

Passed by both Houses



New South Wales

# Financial Services Reform (Consequential Amendments) Bill 2002

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2002*



New South Wales

## **Financial Services Reform (Consequential Amendments) Bill 2002**

Act No , 2002

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An Act to amend the *Corporations (Ancillary Provisions) Act 2001* and certain other Acts and Regulations consequent on the enactment by the Parliament of the Commonwealth of the *Financial Services Reform Act 2001* and the *Financial Services Reform (Consequential Provisions) Act 2001*; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Financial Services Reform (Consequential Amendments) Act 2002*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 2.8 and 2.9 commence on a day or days to be appointed by proclamation.

**3 Amendment of Corporations (Ancillary Provisions) Act 2001 No 32**

The *Corporations (Ancillary Provisions) Act 2001* is amended as set out in Schedule 1.

**4 Amendment of other Acts and Regulations**

Each Act or Regulation specified in Schedules 2 and 3 is amended as set out in those Schedules.

**5 Repeal of State Owned Corporations (National Electricity Market) Regulation 1996**

The *State Owned Corporations (National Electricity Market) Regulation 1996* is repealed.

**6 Explanatory notes**

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

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## Schedule 1 Amendment of Corporations (Ancillary Provisions) Act 2001

(Section 3)

### [1] Section 22 Power to amend certain statutory rules

Omit "Act." from section 22 (2) (e). Insert instead:

- Act, or
- (f) an Act amending an Act referred to in paragraph (d) or (e).

### [2] Section 22A

Insert after section 22:

#### **22A Power to make regulations construing certain references in Acts**

- (1) In this section, *affected reference* means:
  - (a) a reference in an Act to a provision of the new ASIC Act or the new Corporations Act, or
  - (b) a reference in an Act to a term, expression or concept defined or used in the new ASIC Act or the new Corporations Act,  
  
that is, or is to be, affected in any way by the enactment or proposed enactment by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act.
- (2) The Governor, on the recommendation of the Minister, may make regulations providing that an affected reference in any Act is to be construed as set out in the regulations.
- (3) The Minister may make a recommendation under subsection (2) only if he or she considers that:
  - (a) each substantive provision of the proposed regulations is necessary as a consequence of the enactment, or proposed enactment, by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act, and

(b) subject to subsection (4), the proposed regulations do not deal with any other matter.

(4) Regulations made under this section may deal with matters of a transitional nature (including matters of application or savings nature) consequent on the enactment of the amending Act referred to in subsection (3) (a).

**Note.** Section 25 (6) and (7) enable a provision of the regulations made under this section to have effect from a time that is earlier than the day on which they are made.

(5) Regulations made under this section have effect according to their tenor.

**[3] Section 25 Regulations**

Insert “or, in the case of regulations made under section 22 (2) (f) or 22A, the time when the amending Act (or the relevant provision of that Act) comes into operation or is taken to come into operation” after “relevant time” in section 25 (6).

**[4] Section 28**

Insert after section 27:

**28 Savings and transitional provisions consequent on enactment of other Acts**

Schedule 4 has effect.

**[5] Schedule 4**

Insert after Schedule 3:

**Schedule 4 Savings and transitional provisions consequent on enactment of other Acts**

(Section 28)

**Part 1 General**

**1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Financial Services Reform (Consequential Amendments) Act 2002*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 2 Provisions consequent on enactment of Financial Services Reform (Consequential Amendments) Act 2002

### 2 Definition

In this Part:

*amending Act* means the *Financial Services Reform (Consequential Amendments) Act 2002*.

### 3 Validation

- (1) In this section, *relevant period* means the period:
  - (a) starting on the commencement of Part 1 of Schedule 1 to the *Financial Services Reform Act 2001* of the Commonwealth, and
  - (b) ending immediately before the date of assent to the amending Act.
- (2) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had the amending Act been in operation at the time at which the thing was done or omitted, is taken to be, and to have always been, valid and lawful.
- (3) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had none of the provisions of the *Financial Services Reform Act 2001* or the *Financial Services Reform (Consequential Provisions) Act 2001* of the Commonwealth been in operation at the time at which the thing was done or omitted, is taken to be, and to have always been, valid and lawful.

