
29 (a) starting when section 840A begins to apply to the body
30 corporate; and
31 (b) ending at the latest of the following times:
32 (i) when section 840A ceases to apply to the body
33 corporate;
34 (ii) if one or more orders are made under subsection (6) for
35 the body corporate as the result of an application made
36 before section 840A ceases to apply to the body
37 corporate—when the last made of those orders ceases to
38 be in force.

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- 1 (5) The right cannot be enforced as described in subsection (2) during
2 a period (the *stay period*) ending at the latest of the following
3 times:
- 4 (a) when section 840A ceases to apply to the body corporate;
5 (b) if one or more orders are made under subsection (6) for the
6 body corporate as the result of an application made before
7 section 840A ceases to apply to the body corporate—when
8 the last made of those orders ceases to be in force.
- 9 (6) The Court:
- 10 (a) may order an extension of the period otherwise applying
11 under subsection (4) or (5) for the body corporate if the Court
12 is satisfied that the extension is appropriate having regard to
13 the interests of justice; and
- 14 (b) before deciding an application for an order under
15 paragraph (a) of this subsection, may grant an interim order,
16 but must not require the applicant to give an undertaking as
17 to damages as a condition for doing so.
- 18 *Enforcing rights after the stay for reasons relating to earlier*
19 *circumstances*
- 20 (7) The right is unenforceable against the body corporate indefinitely
21 after the end of the stay period to the extent that a reason for
22 seeking to enforce the right:
- 23 (a) is the body corporate's financial position before the end of
24 the stay period; or
- 25 (b) is any of the following:
- 26 (i) the body corporate having come or been under statutory
27 management before the end of the stay period;
- 28 (ii) the Reserve Bank having made, before the end of the
29 stay period, a determination under section 837A that
30 there is to be a transfer of shares in the body corporate;
- 31 (iii) the Reserve Bank having made, before the end of the
32 stay period, a determination under section 837B that
33 there is to be a transfer of business of the body
34 corporate; or
- 35 (c) is a reason, prescribed by the regulations for the purposes of
36 this paragraph, relating to circumstances in existence before
37 the end of the stay period; or
- 38 (d) is a reason referred to in paragraph (1)(c) or subsection (2).
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Rights not subject to the stay

- 1
2 (8) Subsection (1) or (2) does not apply to the right if it is:
3 (a) a right under a contract, agreement or arrangement entered
4 into after the body corporate comes under statutory
5 management; or
6 (b) a right contained in a kind of contract, agreement or
7 arrangement:
8 (i) prescribed by the regulations for the purposes of this
9 subparagraph; or
10 (ii) declared under paragraph (9)(a); or
11 (c) a right of a kind:
12 (i) prescribed by the regulations for the purposes of this
13 subparagraph; or
14 (ii) declared under paragraph (9)(b); or
15 (d) a right of a kind declared under paragraph (9)(c), and the
16 circumstances specified in that declaration exist.
- 17 (9) For the purposes of subsection (8), the Minister may, by legislative
18 instrument:
19 (a) declare kinds of contracts, agreements or arrangements
20 referred to in a specified law of the Commonwealth; or
21 (b) declare kinds of rights to which subsection (1) or (2) does not
22 apply; or
23 (c) declare kinds of rights to which subsection (1) or (2) does not
24 apply in specified circumstances.
- 25 (10) Subsection (1) or (2) does not apply to the right to the extent that:
26 (a) the Reserve Bank; or
27 (b) if a liquidator of the body corporate is appointed after the end
28 of the stay period—the liquidator;
29 has consented in writing to the enforcement of the right.

Stay on body corporate's right to new advance of money or credit

- 30
31 (11) If:
32 (a) one or more rights of an entity cannot be enforced against a
33 body corporate for a period because of subsection (1) or (2);
34 and
35 (b) the body corporate has a right under a contract, agreement or
36 arrangement against the entity for a new advance of money
37 or credit;
-

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1 that right of the body corporate cannot be enforced during the same
2 period.

- 3 (12) Subsection (11) does not apply to a right of a body corporate if:
4 (a) the body corporate is a related body corporate of the entity
5 mentioned in paragraph (11)(a); and
6 (b) exercising the right:
7 (i) constitutes, or constitutes part of, default management;
8 or
9 (ii) constitutes recovery action; or
10 (iii) constitutes a funding call on the entity.

11 **841B Self-executing provisions**

- 12 (1) The object of subsection (2) is to ensure that a self-executing
13 provision:
14 (a) cannot start to apply against a body corporate for certain
15 reasons; and
16 (b) can be the subject of a Court order providing that the
17 provision can only start to apply against a body corporate
18 with the leave of the Court, and in accordance with such
19 terms (if any) as the Court imposes.

- 20 (2) Section 841A applies in relation to a self-executing provision in a
21 corresponding way to the way that section applies in relation to a
22 right. For this purpose, assume that section applies with such
23 modifications as are necessary, including any prescribed by the
24 regulations for the purposes of this subsection.

25 Note 1: This subsection achieves the object in subsection (1) by extending the
26 application of all of the outcomes, exceptions and powers in
27 section 841A.

28 Note 2: These modifications include, for example, treating:

- 29 (a) a reference that a right cannot be enforced (however described)
30 as including a reference that a self-executing provision cannot
31 start to apply; and
32 (b) the words “if the right arises for that reason by express provision
33 (however described) of a contract, agreement or arrangement” as
34 being omitted from subsections 841A(1) and (2); and
35 (c) a reference that one or more rights are enforceable as including a
36 reference that one or more self-executing provisions can start to
37 apply.

- 38 (3) In this section:

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1 *self-executing provision* means a provision of a contract,
2 agreement or arrangement that can start to apply automatically:

- 3 (a) for one or more reasons; and
4 (b) without any party to the contract, agreement or arrangement
5 making a decision that the provision should start to apply.

6 **841C When other laws prevail—certain other Commonwealth Acts**

7 If there is any inconsistency between sections 841A and 841B and
8 one of the following Acts, that Act prevails to the extent of the
9 inconsistency:

- 10 (a) the *Anti-Money Laundering and Counter-Terrorism*
11 *Financing Act 2006*;
12 (b) the *Autonomous Sanctions Act 2011*;
13 (c) the *International Interests in Mobile Equipment (Cape Town*
14 *Convention) Act 2013*;
15 (d) the *Payment Systems and Netting Act 1998*.

16 **841D Circumstances where a transaction by statutory manager not** 17 **voidable under section 588FE**

18 A transaction of a body corporate is not voidable under
19 section 588FE merely because:

- 20 (a) the transaction was entered into at a time when section 840A
21 applied to the body corporate; and
22 (b) the transaction is:
23 (i) an uncommercial transaction of the body corporate; or
24 (ii) an unfair preference given by the body corporate to a
25 creditor of the body corporate; or
26 (iii) an insolvent transaction of the body corporate; or
27 (iv) a creditor-defeating disposition by the body corporate.

28 **Subdivision C—Protection of body corporate’s property**

29 **842A Winding up body corporate**

- 30 (1) While section 840A applies to a body corporate, it cannot be
31 wound up voluntarily.
32 (2) The Court is to adjourn the hearing of an application for an order to
33 wind up a body corporate while section 840A applies to the body
34 corporate.

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- 1 (3) The Court is not to appoint a provisional liquidator of a body
2 corporate while section 840A applies to the body corporate.

3 **842B Restrictions on exercise of third party property rights**

4 *General rule*

- 5 (1) While section 840A applies to a body corporate, the restrictions set
6 out in the table at the end of this section apply in relation to the
7 exercise of the rights of a person (the *third party*) in property of the
8 body, or other property used or occupied by, or in the possession
9 of, the body, as set out in the table.

10 Note: The property of the body includes any PPSA retention of title property
11 of the body corporate.

12 *Exception—consent of statutory manager or leave of court*

- 13 (2) The restrictions set out in the table at the end of this section do not
14 apply in relation to the exercise of a third party's rights in property
15 if the rights are exercised:
16 (a) with the Reserve Bank's written consent; or
17 (b) if the body corporate is under statutory management—with
18 the statutory manager's written consent; or
19 (c) with the leave of the Court.

