Bijlage 6

Relevante bepalingen Australië

Corporations Act 2001

Act No. 50 of 2001 as amended

An Act to make provision in relation to corporations and financial products and services, and for other purposes

Part 1.2—Interpretation
Division 1—General

S. 9 CA2001

*employee share scheme buy-back* means a buy-back under a scheme that:
- (a) has as its purpose the acquisition of shares in a company by, or on behalf of:
  - (i) employees of the company, or of a related body corporate; or
  - (ii) directors of the company, or a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; and
- (b) has been approved by the company in general meeting.

*minimum holding buy-back* means a buy-back of all of a holder's shares in a listed corporation if the shares are less than a marketable parcel within the meaning of the rules of the relevant financial market.

*positive solvency resolution* means a resolution by the directors of a company that, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

*public company* means a company other than a proprietary company and:
- (a) in section 195 and Chapter 2E, includes a body corporate (other than a prescribed body corporate) that:
  - (i) is incorporated in a State or an internal Territory, but not under this Act; and
  - (ii) is included in the official list of a prescribed financial market; and
- (b) in Chapter 2E does not include a company that does not have "Limited" in its name because of section 150 or 151.
negative solvency resolution means a resolution by the directors of a company that, in their opinion, there are not reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

related entity, in relation to a body corporate, means any of the following:
(a) a promoter of the body;
(b) a relative, or de facto spouse, of such a promoter;
(c) a relative of a spouse, or of a de facto spouse, of such a promoter;
(d) a director or member of the body or of a related body corporate;
(e) a relative, or de facto spouse, of such a director or member;
(f) a relative of a spouse, or of a de facto spouse, of such a director or member;
(g) a body corporate that is related to the first-mentioned body;
(h) a beneficiary under a trust of which the first-mentioned body is or has at any time been a trustee;
(i) a relative, or de facto spouse, of such a beneficiary;
(j) a relative of a spouse, or of a de facto spouse, of such a beneficiary;
(k) a body corporate one of whose directors is also a director of the first-mentioned body;
(l) a trustee of a trust under which a person is a beneficiary, where the person is a related entity of the first-mentioned body because of any other application or applications of this definition.

selective buy-back means a buy-back that is none of the following:
(a) a buy-back under an equal access scheme within the meaning of subsections 257B(2) and (3);
(b) a minimum holding buy-back;
(c) an on-market buy-back;
(d) an employee share scheme buy-back.

special resolution means:
(a) in relation to a company, a resolution:
(i) of which notice as set out in paragraph 249L(c) has been given; and
(ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution;

S. 15 CA2001
(1) The associate reference includes a reference to:
(a) a person in concert with whom the primary person is acting, or proposes to act; and
(b) a person who, under the regulations, is, for the purposes of the provision in which the associate reference occurs, an associate of the primary person; and
(c) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way;
in respect of the matter to which the associate reference relates.
(2) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Division, the associate reference includes a reference to that other person.

Division 5A—Types of company

S. 45A CA2001
(1) A proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.
(2) A proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:
(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is less than $10 million;
(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than $5 million;
(c) the company and the entities it controls (if any) have fewer than 50 employees at the end of the financial year.

(3) A proprietary company is a large proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:
(a) the consolidated gross operating revenue for the financial year of the company and the entities it controls (if any) is $10 million or more;
(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $5 million or more;
(c) the company and the entities it controls (if any) have 50 or more employees at the end of the financial year.

S. 46 CA2001
A body corporate (in this section called the first body) is a subsidiary of another body corporate if, and only if:
(a) the other body:
(i) controls the composition of the first body’s board; or
(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or
(iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
(b) the first body is a subsidiary of a subsidiary of the other body.

Division 7—Interpretation of other expressions
S. 79 CA2001
A person is involved in a contravention if, and only if, the person:
(a) has aided, abetted, counselled or procured the contravention; or
(b) has induced, whether by threats or promises or otherwise, the contravention; or
(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
(d) has conspired with others to effect the contravention.