#### Explanatory note

Item [1] of the proposed amendments amends section 22 of the *Corporations (Ancillary Provisions) Act 2001* to enable the Governor to make regulations under that section that amend references in other statutory rules that refer to provisions of, or terms, concepts or expressions used in, the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001* of the Commonwealth that have been, or are to be amended, by another Act of the Parliament of the Commonwealth.

Item [2] of the proposed amendments to the Act inserts a new section 22A in the Act. The new section will enable the Governor to make regulations that specify how references in State Acts to provisions of, or terms, concepts or expressions used in, the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001* of the

Commonwealth that have been, or are to be amended, by another Act of the Parliament of the Commonwealth are to be construed.

Item [3] of the proposed amendments to the Act makes an amendment to section 25 that is consequential on the amendments made by items [1] and [2].

Items [4] and [5] of the proposed amendments to the Act insert provisions of a savings and transitional nature that are consequent on the enactment of the proposed Act. In particular, a provision is inserted in a new Schedule 4 to the Act that validates certain acts and omissions of persons and bodies done or omitted to be done on or after the commencement of Part 1 of Schedule 1 to the *Financial Services Reform Act 2001* of the Commonwealth but before the date of assent to the proposed Act.



## **Schedule 2    Amendment of references in other Acts**

(Section 4)

### **2.1    Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11**

#### **[1]    Section 16 Excluded matter**

Omit section 16 (2) (b). Insert instead:

- (b) provisions applying to or about bodies or bodies corporate included in the official list of any prescribed financial market (including provisions of Chapter 6 applying to or about a company as defined for that Chapter),

#### **[2]    Section 16 (2) (e)**

Omit the paragraph. Insert instead:

- (e) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services),

#### **Explanatory note**

Item [1] of the proposed amendments amends section 16 of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* to replace a reference to provisions of the *Corporations Act 2001* of the Commonwealth applying to or about bodies or bodies corporate included in the official list of a securities exchange with a reference to provisions of the Commonwealth Act applying to or about bodies included in an official list of any prescribed financial market within the meaning of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

Item [2] of the proposed amendments also amends section 16 of the Act to replace a reference to Part 7.11 (Conduct in relation to securities) of the *Corporations Act 2001* of the Commonwealth with a reference to the new Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services) of that Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

## **2.2 Co-operatives Act 1992 No 18**

### **[1] Section 9 Excluded matter**

Omit “the futures industry” from section 9 (2) (h).  
Insert instead “derivatives”.

### **[2] Section 9 (2) (i)**

Omit the paragraph. Insert instead:

- (i) provisions relating to:
  - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities, or
  - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act,

### **[3] Section 9 (2) (j)**

Omit “conduct of a securities business”.  
Insert instead “carrying on of a financial services business (as defined in section 761A of the Corporations Act) relating to securities”.

### **[4] Section 9 (2) (k)**

Omit the paragraph. Insert instead:

- (k) provisions relating to financial statements, and audits of financial statements, of:
  - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities, or

- (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act,

**[5] Section 9 (2) (l)**

Omit the paragraph. Insert instead:

- (l) provisions relating to money and scrip of clients of:
  - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities, or
  - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act,

**[6] Section 9 (3) (d)**

Omit the paragraph. Insert instead:

- (d) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services).

**[7] Section 266 Application of Corporations Act to issues of debentures**

Omit “Part 7.11 (Conduct in relation to securities)” from section 266 (1).

Insert instead “Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services)”.

**Explanatory note**

Item [1] of the proposed amendments amends section 9 of the *Co-operatives Act 1992* to replace a reference to the futures industry within the meaning of the *Corporations Act 2001* of the Commonwealth with a reference to derivatives within the meaning of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

Items [2], [4] and [5] of the proposed amendments amend section 9 of the Act to replace references to participants in the securities industry and dealers within the meaning of the *Corporations Act 2001* of the Commonwealth with references to financial services

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licensees and regulated principals within the meaning of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth) who deal in, or provide advice about, securities.

Item [3] of the proposed amendments amends section 9 of the Act to replace a reference to the conduct of a securities business within the meaning of the *Corporations Act 2001* of the Commonwealth with a reference to **carrying on a financial services business** within the meaning of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth) relating to securities.