20 *Possessory security interests—continued possession*

- 21 (3) If a body corporate's property is subject to a possessory security
22 interest, and the property is in the lawful possession of the secured
23 party, the secured party may continue to possess the property while
24 section 840A applies to the body corporate.
25

Restrictions on exercise of third party rights

Item	Column 1	Column 2
	If the third party is ...	then ...
1	a secured party in relation to property of the body corporate, and is not otherwise covered by this table	the third party cannot enforce the security interest.
2	a secured party in relation to a possessory security interest in the property of the body corporate	the third party cannot sell the property, or otherwise enforce the security interest.

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Restrictions on exercise of third party rights

Item	Column 1 If the third party is ...	Column 2 then ...
3	a lessor of property used or occupied by, or in the possession of, the body corporate, including a secured party (a <i>PPSA secured party</i>) in relation to a PPSA security interest in goods arising out of a lease of the goods	the following restrictions apply: (a) distress for rent must not be carried out against the property; (b) the third party cannot take possession of the property or otherwise recover it; (c) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.
4	an owner (other than a lessor) of property used or occupied by, or in the possession of, the body corporate, including a secured party (a <i>PPSA secured party</i>) in relation to a PPSA security interest in the property	the following restrictions apply: (a) the third party cannot take possession of the property or otherwise recover it; (b) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.

842C Stay of proceedings

- 1
- 2 (1) While section 840A applies to a body corporate, a proceeding in a
- 3 court against the body or in relation to any of its property cannot be
- 4 begun or proceeded with, except:
- 5 (a) with the Reserve Bank's written consent; or
- 6 (b) with the leave of the Court and in accordance with such
- 7 terms (if any) as the Court imposes.
- 8 (2) Subsection (1) does not apply to:
- 9 (a) a criminal proceeding; or
- 10 (b) a prescribed proceeding.
- 11 (3) If a person applies for the leave of the Court under
- 12 paragraph (1)(b), the person must, in writing, notify the Reserve
- 13 Bank.
- 14 (4) The Reserve Bank is entitled to be heard on the application to the
- 15 Court.

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1 **842D Reserve Bank and statutory manager not liable in damages for** 2 **refusing consent**

3 The Reserve Bank or a statutory manager of a body corporate is
4 not liable to an action or other proceeding for damages in respect
5 of a refusal to give an approval or consent for the purposes of this
6 Subdivision.

7 **842E Suspension of enforcement process**

- 8 (1) While section 840A applies to a body corporate, no enforcement
9 process in relation to property of the body corporate can be begun
10 or proceeded with, except:
11 (a) with the leave of the Court; and
12 (b) in accordance with such terms (if any) as the Court imposes.
- 13 (2) If a person applies for the leave of the Court under subsection (1),
14 the person must, in writing, notify the Reserve Bank.
- 15 (3) The Reserve Bank is entitled to be heard on the application to the
16 Court.

17 **842F Duties of court officer in relation to property of a body** 18 **corporate**

- 19 (1) This section applies if an officer of a court (in this section called
20 the *court officer*), being:
21 (a) a sheriff; or
22 (b) the registrar or other appropriate officer of the court;
23 receives written notice of the fact that section 840A applies to a
24 body corporate.
- 25 (2) While section 840A applies to a body corporate, the court officer
26 cannot:
27 (a) take action to sell property of the body corporate under a
28 process of execution; or
29 (b) pay to a person (other than the statutory manager (if any)):
30 (i) proceeds of selling property of the body corporate (at
31 any time) under a process of execution; or
32 (ii) money of the body corporate seized (at any time) under
33 a process of execution; or

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-
- 1 (iii) money paid (at any time) to avoid seizure or sale of
2 property of the body corporate under a process of
3 execution; or
4 (c) take action in relation to the attachment of a debt due to the
5 body corporate; or
6 (d) pay to a person (other than the statutory manager (if any))
7 money received because of the attachment of such a debt.
- 8 (3) If the body corporate is under statutory management, the court
9 officer must:
- 10 (a) deliver to the statutory manager any property of the body
11 corporate that is in the court officer's possession under a
12 process of execution (whenever begun); and
13 (b) pay to the statutory manager all proceeds or money of a kind
14 referred to in paragraph (2)(b) or (d) that:
15 (i) are in the court officer's possession; or
16 (ii) have been paid into the court and have not since been
17 paid out.
- 18 (4) The costs of the execution or attachment are a first charge on
19 property delivered under paragraph (3)(a) or proceeds or money
20 paid under paragraph (3)(b).
- 21 (5) In order to give effect to a charge under subsection (4) on proceeds
22 or money, the court officer may retain, on behalf of the person
23 entitled to the charge, so much of the proceeds or money as the
24 court officer thinks necessary.
- 25 (6) The Court may, if it is satisfied that it is appropriate to do so,
26 permit the court officer to take action, or to make a payment, that
27 subsection (2) would otherwise prevent.
- 28 (7) A person who buys property in good faith under a sale under a
29 process of execution gets a good title to the property as against the
30 body corporate and the statutory manager (if any), despite anything
31 else in this section.

32 **Subdivision D—General power to make orders**

33 **843A General power to make orders**

- 34 (1) The Court may make such order as it thinks appropriate about how
35 this Division is to operate in relation to a particular body corporate.

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- 1 (2) An order may be made subject to conditions.
- 2 (3) An order may be made on the application of:
- 3 (a) the body corporate; or
- 4 (b) a creditor of the body corporate; or
- 5 (c) a statutory manager of the body corporate; or
- 6 (d) the Reserve Bank; or
- 7 (e) any other interested person.

8 **Division 6—Directions and secrecy**

9 **Subdivision A—Directions**

10 **844A Direction to manage or respond to crisis**

- 11 (1) The Reserve Bank may, in writing, give a body corporate a
- 12 direction to do, or refrain from doing, specified acts or things, if:
- 13 (a) the body corporate:
- 14 (i) is a CS facility licensee; or
- 15 (ii) is a related body corporate of a CS facility licensee and
- 16 is incorporated in Australia; or
- 17 (iii) was a related body corporate of a CS facility licensee
- 18 before a transfer of business or shares under this Part
- 19 and is incorporated in Australia; and
- 20 (b) the Reserve Bank considers the direction is reasonably
- 21 appropriate to manage or respond to a condition in
- 22 section 831A being satisfied in relation to the licensee.

23 Note: An expert report on fair value may be required before giving the

24 direction: see section 849D.

- 25 (2) The direction may deal with the time by which, or period during
- 26 which, it is to be complied with.

27 *Offence*

- 28 (3) The body corporate must comply with the direction.

29 Note: Failure to comply with this subsection is an offence (see

30 subsection 1311(1)).

31 *Compliance despite other laws etc.*

- 32 (4) The body corporate may do, or refrain from doing, an act or thing
- 33 to comply with the direction despite:

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-
- 1 (a) any other provision of this Act; and
2 (b) the body corporate's constitution; and
3 (c) any contract or arrangement to which the body corporate is
4 party; and
5 (d) any operating rules or procedures of a licensed CS facility of
6 which the body corporate is the licensee or a participant; and
7 (e) any listing rules of a financial market in whose official list
8 the body corporate is included.

9 **844B Direction to give information to assist crisis management**

- 10 (1) The Reserve Bank may, in writing, direct a person to give the
11 Reserve Bank specified information, or specified documents
12 containing specified information, relating to the business of a body
13 corporate if:
14 (a) the body corporate:
15 (i) is a CS facility licensee; or
16 (ii) is a related body corporate of a CS facility licensee that
17 is incorporated in Australia; or
18 (iii) was a related body corporate of a CS facility licensee
19 before a transfer of business or shares under this Part
20 and is incorporated in Australia; and
21 (b) the Reserve Bank requires the information or documents to
22 manage or respond to a condition in section 831A being
23 satisfied in relation to the licensee; and
24 (c) the Reserve Bank reasonably believes that the person can
25 give the Reserve Bank the information or documents.

26 Note: The secrecy provision in section 79A of the *Reserve Bank Act 1959*
27 applies to information and documents obtained by the Reserve Bank
28 under this section.

- 29 (2) The direction:
30 (a) must specify a reasonable time by which, or a reasonable
31 period during which, it is to be complied with; and
32 (b) may specify the form and manner in which the information or
33 documents must be given.

34 *Offence*

- 35 (3) The person must comply with the direction.