Chapter 2A—Registering a company
Part 2A.1—What companies can be registered
S. 113 CA2001
(1) A company must have no more than 50 non-employee shareholders if it is to:
(a) be registered as a proprietary company; or
(b) change to a proprietary company; or
(c) remain registered as a proprietary company.
(2) In applying subsection (1):
(a) count joint holders of a particular parcel of shares as 1 person; and
(b) an employee shareholder is:
(i) a shareholder who is an employee of the company or of a subsidiary of the company; or
(ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder.
(3) A proprietary company must not engage in any activity that would require disclosure to investors under Chapter 6D, except for an offer of its shares to:
(a) existing shareholders of the company; or
(b) employees of the company or of a subsidiary of the company.
(3A) An offence based on subsection (3) is an offence of strict liability.
(4) An act or transaction is not invalid merely because of a contravention of subsection (3).
Part 2A.2—How a company is registered

S. 117 CA2001
(1) To register a company, a person must lodge an application with ASIC.
(2) The application must state the following:
(k) for a company limited by shares ... the following:
(i) the number and class of shares each member agrees in writing to take up;
(ii) the amount (if any) each member agrees in writing to pay for each share;
(iiia) whether the shares each member agrees in writing to take up will be fully paid on registration;
(iii) if that amount is not to be paid in full on registration – the amount (if any) each member agrees in
writing to be unpaid on each share;
(iv) whether or not the shares each member agrees in writing to take up will be beneficially owned by
the member on registration;
(l) for a public company that is limited by shares ... if shares will be issued for non-cash consideration
– the prescribed particulars about the issue of the shares, unless the shares will be issued under a
written contract and a copy of the contract is lodged with the application;

S. 119 CA2001
A company comes into existence as a body corporate at the beginning of the day on which it is
registered. The company’s name is the name specified in the certificate of registration.

Chapter 2B—Basic features of a company

Part 2B.1—Company powers and how they are exercised

S. 124 CA2001
(1) A company has the legal capacity and powers of an individual both in and outside this jurisdiction.
A company also has all the powers of a body corporate, including the power to:
(a) issue and cancel shares in the company;

Part 2B.4—Replaceable rules and constitution

S. 135 CA2001
(1) A section or subsection (except subsection 129(1), this section and sections 140 and 141) whose
heading contains the words:
(a) replaceable rule—applies as a replaceable rule to:
(i) each company that is or was registered after 1 July 1998; and
(ii) any company registered before 1 July 1998 that repeals or repealed its constitution after that day; and
(b) replaceable rule for proprietary companies and mandatory rule for public companies—applies:
(i) as a replaceable rule to any proprietary company that is or was registered after 1 July 1998; and
(ii) as a replaceable rule to any company that is or was registered before 1 July 1998 and that changes or
changed to a proprietary company (but only while it is a proprietary company); and
(iii) as a replaceable rule to any proprietary company that is or was registered before 1 July 1998 that
repeals or repealed its constitution after that day; and
(iv) as an ordinary provision of this Act to any public company whenever registered.
The section or subsection does not apply to a proprietary company while the same person is both its
sole director and sole shareholder.
(2) A provision of a section or subsection that applies to a company as a replaceable rule can be
placed or modified by the company’s constitution.
(3) A failure to comply with the replaceable rules as they apply to a company is not of itself a
contravention of this Act (so the provisions about criminal liability, civil liability and injunctions do
not apply).

S. 136 CA2001
(1) A company adopts a constitution:
(a) on registration—if each person specified in the application for the company’s registration as a person who consents to become a member agrees in writing to the terms of a constitution before the application is lodged; or
(b) after registration—if the company passes a special resolution adopting a constitution or a court order is made under section 233 that requires the company to adopt the constitution.
(2) The company may modify or repeal its constitution, or a provision of its constitution, by special resolution.
(3) The company’s constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.
(4) Unless the constitution provides otherwise, the company may modify or repeal a further requirement described in subsection (3) only if the further requirement is itself complied with.
(5) A public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution within 14 days after it is passed. The company must also lodge with ASIC within that period:
(a) if the company adopts a constitution—a copy of that constitution; or
(b) if the company modifies its constitution—a copy of that modification.
This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.
(6) An offence based on subsection (5) is an offence of strict liability.

S. 140 CA2001
(1) A company’s constitution (if any) and any replaceable rules that apply to the company have effect as a contract:
(a) between the company and each member; and
(b) between the company and each director and company secretary; and
(c) between a member and each other member;
under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.
(2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:
(a) requires the member to take up additional shares; or
(b) increases the member’s liability to contribute to the share capital of, or otherwise to pay money to, the company; or
(c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:
(i) in connection with the company’s change from a public company to a proprietary company under Part 2B.7; or
(ii) to insert proportional takeover approval provisions into the company’s constitution.