Items [6] and [7] of the proposed amendments amend sections 9 and 266 of the Act to replace references to Part 7.11 (Conduct in relation to securities) of the *Corporations Act 2001* of the Commonwealth with references to the new Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services) of that Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

## 2.3 Duties Act 1997 No 123

### [1] Section 250 Cancellation of registration by the Chief Commissioner

Omit section 250 (1) (a). Insert instead:

- (a) if the insurer's authorisation under the *Insurance Act 1973* of the Commonwealth is revoked, or

### [2] Dictionary

Omit the definition of *insurance intermediary*. Insert instead:

***insurance intermediary*** means:

- (a) a person who arranges contracts of insurance in New South Wales:
  - (i) for reward, or
  - (ii) as an agent for a person carrying on a business of insurance, or
- (b) a financial services licensee (as defined in section 761A of the *Corporations Act 2001* of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
- (c) a regulated principal (as defined in section 1430 of the *Corporations Act 2001* of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

**[3] Dictionary**

Insert after the definition of *public unit trust scheme*:

*quoted*, in relation to marketable securities:

- (a) includes marketable securities that have stopped being listed for quotation on a stock exchange merely because they belong to a class of securities the quotation of which has been temporarily suspended, and
- (b) does not include marketable securities that belong to a class of securities referred to in paragraph (a) if the body that issued the securities has ceased to be included in the official list of the stock exchange.

**Explanatory note**

Item [1] of the proposed amendments amends section 250 of the *Duties Act 1997* to replace a reference to the registration of insurers under the *Insurance Act 1973* of the Commonwealth with a reference to an authorisation under that Act. The amendment is in the nature of statute law revision.

Item [2] of the proposed amendments replaces the definition of *insurance intermediary* in the Dictionary to the Act with a new definition. The current definition provides that the term has the same meaning as in the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth. However, the *Insurance (Agents and Brokers) Act 1984* was repealed by the *Financial Services Reform (Consequential Provisions) Act 2001* of the Commonwealth.

Item [3] of the proposed amendments inserts a new definition of *quoted* in relation to shares and other securities in the Dictionary to the Act. The new definition is drawn from the provisions of section 1097A of the *Corporations Act 2001* of the Commonwealth (as in force immediately before the commencement of the *Financial Services Reform Act 2001* of the Commonwealth). That section provided that certain securities that were temporarily suspended from quotation on a stock exchange were to be treated as still being listed for quotation on the exchange for the purposes of the *Corporations Act 2001*.

## 2.4 Freedom of Information Act 1989 No 5

### Schedule 1 Exempt documents

Insert at the end of clause 18:

- (2) A document is an exempt document if it contains matter that appears in:
  - (a) a document for the purposes of the Ministerial Council for Corporations that has been prepared by, or received by an agency or Minister from, the Commonwealth or another State, or

- (b) a document the disclosure of which would disclose the deliberations or decisions of the Ministerial Council for Corporations, other than a document by which a decision of the Council has been officially published, or
- (c) a document that has been furnished to the Australian Securities and Investments Commission by the Commonwealth, or by this or any other State, and that relates solely to the functions of the Commission in relation to the law of the Commonwealth or the law of this or any other State, or
- (d) a document (other than a document referred to in paragraph (c)) that is held by the Australian Securities and Investments Commission and that relates solely to the exercise of the functions of the Commission under the law of the Commonwealth or the law of this or any other State.

(3) In this clause:

***Australian Securities and Investments Commission*** means the body established by section 7 of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth and continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

***Ministerial Council for Corporations:***

- (a) means the Ministerial Council for Corporations originally established by the Corporations Agreement dated 23 September 1997 between the Governments of the Commonwealth, the States and the Northern Territory, and
- (b) includes any body that is a continuation of, or a successor to, the Council under any subsequent agreement between those Governments.

**Explanatory note**

The amendment to clause 18 of Schedule 1 to the *Freedom of Information Act 1989* ensures that certain documents containing matter relating to the Ministerial Council for Corporations or the Australian Securities and Investments Commission are exempt documents for the purposes of that Act. Currently, clause 18 makes similar provision in respect of documents containing matter that related to the former Ministerial Council for Companies and Securities and National Companies and Securities Commission.

## **2.5 Insurance (Application of Laws) Act 1986 No 13**

### **[1] Section 3 Definitions**

Insert “or” after “Commonwealth,” in paragraph (a) of the definition of *applied provision* in section 3 (1).

### **[2] Section 3 (1), definition of “applied provision”**

Omit paragraph (b).

### **[3] Section 3 (4)**

Insert after section 3 (3):

(4) Notes included in this Act do not form part of this Act.