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

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1 844C Orders to comply with directions

2 If a person fails to comply with a direction given under this
3 Subdivision to the person, the Reserve Bank may apply to the
4 Court for, and the Court may make, an order that the person must
5 comply with the direction.

6 844D Variation or revocation of directions

- 7 (1) The Reserve Bank may vary or revoke a direction given to a person
8 under this Subdivision if, at the time of the variation or revocation,
9 it considers the direction is no longer reasonably appropriate to
10 manage or respond to the condition in section 831A being satisfied,
11 including because the condition is no longer satisfied.
- 12 (2) The variation or revocation must be given to the person in writing.
- 13 (3) A direction given under this Subdivision has effect until the
14 Reserve Bank revokes it under subsection (1).

15 844E Consulting ASIC

16 Before giving, varying or revoking a direction under this
17 Subdivision the Reserve Bank must consult ASIC. However, a
18 failure to consult ASIC does not invalidate the direction, variation
19 or revocation.

20 Subdivision B—Secrecy determinations

21 845A Determination that information is covered by secrecy 22 provision

- 23 (1) The Reserve Bank may determine, in writing, that specified
24 information is covered by this subsection if:
- 25 (a) the information is:
- 26 (i) information that reveals the fact that a specified
27 direction given to a body corporate under section 844A
28 was given; or
- 29 (ii) information that is, or is contained in a specified
30 document, given to a body corporate covered by
31 subsection (2) of this section by the Reserve Bank in the
32 exercise of a power or the performance of a function
33 under this Part; and

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- 1 (b) the Reserve Bank considers that the determination is
2 necessary to:
- 3 (i) protect the stability of the financial system in Australia;
4 or
5 (ii) ensure the continuity of one or more clearing and
6 settlement facility services that are critical to the
7 functioning of the financial system in Australia.
- 8 (2) A body corporate is covered by this section if it is incorporated in
9 Australia and it:
- 10 (a) is a CS facility licensee; or
11 (b) is a related body corporate of a CS facility licensee; or
12 (c) was a related body corporate of a CS facility licensee before
13 a transfer of business or shares under this Part; or
14 (d) is a body corporate to which information has been provided
15 under section 839B in relation to a transfer.
- 16 (3) The Reserve Bank must give the body corporate to which the
17 determination relates a copy of the determination as soon as
18 practicable after making it.

19 *Reserve Bank must consider other determinations*

- 20 (4) If the Reserve Bank makes a determination under subsection (1),
21 the Reserve Bank must consider whether it is appropriate in the
22 circumstances to also make a determination under either or both of
23 subsections 845E(2) and (4).

24 *Determination not a legislative instrument*

- 25 (5) An instrument under subsection (1) is not a legislative instrument.

26 **845B Variation or revocation of determination**

- 27 (1) The Reserve Bank may vary or revoke a determination given to a
28 person under this Subdivision if, at the time of the variation or
29 revocation, the Reserve Bank no longer considers that the
30 determination is necessary to:
- 31 (a) protect the stability of the financial system in Australia; or
32 (b) ensure the continuity of one or more clearing and settlement
33 facility services that are critical to the functioning of the
34 financial system in Australia.
- 35 (2) The variation or revocation must be given to the person in writing.
-

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- 1 (3) A determination given under this Subdivision has effect until the
2 Reserve Bank revokes it under subsection (1).

3 **845C Prohibition on disclosing information covered by secrecy** 4 **provision**

5 *Offence*

- 6 (1) A person must not disclose information if:
7 (a) the information is covered by a determination under
8 subsection 845A(1); and
9 (b) the person is, or has been, covered by subsection (2) of this
10 section in relation to the information.

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

- 13 (2) A person is covered by this subsection in relation to the
14 information if the person is:
15 (a) the body corporate to which the determination under
16 subsection 845A(1) relates; or
17 (b) at or after the time when the Reserve Bank gave the direction
18 or information:
19 (i) an officer; or
20 (ii) an employee; or
21 (iii) a contractor; or
22 (iv) a statutory manager (other than the Reserve Bank);
23 of the body corporate to which the determination relates; or
24 (c) any other person who, because of their employment, or in the
25 course of that employment, has acquired the information
26 covered by the determination.

27 *Exception*

- 28 (3) Subsection (1) does not apply if:
29 (a) the disclosure is authorised by section 845D, 845E, 845F,
30 845G, 845H, 845J or 845K; or
31 (b) the disclosure is required by an order or direction of a court
32 or tribunal.

33 Note: A defendant bears an evidential burden in relation to a matter in
34 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

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Civil penalty

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

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

845D Disclosure of publicly available information

6 A person covered by subsection 845C(2) in relation to information

7 may disclose the information, to the extent that the information has

8 already been lawfully made available to the public.

845E Disclosure allowed by the Reserve Bank

- 9
- 10 (1) A person covered by subsection 845C(2) in relation to information
- 11 may disclose the information if:
- 12 (a) a determination under subsection (2) or (4) of this section
- 13 allows the disclosure by the person; and
- 14 (b) if the Reserve Bank has included conditions in the
- 15 determination—those conditions are satisfied.

Determinations relating to specified person

- 16
- 17 (2) The Reserve Bank may, in writing, make a determination allowing:
- 18 (a) a specified person covered by subsection 845C(2) in relation
- 19 to specified information; or
- 20 (b) a specified person covered by subsection 845C(2) in relation
- 21 to information that is in a specified class of information;
- 22 to disclose specified information.
- 23 (3) The Reserve Bank must give a copy of the determination, as soon
- 24 as practicable after making it, to:
- 25 (a) the body corporate to which the determination under
- 26 subsection 845A(1) relates; and
- 27 (b) the person specified, or each person specified, in the
- 28 determination.

Determinations relating to specified class of persons

- 29
- 30 (4) The Reserve Bank may, by legislative instrument, make a
- 31 determination allowing a specified class of persons covered by
- 32 subsection 845C(2) in relation to information that is in a specified
- 33 class of information to disclose:

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-
- 1 (a) specified kinds of information in that class; or
2 (b) any kind of information in that class.

3 *Conditions in determinations*

- 4 (5) The Reserve Bank may include conditions in a determination under
5 subsection (2) or (4) that relate to any of the following:
6 (a) the kind of entities to which the disclosure may be made;
7 (b) the way in which the disclosure is to be made;
8 (c) any other matter that the Reserve Bank considers appropriate.

9 *Determination not a legislative instrument*

- 10 (6) An instrument under subsection (2) is not a legislative instrument.

11 **845F Disclosure for the purpose of seeking review or legal advice**

- 12 (1) A person covered by subsection 845C(2) in relation to information
13 referred to in subparagraph 845A(1)(a)(i) may disclose the
14 information if the disclosure is made for the purposes of seeking
15 review, under Part 9.4A or any other applicable law, of the
16 direction or of a decision made in relation to the direction.
- 17 (2) A person covered by subsection 845C(2) in relation to any
18 information may disclose the information if:
19 (a) the disclosure is to the person's lawyer; and
20 (b) the purpose of the person making the disclosure is for the
21 lawyer to provide legal advice, or another legal service, in
22 relation to the direction.

23 **845G Disclosure under the Reserve Bank Act**

- 24 (1) A person covered by subsection 845C(2) in relation to information
25 may disclose the information if:
26 (a) the person is:
27 (i) an officer (within the meaning of subsection 79A(1) of
28 the *Reserve Bank Act 1959*); or
29 (ii) a Commonwealth officer (within the meaning of the
30 *Crimes Act 1914*) who, because of their employment, or
31 in the course of that employment, has acquired the
32 information (other than an employee of the body to
33 which the information relates); and
34 (b) the information:

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-
- 1 (i) is protected information, as defined in 79A(1) of the
2 *Reserve Bank Act 1959*; or
3 (ii) is contained in a protected document, as defined in that
4 subsection; and
5 (c) the disclosure is not prohibited under subsection 79A(2) of
6 the *Reserve Bank Act 1959*.

7 (2) Disclosure of the information is not an offence under
8 subsection 79A(2) of the *Reserve Bank Act 1959* if the disclosure is
9 authorised by section 845D, 845E, 845F, 845H, 845J or 845K of
10 this Act.