Chapter 2C—Registers
Part 2C.2—Notice by proprietary companies of changes to member register

S. 178A CA2001
(1) A proprietary company must notify ASIC within the time determined under section 178D and in the prescribed form, if:
(a) it is required to add or alter a particular in the register it maintains under section 169; and
(b) the particular is one required to be kept under any of the following:
(i) subsection 169(1) (name and address and date of entry of member’s name into register);
(ii) paragraph 169(3)(b) (number of shares in each allotment to the member);
(iii) paragraph 169(3)(c) (the number of shares held by the member);
(iv) paragraph 169(3)(d) (the class of shares held by the member);
(v) paragraph 169(3)(ea) (the amount paid on the member’s shares);
(vi) paragraph 169(3)(eb) (whether the member’s shares are fully paid);
(vii) paragraph 169(3)(f) (the amount unpaid, if any, on the member’s shares);
(viii) subsection 169(5A) (statement whether any of the member’s shares are held beneficially).
(2) An offence based on subsection (1) is an offence of strict liability.

S. 178B CA2001
If a proprietary company has more than 20 members, the company is only required to notify additions or alterations of particulars under section 178A that relate to a person who is, or as a result of the addition or alteration will become, a top 20 member of a class of the company.

S. 178C CA2001
(1) A proprietary company that is required to notify ASIC under section 178A of an addition or alteration must also notify ASIC, at the same time, of any of the following details in relation to the company that are different from the details previously notified to ASIC:
(a) the total number of the company’s shares on issue;
(b) the classes into which the shares are divided;
(c) for each class issued:
   (i) the total number of shares for the class;
   (ii) the total amount paid up for the class;
   (iii) the total amount unpaid for the class.
(2) An offence based on subsection (1) is an offence of strict liability.

Chapter 2D—Officers and employees
Part 2D.1—Duties and powers
Division 1—General duties

S. 180 CA2001
(1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
(a) were a director or officer of a corporation in the corporation’s circumstances; and
(b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.
(2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:
(a) make the judgment in good faith for a proper purpose; and
(b) do not have a material personal interest in the subject matter of the judgment; and
(c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
(d) rationally believe that the judgment is in the best interests of the corporation.
The director’s or officer’s belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.
(3) In this section:
   business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

S. 181 CA2001
(1) A director or other officer of a corporation must exercise their powers and discharge their duties:
(a) in good faith in the best interests of the corporation; and
(b) for a proper purpose.
(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

S. 184 CA2001
(1) A director or other officer of a corporation commits an offence if they:
(a) are reckless; or
(b) are intentionally dishonest;
and fail to exercise their powers and discharge their duties:
(c) in good faith in the best interests of the corporation; or
(d) for a proper purpose.
(2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:
(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.
(3) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:
(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

S. 185 CA2001
Sections 180 to 184:
(a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and
(b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).
This section does not apply to subsections 180(2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of subsection 180(1).

S. 189 CA2001
If:
(a) a director relies on information, or professional or expert advice, given or prepared by:
(i) an employee of the corporation whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
(ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person’s professional or expert competence;
or
(iii) another director or officer in relation to matters within the director’s or officer’s authority; or
(iv) a committee of directors on which the director did not serve in relation to matters within the committee’s authority; and
(b) the reliance was made:
(i) in good faith; and
(ii) after making an independent assessment of the information or advice, having regard to the director’s knowledge of the corporation and the complexity of the structure and operations of the corporation; and
(c) the reasonableness of the director’s reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty under this Part or an equivalent general law duty;
the director’s reliance on the information or advice is taken to be reasonable unless the contrary is proved.

Part 2D.1—Duties and powers
Division 2—Disclosure of, and voting on matters involving, material personal interests

S. 194 CA2001
If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:
(a) under section 191 the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
(b) the interest is one that does not need to be disclosed under section 191; then:
(c) the director may vote on matters that relate to the interest; and
(d) any transactions that relate to the interest may proceed; and
(e) the director may retain benefits under the transaction even though the director has the interest; and
(f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Division 4—Powers

S. 198A CA2001
(1) The business of a company is to be managed by or under the direction of the directors.
(2) The directors may exercise all the powers of the company except any powers that this Act or the company’s constitution (if any) requires the company to exercise in general meeting.