### **[4] Section 6 Application of Insurance (Agents and Brokers) Act 1984 of the Commonwealth etc**

Omit the section. Insert instead:

#### **6 Application of Corporations legislation to State insurance matters**

(1) The regulations may declare any State insurance matter to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (with such modifications as may be specified in the declaration) in relation to the following:

- (a) all or any of the provisions of Chapter 7 (Financial services and markets) of the *Corporations Act 2001* of the Commonwealth,
- (b) all or any of the provisions of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth relating to financial products or financial markets.

**Note.** Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the

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purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) Without limiting subsection (1), any such regulations may:
- (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and
  - (b) provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
    - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
    - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (c) specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person, and
  - (d) identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and
  - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.
- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.



(4) In this section:

*State insurance matter* means:

- (a) State insurance within the meaning of section 51 (xiv) of the Commonwealth Constitution, or
- (b) contracts of insurance and proposed contracts of insurance entered into, or proposed to be entered into, by the State and some other insurer as joint insurers, or
- (c) conduct in connection with contracts and proposed contracts of the kind referred to in paragraph (b).

**Explanatory note**

Item 245 of Schedule 1 to the *Financial Services Reform (Consequential Provisions) Act 2001* of the Commonwealth repealed the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth on the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001* of the Commonwealth. The *Insurance (Agents and Brokers) Act 1984* regulated insurance intermediaries, but did not extend to the regulation of insurance intermediaries involved in State insurance. Provisions regulating such insurance intermediaries are now located in the new Chapter 7 of the *Corporations Act 2001* of the Commonwealth, as inserted by the *Financial Services Reform Act 2001*. Section 6 of the *Insurance (Application of Laws) Act 1986* applies the provisions of the *Insurance (Agents and Brokers) Act 1984* to State insurance as a matter of State law. However, the former Act has no Commonwealth provisions to apply to State insurance on the repeal of the latter Act.

Item [4] of the proposed amendments to the *Insurance (Application of Laws) Act 1986* replaces section 6 with a new section that enables the regulations to apply provisions of the new Chapter 7 of the *Corporations Act 2001* of the Commonwealth (and related provisions of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth) as State law to matters concerning State insurance. Item [3] of the proposed amendments amends section 3 of the Act to ensure that notes included with the proposed amendment made by item [4] are not treated as forming part of the Act. Items [1] and [2] of the proposed amendments make consequential amendments to section 3 of the Act.

## 2.6 Insurance Protection Tax Act 2001 No 40

### [1] Section 3 Definitions

Omit the definition of *insurance intermediary*. Insert instead:

*insurance intermediary* means:

- (a) a person who arranges contracts of insurance in New South Wales:
  - (i) for reward, or
  - (ii) as an agent for a person carrying on a business of insurance, or

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- (b) a financial services licensee (as defined in section 761A of the *Corporations Act 2001* of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
  - (c) a regulated principal (as defined in section 1430 of the *Corporations Act 2001* of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

**[2] Section 3, definition of “insurer”**

Omit paragraph (c). Insert instead:

- (c) who is authorised to carry on insurance business under the *Insurance Act 1973* of the Commonwealth.

**[3] Section 19 Cancellation of registration by Chief Commissioner**

Omit section 19 (1) (a). Insert instead:

- (a) if the insurer’s authorisation under the *Insurance Act 1973* of the Commonwealth is revoked, or

**Explanatory note**

Item [1] of the proposed amendments amends section 3 of the *Insurance Protection Tax Act 2001* by replacing the definition of **insurance intermediary** with a new definition. The current definition provides that the term has the same meaning as in the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth. However, the *Insurance (Agents and Brokers) Act 1984* was repealed by the *Financial Services Reform (Consequential Provisions) Act 2001* of the Commonwealth.

Items [2] and [3] of the proposed amendments amend both the definition of **insurer** in section 3 and section 19 to replace references to the registration of insurers under the *Insurance Act 1973* of the Commonwealth with references to authorisations under that Act. The amendments are in the nature of statute law revision.

## **2.7    Legal Profession Act 1987 No 109**

### **Section 43 Investment of Indemnity Fund**

Omit “securities or shares listed on a stock exchange in Australia” from section 43 (c).

Insert instead “securities or shares listed for quotation on a prescribed financial market (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth)”.

#### **Explanatory note**

The proposed amendment to section 43 of the *Legal Profession Act 1987* replaces a reference to securities or shares listed on a stock exchange in Australia with a reference to securities or shares listed for quotation on a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001*).