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

13 **845H Disclosure under the ASIC Act**

14 A person covered by subsection 845C(2) in relation to information
15 may disclose the information if:

- 16 (a) the person is:
17 (i) a member of ASIC; or
18 (ii) an ASIC staff member; or
19 (iii) a Commonwealth officer, within the meaning of the
20 *Crimes Act 1914*, who, because of their employment, or
21 in the course of that employment, has acquired the
22 information (other than an employee of the body to
23 which the information relates); and
24 (b) the information is protected information as defined in
25 subsection 127(9) of the ASIC Act; and
26 (c) the disclosure is authorised use and disclosure of the
27 information for the purposes of subsection 127(1) of that Act.

28 Note: A disclosure of information permitted by section 845D, 845E, 845F,
29 845G, 845J or 845K of this Act is authorised use and disclosure
30 because of subsection 127(2) of the ASIC Act.

31 **845J Disclosure in circumstances determined by the Minister**

- 32 (1) A person covered by subsection 845C(2) in relation to information
33 may disclose the information if the disclosure is made in
34 circumstances (if any) determined under subsection (2) of this
35 section.
36 (2) The Minister may, by legislative instrument, determine
37 circumstances for the purpose of subsection (1).

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1 845K Disclosure for same purpose

2 A person covered by subsection 845C(2) (the *relevant person*) in
3 relation to information may disclose the information if:

- 4 (a) another person covered by subsection 845C(2) in relation to
5 the information disclosed the information to the relevant
6 person for a particular purpose in accordance with
7 section 845E, 845F, 845G, 845H or 845J, or in accordance
8 with a previous operation of this section; and
9 (b) the disclosure by the relevant person is for the same purpose.

10 845L Exceptions operate independently

11 Sections 845D, 845E, 845F, 845G, 845H, 845J and 845K do not
12 limit each other.

13 Division 7—Funding for crisis resolution

14 846A Authorising contracts etc. for the purposes of crisis resolution

15 *Authorising the making of contracts and arrangements*

- 16 (1) If a condition in section 831A is satisfied in relation to a CS
17 facility licensee, the Minister may, with the Finance Minister's
18 written approval, authorise the making of contracts, agreements
19 and arrangements by the Commonwealth, for the purposes of:
20 (a) protecting the stability of the financial system in Australia; or
21 (b) if the licensee is incorporated in Australia—ensuring the
22 continuity of one or more clearing and settlement facility
23 services provided by the licensee that are critical to the
24 functioning of the financial system in Australia.

25 *Limit on total amounts payable under authorised contracts etc.*

- 26 (2) The authorisation must specify the amount (if any) the
27 Commonwealth may pay under the authorised contracts or
28 arrangements.
- 29 (3) The total of all the amounts specified under subsection (2) in
30 authorisations (taking account of any amendments of those
31 authorisations) in relation to the condition being satisfied, must not
32 exceed \$5,000,000,000.

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Amending specification of amount

- 1
2 (4) The Minister may amend an authorisation made under this section,
3 but only to change the specification of an amount under
4 subsection (2), within the limit set out in subsection (3).

5
Authorisation cannot be revoked

- 6 (5) The Minister cannot revoke an authorisation made under this
7 section.

8
Authorisation or amendment not disallowable

- 9 (6) An authorisation or amendment made under this section is a
10 legislative instrument, but section 42 (disallowance) of the
11 *Legislation Act 2003* does not apply to the authorisation or
12 amendment.

13
When authorisation or amendment commences

- 14 (7) Despite subsection 12(2) of the *Legislation Act 2003*, the
15 authorisation or amendment commences from the time it is made.

16 **846B Appropriation of Consolidated Revenue Fund**

17 The Consolidated Revenue Fund is appropriated for the purposes
18 of making a payment under a contract or arrangement authorised
19 under section 846A.

20 **Division 8—Temporary suspension of termination rights**

21 **847A Application of this Division**

- 22 (1) This Division applies to a body corporate if:
23 (a) the body corporate:
24 (i) is a CS facility licensee; or
25 (ii) is a related body corporate of a CS facility licensee and
26 is incorporated in Australia; and
27 (b) an instrument under subsection (2) is in force in relation to
28 the licensee.
- 29 (2) For the purposes of paragraph (1)(b), the Reserve Bank may, by
30 notifiable instrument, declare that this Division applies in relation
31 to a CS facility licensee if the Reserve Bank intends:

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-
- 1 (a) to take either or both of the actions in subsection 832A(2) in
2 relation to the CS facility licensee; or
3 (b) to make a determination under section 837A that there is to
4 be a transfer of shares in the CS facility licensee; or
5 (c) to make a determination under section 837B that there is to
6 be a transfer of business of the CS facility licensee.
- 7 (3) The Reserve Bank must revoke a notice made under subsection (2)
8 in relation to a CS facility licensee if:
9 (a) the licensee begins to be under statutory management; or
10 (b) the Reserve Bank makes the determination mentioned in
11 paragraph (2)(b) or (c); or
12 (c) the Reserve Bank ceases intending to do the things
13 mentioned paragraphs (2)(a), (b) and (c).
- 14 Note: If paragraph (a) or (b) of this subsection applies, Division 5
15 (moratorium on action during statutory management or compulsory
16 transfer) will apply in relation to the CS facility licensee.
- 17 (4) Subsection (3) does not limit the application of subsection 33(3) of
18 the *Acts Interpretation Act 1901* in relation to a notice in force
19 under subsection (2) of this section.

20 **847B Stay on exercising termination rights**

21 *Stay on exercising termination rights*

- 22 (1) Subject to subsection (4), a right to terminate:
23 (a) a contract, agreement or arrangement; or
24 (b) an obligation under a contract, agreement or arrangement;
25 that arises:
26 (c) by express provision (however described) of a contract,
27 agreement or arrangement; or
28 (d) because of anything done in accordance with a direction
29 given under section 823F or 823L;
30 cannot be exercised if a body corporate to which this Division
31 applies is a party to the contract, agreement or arrangement.

32 Note: This result is subject to subsections (5) and (7) of this section.

33 *Rights not subject to the stay*

- 34 (2) Subsection (1) does not apply to the right if it is:

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- 1 (a) a right that is exercisable only in particular circumstances
2 (other than circumstances relating to the manner in which the
3 right is exercised, such as a requirement relating to giving
4 notice about exercising the right); or
5 (b) a right:
6 (i) under a contract, agreement or arrangement entered into
7 after this Division begins to apply to the body corporate;
8 or
9 (ii) that arises because of anything done in accordance with
10 a direction given, after this Division begins to apply to
11 the body corporate, under section 823F or 823L; or
12 (c) a right contained in a kind of contract, agreement or
13 arrangement:
14 (i) prescribed by the regulations for the purposes of this
15 subparagraph; or
16 (ii) declared under paragraph (3)(a) of this section; or
17 (d) a right of a kind:
18 (i) prescribed by the regulations for the purposes of this
19 subparagraph; or
20 (ii) declared under paragraph (3)(b); or
21 (e) a right of a kind declared under paragraph (3)(c), and the
22 circumstances specified in that declaration exist.
- 23 (3) For the purposes of subsection (2), the Minister may, by legislative
24 instrument:
25 (a) declare kinds of contracts, agreements or arrangements
26 referred to in a specified law of the Commonwealth; or
27 (b) declare kinds of rights to which subsection (1) does not
28 apply; or
29 (c) declare kinds of rights to which subsection (1) does not apply
30 in specified circumstances.
- 31 (4) Subsection (1) does not apply to the exercise of a right if, before
32 the exercise of the right:
33 (a) the Reserve Bank; or
34 (b) if a liquidator of the body corporate is appointed after this
35 Division ceases to apply to the body corporate—the
36 liquidator;
37 has consented in writing to the exercise of the right.
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1 847C Self-executing provisions

- 2 (1) The object of subsection (2) is to ensure that a self-executing
3 provision:
4 (a) cannot start to apply for certain reasons; and
5 (b) can be the subject of a Court order providing that the
6 provision can only start to apply with the leave of the Court,
7 and in accordance with such terms (if any) as the Court
8 imposes.

- 9 (2) Section 847B applies in relation to a self-executing provision in a
10 corresponding way to the way that section applies in relation to a
11 right to terminate:

- 12 (a) a contract, agreement or arrangement; or
13 (b) an obligation under a contract, agreement or arrangement.