## **2.8    Minors (Property and Contracts) Act 1970 No 60**

### **[1]    Section 28 Certified disposition by a minor**

Omit “disposition,” from section 28 (2) (a).

Insert instead “disposition, and”.

### **[2]    Section 28 (2) (c)–(e)**

Omit section 28 (2) (c). Insert instead:

- (c)    state that the person giving the certificate is satisfied that:
  - (i)    the minor understands the true purport and effect in law of the disposition, and
  - (ii)   the minor makes the disposition freely and voluntarily, and
- (d)    state that the person giving the certificate has received a written statement from an independent and appropriately qualified valuer or other financial adviser to the effect that the consideration for the disposition is not manifestly inadequate, and

- (e) have annexed to the certificate a copy of the written statement referred to in paragraph (d).

**[3] Section 29 Certified disposition to a minor**

Omit “disposition,” from section 29 (2) (a).

Insert instead “disposition, and”.

**[4] Section 29 (2) (c)–(e)**

Omit section 29 (2) (c). Insert instead:

- (c) state that the person giving the certificate is satisfied that:
  - (i) the minor understands the true purport and effect in law of the disposition, and
  - (ii) the minor takes the disposition freely and voluntarily, and
- (d) state that the person giving the certificate has received a written statement from an independent and appropriately qualified valuer or other financial adviser to the effect that the consideration for the disposition is not manifestly excessive, and
- (e) have annexed to the certificate a copy of the written statement referred to in paragraph (d).

**Explanatory note**

Item [2] of the amendments to the *Minors (Property and Contracts) Act 1970* amends section 28 of the Act to ensure that a solicitor or the Public Trustee is not required under that section to certify matters that could constitute the provision of financial advice for the purposes of Chapter 7 of the *Corporations Act 2001* of the Commonwealth (as inserted by the *Financial Services Reform Act 2001* of the Commonwealth) for which the person must be licensed under that Chapter. Currently, section 28 requires a solicitor or the Public Trustee to certify that the consideration for a disposition by a minor is not manifestly inadequate. Section 28, as amended, will require a solicitor or the Public Trustee to certify that he or she has received a written statement from a qualified valuer or other financial adviser concerning the consideration and annex a copy of that statement to the certificate.

Item [4] of the amendments makes a comparable amendment to section 29 of the Act. Currently, section 29 requires a solicitor or the Public Trustee to certify that the consideration for a disposition to a minor is not manifestly excessive. Section 28, as amended, will require a solicitor or the Public Trustee to certify that he or she has received a written statement from a qualified valuer or other financial adviser concerning the consideration and annex a copy of that statement to the certificate.

Items [1] and [3] of the amendments to the Act make consequential amendments to sections 28 and 29.

## **2.9 Property (Relationships) Act 1984 No 147**

### **Section 47 Effect of agreements in certain proceedings**

Omit section 47 (1) (d). Insert instead:

- (d) that each party to the relationship was, before the time at which the agreement was signed by him or her, as the case may be, furnished with a certificate in or to the effect of the prescribed form by a solicitor which states that, before that time, the solicitor provided legal advice to that party, independently of the other party to the relationship, as to the following matters:
  - (i) the effect of the agreement on the rights of the parties to apply for an order under Part 3, and
  - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement, and

#### **Explanatory note**

The amendment to section 47 of the *Property (Relationships) Act 1984* ensures that the advice that a solicitor is required to give a party to a domestic relationship who enters into a domestic relationship agreement or termination agreement does not extend to the giving of advice that would constitute the provision of a financial service within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth. A person must be licensed under Chapter 7 of the *Corporations Act 2001* in order to provide a financial service.

The amendment will ensure that a solicitor must advise the party about the legal effect of the agreement.

## **2.10 Property, Stock and Business Agents Act 1941 No 28**

### **[1] Section 4 Act not to apply to certain persons or bodies**

Omit “a dealers licence” from section 4 (5) (a).

Insert instead “an Australian financial services licence”.

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**[2] Section 4 (5) (b)**

Omit the paragraph. Insert instead:

- (b) the person is an authorised representative of a financial services licensee within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth.