14 For this purpose, assume that section applies with such
15 modifications as are necessary, including any prescribed by the
16 regulations for the purposes of this subsection.

17 Note 1: This subsection achieves the object in subsection (1) by extending the
18 application of all of the outcomes, exceptions and powers in
19 section 847B.

20 Note 2: These modifications include, for example, treating:

- 21 (a) a reference that a right cannot be exercised as including a
22 reference that a self-executing provision cannot start to apply;
23 and
24 (b) a reference that one or more rights are exercisable as including a
25 reference that one or more self-executing provisions can start to
26 apply.

- 27 (3) In this section:

28 ***self-executing provision*** means a provision of a contract,
29 agreement or arrangement that:

- 30 (a) can start to apply automatically:
31 (i) for one or more reasons; and
32 (ii) without any party to the contract, agreement or
33 arrangement making a decision that the provision
34 should start to apply; and
35 (b) terminates:
36 (i) a contract, agreement or arrangement; or
37 (ii) an obligation under a contract, agreement or
38 arrangement.

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1 847D When other laws prevail—certain other Commonwealth Acts

2 If there is any inconsistency between sections 847B and 847C and
3 one of the following Acts, that Act prevails to the extent of the
4 inconsistency:

- 5 (a) the *Anti-Money Laundering and Counter-Terrorism*
6 *Financing Act 2006*;
- 7 (b) the *Autonomous Sanctions Act 2011*;
- 8 (c) the *International Interests in Mobile Equipment (Cape Town*
9 *Convention) Act 2013*;
- 10 (d) the *Payment Systems and Netting Act 1998*.

11 Division 9—Cross-border crisis resolution

12 848A Reserve Bank may recognise crisis resolution of foreign 13 operator of a clearing and settlement facility

- 14 (1) Subject to subsection (6), the Reserve Bank may take action in
15 accordance with this Part in relation to a CS facility licensee if both
16 of the following conditions are satisfied in relation to the licensee:
- 17 (a) either or both of the following subparagraphs apply:
- 18 (i) the licensee is registered under Division 2 of Part 5B.2;
- 19 (ii) the licensee's licence was granted under
20 subsection 824B(2) (overseas clearing and settlement
21 facilities);
- 22 (b) an instrument under subsection (2) of this section is in force
23 in relation to the licensee.
- 24 (2) For the purposes of paragraph (1)(b), the Reserve Bank may, by
25 notifiable instrument, recognise a request by an authority that is
26 responsible for regulating the operation of a clearing and
27 settlement facility by a CS facility licensee in a foreign
28 jurisdiction, if:
- 29 (a) the Reserve Bank reasonably believes that the authority is
30 exercising, or is intending to or considering exercising,
31 powers to manage or respond to an event relating to the
32 licensee that is likely to pose a threat to the stability of the
33 financial system in the foreign jurisdiction; and
- 34 (b) the request is for the Reserve Bank to exercise powers under
35 this Part to assist the authority to manage or respond to the
36 event.

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-
- 1 (3) The Reserve Bank may, by notifiable instrument, revoke an
2 instrument under subsection (2) recognising a request by an
3 authority in relation to a CS facility licensee if:
4 (a) the authority terminates or withdraws the request; or
5 (b) the Reserve Bank considers that it is no longer appropriate
6 for the Reserve Bank to exercise powers under this Part to
7 assist the authority to manage or respond to the event,
8 including because the event is no longer likely to pose a
9 threat to the stability of the financial system in the foreign
10 jurisdiction.
- 11 (4) Subsection (3) does not limit the application of subsection 33(3) of
12 the *Acts Interpretation Act 1901* in relation to an instrument in
13 force under subsection (2) of this section.
- 14 (5) Subject to subsection (6), if the condition in subsection (1) is
15 satisfied in relation to a CS facility licensee:
16 (a) a reference in this Part to managing or responding to a
17 condition in section 831A is taken to include a reference to
18 responding to the request mentioned in subsection (2) of this
19 section; and
20 (b) a reference in this Part to a condition in section 831A no
21 longer being satisfied is taken to include a reference to the
22 instrument under subsection (2) of this section being
23 revoked; and
24 (c) a reference in Subdivision B of Division 6 to protecting the
25 stability of the financial system in Australia is taken to
26 include a reference to responding to the request mentioned in
27 subsection (2) of this section.
- 28 *Excluded provisions*
- 29 (6) A reference in this section to this Part does not include a reference
30 to:
31 (a) Division 3 (statutory management); or
32 (b) section 837A (compulsory transfer of shares); or
33 (c) Division 7 (funding for crisis resolution); or
34 (d) section 849A (winding up).

EXPOSURE DRAFT

1 Division 10—Other matters

2 849A Reserve Bank may apply for body corporate to be wound up

- 3 (1) The Reserve Bank may apply under section 459P to the Court for
4 an order that a body corporate be wound up in insolvency if:
- 5 (a) a condition in section 831A is satisfied in relation to a CS
6 facility licensee; and
 - 7 (b) the body corporate:
 - 8 (i) is the CS facility licensee; or
 - 9 (ii) is a related body corporate of the CS facility licensee
10 and is incorporated in Australia; or
 - 11 (iii) was a related body corporate of the CS facility licensee
12 before a transfer of business or shares under this Part
13 and is incorporated in Australia; and
 - 14 (c) the Reserve Bank considers that the body corporate is
15 insolvent and could not be restored to solvency within a
16 reasonable period.
- 17 (2) If the Reserve Bank makes an application under section 459P, the
18 Reserve Bank must inform ASIC of the application as soon as
19 possible.

20 849B Reserve Bank may request ASIC to make rules or give 21 directions

22 *Rules*

- 23 (1) If the Reserve Bank considers that:
- 24 (a) making a market integrity rule or CS facility rule (including a
25 rule amending or revoking another market integrity rule or
26 CS facility rule); or
 - 27 (b) giving or varying a direction under subsection 794AA(1) or
28 (5) or 798JA(1) or (4);
- 29 is reasonably appropriate to manage or respond to a condition in
30 section 831A being satisfied in relation to a CS facility licensee,
31 the Reserve Bank may, by written notice, request ASIC to make
32 the rule or give or vary the direction.
- 33 (2) A request for ASIC to give or vary a direction must include a
34 statement setting out the Reserve Bank's reasons for the request.

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1 **849C Exercise of certain powers by ASIC during statutory** 2 **management requires consent of Reserve Bank**

3 (1) ASIC must not do an act mentioned in subsection (2) in relation to
4 a body corporate to which subsection (3) applies unless the
5 Reserve Bank has, by written notice given to ASIC, consented to
6 ASIC doing the act.

7 (2) For the purposes of subsection (1), the acts are the following:

8 (a) make market integrity rules or CS facility rules that the body
9 corporate must comply with, other than a rule the Reserve
10 Bank requests ASIC to make under subsection 849B(1);

11 (b) give a direction under section 794A, 794D, 794E, 798J,
12 823A or 823D to the body corporate;

13 (c) an act prescribed by the regulations for the purposes of this
14 paragraph in relation to the body corporate.

15 (3) This section applies in relation to a body corporate if:

16 (a) the body corporate is under statutory management; or

17 (b) all of the following subparagraphs apply:

18 (i) the Reserve Bank has made a determination under
19 section 837A that there is to be a transfer of shares in
20 the body corporate;

21 (ii) a certificate under section 838A that the transfer is to
22 take effect has not come into force;

23 (iii) the Reserve Bank has not determined under section
24 837G that the transfer is not to take effect; or

25 (c) all of the following subparagraphs apply:

26 (i) the Reserve Bank has made a determination under
27 section 837B that there is to be a transfer of business of
28 the body corporate;

29 (ii) a certificate under section 838A that the transfer is to
30 take effect has not come into force;

31 (iii) the Reserve Bank has not determined under section
32 837G that the transfer is not to take effect; or

33 (d) a direction given to the body corporate under section 844A is
34 in force; or

35 (e) the body corporate is:

36 (i) a related body corporate of a CS facility licensee to
37 which paragraph (a), (b), (c) or (d) applies; or

38 (ii) a market licensee that has clearing and settlement
39 arrangements with a CS facility licensee to which

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1 paragraph (a), (b), (c) or (d) applies for the clearing and
2 settlement of transactions through a clearing and
3 settlement facility operated by the CS facility licensee.

4 (4) If:

5 (a) ASIC has asked the Reserve Bank whether the Reserve Bank,
6 for the purposes of subsection (1), consents to ASIC doing an
7 act; and

8 (b) the Reserve Bank has not, by written notice given to ASIC,
9 consented;

10 ASIC may refer the matter to the Minister.

11 (5) The Minister may, after being referred the matter, require the
12 Reserve Bank to consent to ASIC doing the act.

13 Note: The Reserve Bank will need to do so immediately (see paragraph
14 823J(1)(b)).

15 (6) To avoid doubt, subsection (1) does not affect the validity or
16 application of anything done by ASIC before subsection (3) began
17 to apply in relation to the body corporate.

18 **849D Expert report for acquisition or disposal of assets**

19 (1) This section applies if:

20 (a) a statutory manager of a body corporate proposes to:

21 (i) take action under subsection 833D(1) (recapitalisation);
22 or

23 (ii) otherwise take action on behalf of the body corporate to
24 acquire or dispose of an asset (excluding an action to be
25 taken in the ordinary course of the body corporate's
26 business); or

27 (b) the Reserve Bank proposes to make:

28 (i) a determination under section 837A that there is to be a
29 transfer of shares in the body corporate; or

30 (ii) a determination under section 837B that there is to be a
31 transfer of business of the body corporate; or

32 (c) the Reserve Bank proposes to give a direction to a body
33 corporate under section 844A:

34 (i) that the body corporate is to do an act referred to in a
35 paragraph of subsection 833D(1) (recapitalisation); or

36 (ii) that the body corporate is to otherwise take action to
37 acquire or dispose of an asset (excluding an action to be

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1 taken in the ordinary course of the body corporate's
2 business).

3 Note: For example, a report may be required for some actions taken under
4 section 833A.

5 *Expert report*

6 (2) Before determining terms for an action referred to in
7 subsection (1), the statutory manager or Reserve Bank (as the case
8 may be) must obtain, and consider, a report from an expert on:

9 (a) if the action is an action referred to in paragraph (1)(a) or
10 (c)—the fair value of the asset concerned; or

11 (b) if the action is an action referred to in paragraph (1)(b)—the
12 fair value of the business, part of the business or shares to be
13 transferred.

14 (3) The expert must not be an associate of:

15 (a) the body corporate; or

16 (b) if the action is to be taken by a statutory manager (other than
17 the Reserve Bank)—the statutory manager.

18 *Publication*

19 (4) The Reserve Bank may publish details of, or relating to, the report.

20 *Exemption from obtaining expert report*

21 (5) Despite subsection (2), the Reserve Bank need not obtain the report
22 if satisfied that doing so is likely to pose a threat to:

23 (a) the stability of the financial system in Australia; or

24 (b) the continuity of one or more clearing and settlement facility
25 services that are critical to the functioning of the financial
26 system in Australia.

27 *Contravention does not invalidate act*

28 (6) A contravention of subsection (2) does not affect the validity of
29 anything referred to in subsection (1).

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1 **849E Exercise of Reserve Bank powers under this Part not grounds** 2 **for denial of obligations**

- 3 (1) This section applies if a body corporate is party to a contract,
4 agreement or arrangement, whether the proper law of the contract,
5 agreement or arrangement is:
6 (a) Australian law; or
7 (b) foreign law, including the law of part of a foreign country.
- 8 (2) None of the matters mentioned in subsection (3) allow the contract,
9 agreement or arrangement, or a party to the contract, agreement or
10 arrangement (other than the body corporate), to do any of the
11 following:
12 (a) deny any obligation under the contract, agreement or
13 arrangement;
14 (b) accelerate any debt under the contract, agreement or
15 arrangement;
16 (c) terminate or close out:
17 (i) the contract, agreement or arrangement; or
18 (ii) any transaction relating to the contract, agreement or
19 arrangement;
20 (d) enforce any security under the contract, agreement or
21 arrangement.
- 22 (3) The matters are as follows:
23 (a) the body corporate being subject to the exercise of a power
24 under this Part by the Reserve Bank;
25 (b) a related body corporate, or a body corporate that was a
26 related body corporate before a transfer of business or shares
27 under this Part, of the body corporate being subject to the
28 exercise of a power under this Part by the Reserve Bank.

29 **849F Protection from liability for acts or omissions in good faith**

- 30 (1) An action, suit or proceeding (whether criminal or civil) does not
31 lie against a person in relation to anything done, or omitted to be
32 done, in good faith by the person if:
33 (a) the person does the thing, or omits to do the thing, for the
34 purpose of any of the following:
35 (i) complying with a direction or determination given
36 under this Part by the Reserve Bank;

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-
- 1 (ii) taking a measure, or an action, specified in such a
2 direction or determination;
- 3 (iii) doing, or refraining from doing, anything in accordance
4 with such a direction or determination;
- 5 (b) it is reasonable for the person to do the thing, or to omit to do
6 the thing, in order to achieve that purpose; and
- 7 (c) the person is any of the following:
- 8 (i) an officer or senior manager of the body corporate, or of
9 a related body corporate or of a body corporate that was
10 a related body corporate of a CS facility licensee before
11 a transfer of business or shares under this Part;
- 12 (ii) an employee or agent of the body corporate, or of a
13 related body corporate or of a body corporate that was a
14 related body corporate of a CS facility licensee before a
15 transfer of business or shares under this Part;
- 16 (iii) the body corporate, a related body corporate or a body
17 corporate that was a related body corporate of a CS
18 facility licensee before a transfer of business or shares
19 under this Part;
- 20 (iv) a person engaged to provide services (including advice)
21 to the body corporate, a related body corporate, or a
22 body corporate that was a related body corporate of a
23 CS facility licensee before a transfer of business or
24 shares under this Part.
- 25 (2) For the purposes of paragraph (1)(b), treat it as reasonable for a
26 person to do a thing, or to omit to do a thing, in order to achieve a
27 purpose unless no reasonable person in that person's position
28 would do the thing, or omit to do the thing, in order to achieve that
29 purpose.

849G Compensation for acquisition of property

- 30
- 31 (1) If:
- 32 (a) apart from this section, the operation of this Part would result
33 in an acquisition of property from a person otherwise than on
34 just terms; and
- 35 (b) the acquisition would be invalid because of
36 paragraph 51(xxxi) of the Constitution;
- 37 the Commonwealth is liable to pay a reasonable amount of
38 compensation to the person.
-

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1 (2) If the Commonwealth and the person do not agree on the amount
2 of the compensation, the person may institute proceedings in the
3 Court for the recovery from the Commonwealth of such reasonable
4 amount of compensation as the court determines.

5 (3) To avoid doubt, this section applies in relation to the operation of
6 this Part instead of section 1350.

7 (4) In this section:

8 *acquisition of property* has the same meaning as in
9 paragraph 51(xxxi) of the Constitution.

10 *just terms* has the same meaning as in paragraph 51(xxxi) of the
11 Constitution.

12 **15 Section 1042E**

13 Omit “or 798J(2)”, substitute “, 798J(2) or 798JA(1)”.

14 **16 In the appropriate position in subsection 1317E(3)**

15 Insert:

16

Subsection 845C(4) disclosure of information covered financial services
by secrecy provision

17 **17 In the appropriate position in Schedule 3**

18 Insert:

19

Subsection 794AA(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 833E(3) Imprisonment for 12 months or 50 penalty units,
or both

Subsection 834A(2) 30 penalty units

Subsection 834B(5) 6 months imprisonment

Subsection 837F(5) 200 penalty units

Section 839G 1 year imprisonment

Section 839H 1 year imprisonment

Subsection 844A(3) (a) for an individual—100 penalty units for each

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	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 844B(3)	Imprisonment for 12 months or 50 penalty units, or both
Subsection 845C(1)	Imprisonment for 2 years

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1 **Part 2—Resolution prevention**

2 *Corporations Act 2001*

3 **18 Subparagraph 821A(1)(aa)(i)**

4 After “section 827D”, insert “or section 827DA”.

5 **19 Section 821BA**

6 Repeal the section, substitute:

7 **821BA Obligation to notify Reserve Bank of certain matters**

8 A CS facility licensee must give written notice to the Reserve
9 Bank, immediately after becoming aware that:

- 10 (a) the licensee has failed to comply with one or more standards
11 in force under section 827D or 827DA, or is likely to fail to
12 comply with such standards; or
13 (b) the licensee may no longer be able to meet, or has breached,
14 its obligation under subparagraph 821A(1)(aa)(ii); or
15 (c) the licensee has ceased, intends to cease or is likely to cease
16 providing one or more clearing and settlement facility
17 services that are critical to the functioning of the financial
18 system in Australia; or
19 (d) in the absence of external support, the licensee is likely to be
20 unable to continue to provide one or more clearing and
21 settlement facility services that are critical to the functioning
22 of the financial system in Australia; or
23 (e) the licensee’s financial viability is at risk or is likely to be at
24 risk; or
25 (f) in the absence of external support, the licensee’s financial
26 viability is likely to be at risk; or
27 (g) an event treated, under the facility’s operating rules, as an
28 event in default occurs, or is likely to occur, in relation to a
29 participant in the CS facility.