**Explanatory note**

Item [1] of the proposed amendments to the *Property, Stock and Business Agents Act 1941* amends section 4 of the Act to replace a reference to a dealers licence within the meaning of the *Corporations Act 2001* of the Commonwealth with a reference to an Australian financial services licence within the meaning of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

Item [2] of the proposed amendments replaces section 4 (5) (b) that refers to a person who holds a proper authority, within the meaning of the *Corporations Act 2001* of the Commonwealth, from the holder of such a dealers licence with a provision that refers to a person who is an authorised representative of a financial services licensee within the meaning of Chapter 7 of that Act (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

## **2.11 State Owned Corporations Act 1989 No 134**

### **Section 20G Application of Commonwealth Corporations Act 2001**

Omit “other than to the extent specified by the regulations for the purposes of this subsection” from section 20G (1).

Insert instead:

other than:

- (a) section 1101I (Gaming and wagering laws do not affect validity of contracts relating to financial products) of that Act to the extent that it applies to any contract that is a financial product entered into by an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*, or
- (b) to the extent specified by the regulations for the purposes of this subsection.

**Explanatory note**

Section 20G (1) of the *State Owned Corporations Act 1989* provides that a statutory SOC is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation other than to the extent specified by the regulations for the purposes of that subsection. Section 5F of the *Corporations Act 2001* provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the

Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

Currently, clause 3 of the *State Owned Corporations (National Electricity Market) Regulation 1996* applies the provisions of Chapter 8 of the *Corporations Act 2001* of the Commonwealth relating to the futures industry (as in force before its repeal by the *Financial Services Reform Act 2001* of the Commonwealth) as a State law. However, that Regulation will be repealed by proposed section 5 of the proposed Act.

The amendment to section 20G of that Act ensures that section 1101I of the *Corporations Act 2001* (as inserted by the *Financial Services Reform Act 2001*) will apply as a federal law to energy services corporations within the meaning of the *Energy Services Corporations Act 1995* that are statutory SOCs under the *State Owned Corporations Act 1989*. Section 1101I of the *Corporations Act 2001* provides that gaming and wagering laws in a State or Territory do not affect the validity of contracts relating to financial products.

## 2.12 Teacher Housing Authority Act 1975 No 27

### Section 11 Vacation of office

Omit “listed for quotation on the official list of a stock exchange in Australia” from section 11 (3) (a).

Insert instead “listed for quotation on a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth”.

#### Explanatory note

The proposed amendment to section 11 of the *Teacher Housing Authority Act 1975* replaces a reference to a company whose shares are listed for quotation on the official list of a stock exchange in Australia with a reference to a company whose shares are listed for quotation on a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth (as amended by the *Financial Services Reform Act 2001* of the Commonwealth).

## 2.13 Workers Compensation Act 1987 No 70

### Section 156A Misleading conduct by insurers and insurance intermediaries

Omit the definition of *insurance intermediary* from section 156A (1).

Insert instead:

*insurance intermediary* means:

- (a) a person who arranges contracts of insurance in New South Wales:
  - (i) for reward, or
  - (ii) as an agent for a person carrying on a business of insurance, or
- (b) a financial services licensee (as defined in section 761A of the *Corporations Act 2001* of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
- (c) a regulated principal (as defined in section 1430 of the *Corporations Act 2001* of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

#### Explanatory note

The proposed amendment to section 156A of the *Workers Compensation Act 1987* replaces the definition of *insurance intermediary* with a new definition. The current definition provides that the term has the same meaning as in the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth. However, the *Insurance (Agents and Brokers) Act 1984* was repealed by the *Financial Services Reform (Consequential Provisions) Act 2001* of the Commonwealth.



## Schedule 3 Amendment of references in Regulations

(Section 4)

### 3.1 Constitution (Disclosures by Members) Regulation 1983

#### Clause 7 Interpretation: Part 3

Omit the definition of *public company* in clause 7 (1). Insert instead:

*public company* means a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

#### Explanatory note

The proposed amendment to clause 7 of the *Constitution (Disclosure by Members) Regulation 1993* replaces a definition that contains a reference to a company whose shares are listed for quotation on the stock market of a stock exchange in New South Wales with a reference to a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001*). A company will be a listed company for the purposes of section 9 of the Commonwealth Act (as amended) only if it is included in the official list of a prescribed financial market within the meaning of that amended section.