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

32 **20 Subsection 821C(3)**

33 After “this Part”, insert “or Part 7.3B”.

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21 After Subdivision A of Division 2 of Part 7.3

2 Insert:

3 **Subdivision AA—Obligations on licensees and certain related** 4 **bodies and persons**

5 **821H Notification of sale of shares, change of control or** 6 **restructuring**

7 (1) A body corporate that:

8 (a) is a CS facility licensee; or

9 (b) is a related body corporate of a CS facility licensee and is
10 incorporated in Australia;

11 must give written notice to the Reserve Bank immediately after the
12 body corporate forms an intention to:

13 (c) enter into a transaction to do an act referred to in a paragraph
14 of subsection 833D(1) (recapitalisation); or

15 (d) propose a scheme for the reconstruction of the body
16 corporate; or

17 (e) develop a plan to restructure the body corporate.

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

20 *Invalid acts*

21 (2) Subject to subsection (5), if a body corporate:

22 (a) purports to do an act mentioned in paragraph (1)(c), (d) or
23 (e); and

24 (b) contravenes subsection (1) in relation to that act;

25 the act is invalid and of no effect.

26 (3) The body corporate may apply in writing to the Reserve Bank to
27 have the contravention disregarded.

28 (4) The Reserve Bank may, by notice in writing given to the body
29 corporate that made the application, agree to the contravention
30 being disregarded for the purposes of subsection (2) if the Reserve
31 Bank is satisfied that it would be appropriate for the contravention
32 to be disregarded.

33 (5) For the purposes of subsection (2), the contravention must be
34 disregarded if the Reserve Bank so agrees under subsection (4).

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821J Notice of any other material changes in circumstances

- 1
2 (1) A body corporate that:
3 (a) is a CS facility licensee; or
4 (b) is a related body corporate of a CS facility licensee and is
5 incorporated in Australia;
6 must give written notice to the Reserve Bank immediately after
7 becoming aware of any material change in the body corporate's
8 circumstances.

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

- 11 (2) Circumstances of which a material change must be notified under
12 subsection (1) include, but are not limited to, circumstances that
13 affect the following:
14 (a) the solvency of the body corporate;
15 (b) the financial position of the body corporate;
16 (c) voting power in the body corporate (but see subsections (3)
17 and (4));
18 (d) the corporate structure of the body corporate;
19 (e) the provision of one or more clearing and settlement facility
20 services that are critical to the functioning of the financial
21 system in Australia.

Change in voting power in listed related body corporate

- 22
23 (3) Subsection (4) applies to a body corporate that is:
24 (a) a related body corporate of a CS facility licensee; and
25 (b) a listed entity.
- 26 (4) For the purpose of this section, a change in voting power in the
27 body corporate is a material change in the body corporate's
28 circumstances if, and only if:
29 (a) before the change, a particular person held:
30 (i) no voting power in the body corporate; or
31 (ii) less than 15% of the voting power in the body
32 corporate; and
33 (b) after the change, the person holds at least 15% of that voting
34 power.

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Changes already notified to ASIC

(5) Despite subsection (1), a body corporate is not required to notify the Reserve Bank of a material change in the body corporate's circumstances if the body corporate has already notified the Reserve Bank of that change under:

- (a) section 821BA; or
- (b) another provision of this Subdivision.

821K Notification of appointment of external administrator

(1) If a person is considering appointing an external administrator of a body corporate that:

- (a) is a CS facility licensee; or
- (b) is a related body corporate of a CS facility licensee and is incorporated in Australia;

the person must give written notice to the Reserve Bank. The notice must be given at least 7 days before an external administrator of the body corporate is appointed.

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

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

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

(3) An external administrator of the body corporate must not be appointed before that time, unless the Reserve Bank approves the appointment.

Invalid acts

(4) If a purported external administrator of the body corporate, appointed in contravention of subsection (3), purports to act in relation to the body corporate's business, those acts are invalid and of no effect.

Safe harbour

(5) Subsection 588G(2) does not apply in relation to a person and a debt incurred by a body corporate if the debt is incurred:

- (a) at a time while this section prevents the appointment of an external administrator; and

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1 (b) in the ordinary course of the body corporate's business, or
2 with the consent of the Reserve Bank or by order of the
3 Court.

4 **821L Notification from liquidator and request for information about** 5 **winding up**

6 *Notification of applications relating to winding up*

7 (1) A liquidator, or a provisional liquidator, of a body corporate that:

8 (a) is a CS facility licensee; or

9 (b) is a related body corporate of a CS facility licensee and is
10 incorporated in Australia;

11 must give written notice to the Reserve Bank, at least 7 days before
12 making an application to the Court in relation to a matter arising
13 under the winding-up of the body corporate.

14 (2) The notice must include details of the proposed application.

15 (3) The Reserve Bank is entitled to be heard on the application to the
16 Court.

17 *Information request*

18 (4) The Reserve Bank may request the liquidator or provisional
19 liquidator to give, within a reasonable time specified in the request,
20 specified information in writing about:

21 (a) the application; or

22 (b) other matters relating to the winding-up, or proposed winding
23 up, of the body corporate; or

24 (c) the affairs of the body corporate.

25 (5) The liquidator or provisional liquidator must comply with the
26 request.

27 **22 Section 823CA (heading)**

28 Repeal the heading, substitute:

29 **823CA Reserve Bank assessment of compliance**

30 **23 Subsection 823CA(1)**

31 Repeal the subsection, substitute:

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-
- 1 (1) The Reserve Bank may do an assessment of:
2 (a) how well a CS facility licensee is complying with its
3 obligation under paragraph 821A(1)(aa); or
4 (b) how well a related body corporate of a CS facility licensee is
5 complying with standards determined under section 827DA.
6 In doing the assessment, the Reserve Bank may take account of
7 any information and reports that it thinks appropriate, including
8 information and reports from an overseas regulatory authority.

9 **24 After section 823CA**

10 Insert:

11 **823CB Directions to give information to assist Reserve Bank** 12 **assessment**

13 *Direction to give information or documents*

- 14 (1) The Reserve Bank may, by written notice given to a body
15 corporate that:
16 (a) is a CS facility licensee; or
17 (b) is a related body corporate of a CS facility licensee and is
18 incorporated in Australia;
19 direct the body corporate to give:
20 (c) specified information; or
21 (d) specified documents containing specified information;
22 to the Reserve Bank or a Reserve Bank staff member if
23 subsection (2) applies for the body corporate.
- 24 (2) This subsection applies for the body corporate if the Reserve Bank
25 reasonably believes that:
26 (a) the body corporate can give the information or documents;
27 and
28 (b) the information or documents could assist the Reserve Bank
29 perform its functions, or exercise its powers, under
30 subsection 823CA(1).
- 31 (3) The direction:
32 (a) must specify a reasonable time by which, or a reasonable
33 period during which, it is to be complied with; and
34 (b) may specify the form and manner in which the information or
35 documents must be given.

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-
- 1 (4) The body corporate must comply with the direction.
2 Note: Failure to comply with this subsection is an offence (see
3 subsection 1311(1)).

4 *Referrals to the Minister*

- 5 (5) If, at any time after the body corporate receives the direction, the
6 body corporate requests in writing that the Reserve Bank refer the
7 direction to the Minister, the Reserve Bank must do so
8 immediately.