### 3.2 Co-operatives Regulation 1997

#### [1] Clause 23A

Omit the clause. Insert instead:

#### 23A Securities listing provisions to apply to co-operatives

- (1) For the purposes of section 9 (2) (a) of the Act, the provisions of the Corporations Act that relate to the listing of securities of a co-operative for quotation on a financial market are not to be excluded from the operation of the Corporations Act in relation to a co-operative.
- (2) For the purposes of section 9 (2) (a) of the Act, the provisions of the Corporations Act that relate to the matters for which the following provisions of that Act make provision are not to be

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excluded from the operation of the Corporations Act in relation to a co-operative in respect of securities that are listed for quotation on a financial market:

- (a) Part 1.2 (Interpretation), but only in relation to the interpretation of the other provisions of the Corporations Act applying under their own force to co-operatives,
  - (b) Part 1.2A (Disclosing entities),
  - (c) Section 1020C (ASIC's power to prohibit short selling in certain cases),
  - (d) Sections 792B–792E (Market licensee's obligations to provide information and assistance to ASIC),
  - (e) Section 793C (Market operating rules),
  - (f) Part 7.3 (Licensing of clearing and settlement facilities),
  - (g) Part 7.5 (Compensation regimes for financial markets),
  - (h) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services),
  - (i) Divisions 3 (Transfer of certain securities effected otherwise than through a prescribed CS facility), 4 (Transfer of financial products effected through prescribed CS facility) and 5 (Exemptions and modifications) of Part 7.11 (Title and transfer),
  - (j) Part 7.12 (Miscellaneous), but only to the extent to which that Part relates to the other provisions of the Corporations Act applying under their own force to co-operatives,
  - (k) Chapters 2L (Debentures) and 6D (Fundraising), but only in relation to securities of the same class, and issued or offered on the same terms, as those already listed by the co-operative on a financial market,
  - (l) Part 9.4 (Offences), but only to the extent to which that Part relates to the other provisions of the Corporations Act applying under their own force to co-operatives.
- (3) To remove doubt, this clause extends to all the securities of a co-operative, including CCUs.

(4) In this clause, *financial market* has the same meaning as in the Corporations Act.

**[2] Schedule 3 Modifications of Corporations Act**

Omit Division 2 of Part 2.

**[3] Schedule 4 Prescribed information relating to proposed compromise or arrangement**

Omit “*Corporations Law*” from the definitions of *marketable securities* and *relative* in clause 1 wherever occurring.

Insert instead “Corporations Act”.

**Explanatory note**

Item [1] of the proposed amendments to the *Co-operatives Regulation 1997* replaces clause 23A with a new clause. Currently, clause 23A provides for certain provisions of the former Chapter 7 of the *Corporations Act 2001* of the Commonwealth (which has now been replaced with a new Chapter 7 by the *Financial Services Reform Act 2001* of the Commonwealth) to apply to co-operatives. The new provisions reflect the terminology and structure of the new Chapter 7.

Item [2] of the proposed amendments omits Division 2 of Part 2 In Schedule 3, which has become redundant.

Item [3] of the proposed amendments amends Schedule 4 to the Regulation to replace references to the *Corporations Law* with references to the *Corporations Act 2001* of the Commonwealth. The amendments is in the nature of statute law revision.

### 3.3 Local Government (General) Regulation 1999

#### Clause 40A Definitions

Omit the definition of *public company*. Insert instead:

*public company* means a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

**Explanatory note**

The proposed amendment to clause 40A of the *Local Government (General) Regulation 1999* replaces a definition that contains a reference to a company whose shares are listed for quotation on the stock market of a stock exchange in New South Wales with a reference to a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001*). A company will be a listed company for the purposes of section 9 of the Commonwealth Act (as amended) only if it is included in the official list of a prescribed financial market within the meaning of that amended section.

### **3.4 Protection of the Environment Administration (Disclosure by Board Members) Regulation 1997**

#### **Clause 3 Definitions**

Omit the definition of *public company* from clause 3 (1). Insert instead:

*public company* means a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

#### **Explanatory note**

The proposed amendment to clause 3 of the *Protection of the Environment Administration (Disclosure by Board Members) Regulation 1997* replaces a definition that contains a reference to a company whose shares are listed for quotation on the stock market of a stock exchange in New South Wales with a reference to a listed company within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth Act (as amended by the *Financial Services Reform Act 2001*). A company will be a listed company for the purposes of section 9 of the Commonwealth Act (as amended) only if it is included in the official list of a prescribed financial market within the meaning of that amended section.