- 9 (6) The Minister may, if the Minister considers it appropriate after
10 being referred the direction, require the Reserve Bank to vary or
11 revoke the direction.

- 12 Note: The Reserve Bank will need to do so immediately (see paragraph
13 823J(1)(b)).

14 **25 At the end of 824B**

15 Add:

16 *Grant to receiving body*

- 17 (5) If a certificate issued under section 838A for a transfer comes into
18 force, ASIC may grant an Australian CS facility licence to a body
19 corporate that becomes the successor in law of a CS facility
20 licensee.

21 **26 Subsections 827D(1) and (6)**

22 Omit “in writing”, substitute “by legislative instrument”.

23 **27 Subsection 827D(7)**

24 Repeal the subsection.

25 **28 Subsection 827D(8)**

26 Omit “in writing”, substitute “by legislative instrument”.

27 **29 Subsections 827D(9) and (10)**

28 Repeal the subsections.

29 **30 At the end of Division 4 of Part 7.3**

30 Add:

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1 **827DA Reserve Bank may determine resolvability standards for CS** 2 **facility licensees and certain related bodies corporate**

- 3 (1) The Reserve Bank may, by legislative instrument, determine
4 standards for the purposes of ensuring that:
5 (a) CS facility licensees; and
6 (b) related bodies corporate of CS facility licensees that are
7 incorporated in Australia;
8 conduct their affairs in a way that would assist the Reserve Bank to
9 manage or respond to a condition in section 831A being satisfied in
10 relation to a CS facility licensee.
- 11 (2) The standards are to be complied with by:
12 (a) all CS facility licensees and all related bodies corporate of
13 those licensees that are incorporated in Australia; or
14 (b) a specified class of those bodies corporate in the case of a
15 standard that is expressed to apply only in relation to that
16 class.
- 17 (3) Before the Reserve Bank determines a standard, it must consult
18 with:
19 (a) the bodies corporate that will be required to comply with the
20 standard; and
21 (b) ASIC.
- 22 (4) A standard may impose different requirements to be complied with
23 in different situations or in respect of different activities.
- 24 (5) A standard:
25 (a) comes into force:
26 (i) unless subparagraph (ii) applies—on the day on which
27 the determination of the standard is made; or
28 (ii) if that determination specifies a later day as the day on
29 which the standard comes into force—on the day so
30 specified; and
31 (b) continues in force until it is revoked.
- 32 (6) The Reserve Bank may, by legislative instrument, vary a standard.
33 Before it does so, it must consult with:
34 (a) the CS facility licensees that will be required to comply with
35 the standard if it is varied as proposed; and
36 (b) ASIC.

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- 1 (7) The Reserve Bank may, by legislative instrument, revoke a
2 standard. Before it does so, it must consult with ASIC.

3 *Inconsistency with other rules*

- 4 (8) If there is an inconsistency between the standards made under this
5 section and any of the following:
6 (a) the standards made under section 827D;
7 (b) the derivative transaction rules;
8 (c) the derivative trade repository rules;
9 (d) the CS services rules;
10 (e) the CS facility rules;
11 the standards made under this section prevail to the extent of the
12 inconsistency.

13 **827DB Resolution planning**

- 14 (1) The Reserve Bank may make a plan for the event that a condition
15 in section 831A is satisfied in relation to a CS facility licensee.
16 (2) If the Reserve Bank makes a plan under subsection (1), the Reserve
17 Bank may review, vary or revoke the plan.
18 (3) In making, reviewing, varying or revoking a plan under this
19 section, the Reserve Bank may take account of any information
20 that the Reserve Bank considers appropriate in making the plan.
21 (4) A plan made under this section is not a legislative instrument.

22 **827DC Directions to give information to assist the Reserve Bank's**
23 **resolution planning**

24 *Direction to give information or documents*

- 25 (1) The Reserve Bank may, by written notice given to a person, direct
26 the person to give:
27 (a) specified information; or
28 (b) specified documents containing specified information;
29 to the Reserve Bank or a Reserve Bank staff member if
30 subsection (2) applies for the person.
31 (2) This subsection applies for a person if:
32 (a) the person is:

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- 1 (i) a CS facility licensee; or
2 (ii) a related body corporate of a CS facility licensee and is
3 incorporated in Australia; and
4 (b) the Reserve Bank reasonably believes that:
5 (i) the person can give the information or documents; and
6 (ii) the information or documents could assist the Reserve
7 Bank perform its functions, or exercise its powers,
8 under section 827DB (resolution planning) in relation to
9 the CS facility licensee.

- 10 (3) The direction:
11 (a) must specify a reasonable time by which, or a reasonable
12 period during which, it is to be complied with; and
13 (b) may specify the form and manner in which the information or
14 documents must be given.

- 15 (4) The person must comply with the direction.

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

18 *Referrals to the Minister*

- 19 (5) If, at any time after the person receives the direction, the person
20 requests in writing that the Reserve Bank refer the direction to the
21 Minister, the Reserve Bank must do so immediately.

- 22 (6) The Minister may, if the Minister considers it appropriate after
23 being referred the direction, require the Reserve Bank to vary or
24 revoke the direction.

25 Note: The Reserve Bank will need to do so immediately (see paragraph
26 823J(1)(b)).

27 **31 After paragraph 1317B(1)(b)**

28 Insert:
29 (ba) the Reserve Bank; or

30 **32 After paragraph 1317C(gh)**

31 Insert:
32 (gi) a decision of the Reserve Bank or a statutory manager under
33 Part 7.3B; or

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1 **33 In the appropriate position in Schedule 3**

2 Insert:

3

Subsection 821H(1)	2 years imprisonment
Subsection 821J(1)	2 years imprisonment
Subsection 821K(1)	2 years imprisonment
Subsection 823CB(4)	2 years imprisonment
Subsection 827DC(4)	2 years imprisonment

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1 **Part 3—Amendments of other Acts**

2 *Australian Securities and Investments Commission Act 2001*

3 **34 After paragraph 127(2A)(d)**

4 Insert:

5 (da) a statutory manager of a body corporate;

6 *Personal Property Securities Act 2009*

7 **35 After subparagraph 267(1)(a)(iiib)**

8 Insert:

9 (iiic) Division 5 or 7A of Part 7.3B of the *Corporations Act 2001*
10 begins to apply to a body corporate;

11 **36 After subparagraph 267(1)(b)(iia)**

12 Insert:

13 (iib) in the case of a body corporate to which
14 subparagraph (a)(iiic) applies—when the body corporate
15 begins to be under statutory management under Part 7.5B of
16 the *Corporations Act 2001*;

17 *Reserve Bank Act 1959*

18 **37 Subsection 5(1) (paragraph (c) of the definition of**
19 ***payments system policy*)**

20 Omit “Part 7.3”, substitute “Parts 7.3 and 7.3B”.

21 **38 Subsection 10(2)**

22 After “Part 7.3”, insert “and 7.3B”.

23 **39 Paragraph 10B(3)(c)**

24 Omit “Part 7.3”, substitute “Parts 7.3 and 7.3B”.

25 **40 Subsection 79A(1) (at the end of the definition of *officer*)**

26 Add:

27 Note: For example, a person who is a statutory manager of a body corporate
28 under Part 7.3B of the *Corporations Act 2001* who has acquired

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1 protected information or has access to protected documents is an
2 officer.

3 **41 Subsection 79A(1) (definition of *protected document*)**

4 After “Part 7.3”, insert “, 7.3B”.

5 **42 Subsection 79A(1) (definition of *protected information*)**

6 After “Part 7.3”, insert “, 7.3B”.

7 **43 Subsection 79A(2)**

8 After “Part 7.3”, insert “, 7.3B”.

9 **44 After paragraph 79A(4)(b)**

10 Insert:

11 (ba) a statutory manager of a body corporate under Part 7.3B of
12 the *Corporations Act 2001*; or

13 **45 Subsection 79A(4)**

14 Omit “or bank”, substitute “, bank or statutory manager”.

15 **46 Subsection 79A(6A)**

16 After “Part 7.3”, insert “, 7.3B”.

17 **47 Paragraphs 79A(6B)(a) and (b)**

18 After “Part 7.3”, insert “, 7.3B”.

19 **48 Subsection 79A(8)**

20 After “Part 7.3”, insert “, 7.3B”.

21