S. 198E CA2001
(1) The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company’s constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.
(2) The director of a proprietary company who is its only director and only shareholder may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

Part 2D.2—Restrictions on indemnities, insurance and termination payments
Division 1—Indemnities and insurance for officers and auditors

S. 199A CA2001
(2) A company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:
(b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H or 1317HA;

Part 2D.3—Appointment, remuneration and cessation of appointment of directors
Division 1—Appointment of directors

S. 201F CA2001
(1) The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record.
(2) If a person who is the only director and the only shareholder of a proprietary company:
(a) dies; or
(b) cannot manage the company because of the person’s mental incapacity;
and a personal representative or trustee is appointed to administer the person’s estate or property, the personal representative or trustee may appoint a person as the director of the company.
(3) If:
(a) the office of the director of a proprietary company is vacated under subsection 206B(3) or (4) because of the bankruptcy of the director; and
(b) the person is the only director and the only shareholder of the company; and
(c) a trustee in bankruptcy is appointed to the person’s property;
the trustee may appoint a person as the director of the company.
(4) A person who has a power of appointment under subsection (2) or (3) may appoint themselves as director.
(5) A person appointed as a director of a company under subsection (2), (3) or (4) holds office as if they had been appointed in the usual way.

Division 2—Remuneration of directors

S. 202C CA2001
A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director’s travelling and other expenses properly incurred by the director in connection with the company’s business.

Part 2D.6—Disqualification from managing corporations

S. 206C CA2001
(1) On application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if:
(a) a declaration is made under section 1317E (civil penalty provision) that the person has contravened a corporation/scheme civil penalty provision; and
(b) the Court is satisfied that the disqualification is justified.
(2) In determining whether the disqualification is justified, the Court may have regard to:
(a) the person’s conduct in relation to the management, business or property of any corporation; and
(b) any other matters that the Court considers appropriate.

Chapter 2F—Members’ rights and remedies

Part 2F.1—Oppressive conduct of affairs

S. 232 CA2001
The Court may make an order under section 233 if:
(a) the conduct of a company’s affairs; or
(b) an actual or proposed act or omission by or on behalf of a company; or
(c) a resolution, or a proposed resolution, of members or a class of members of a company;
is either:
(d) contrary to the interests of the members as a whole; or
(e) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.
For the purposes of this Part, a person to whom a share in the company has been transmitted by will or by operation of law is taken to be a member of the company.

S. 233 CA2001
(1) The Court can make any order under this section that it considers appropriate in relation to the company, including an order:
(a) that the company be wound up;
(b) that the company’s existing constitution be modified or repealed;
(c) regulating the conduct of the company’s affairs in the future;
(d) for the purchase of any shares by any member or person to whom a share in the company has been transmitted by will or by operation of law;
(e) for the purchase of shares with an appropriate reduction of the company’s share capital;
(f) for the company to institute, prosecute, defend or discontinue specified proceedings;
(g) authorising a member, or a person to whom a share in the company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;
(h) appointing a receiver or a receiver and manager of any or all of the company’s property;
(i) restraining a person from engaging in specified conduct or from doing a specified act;
(j) requiring a person to do a specified act.
(2) If an order that a company be wound up is made under this section, the provisions of this Act relating to the winding up of companies apply:
(a) as if the order were made under section 461; and
(b) with such changes as are necessary.
(3) If an order made under this section repeals or modifies a company’s constitution, or requires the company to adopt a constitution, the company does not have the power under section 136 to change or repeal the constitution if that change or repeal would be inconsistent with the provisions of the order, unless:
(a) the order states that the company does have the power to make such a change or repeal; or
(b) the company first obtains the leave of the Court.

S. 234 CA2001
An application for an order under section 233 in relation to a company may be made by:
(a) a member of the company, even if the application relates to an act or omission that is against:
(i) the member in a capacity other than as a member; or
(ii) another member in their capacity as a member; or
(b) a person who has been removed from the register of members because of a selective reduction; or
(c) a person who has ceased to be a member of the company if the application relates to the circumstances in which they ceased to be a member; or
(d) a person to whom a share in the company has been transmitted by will or by operation of law; or
(e) a person whom ASIC thinks appropriate having regard to investigations it is conducting or has conducted into:
(i) the company’s affairs; or
(ii) matters connected with the company’s affairs.

Part 2F.1—Oppressive conduct of affairs

S. 236 CA2001
(1) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if:
(a) the person is:
(i) a member, former member, or person entitled to be registered as a member, of the company or of a related body corporate; or
(ii) an officer or former officer of the company; and
(b) the person is acting with leave granted under section 237.
(2) Proceedings brought on behalf of a company must be brought in the company’s name.
(3) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

S. 237 CA2001
(1) A person referred to in paragraph 236(1)(a) may apply to the Court for leave to bring, or to intervene in, proceedings.
(2) The Court must grant the application if it is satisfied that:
(a) it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them; and
(b) the applicant is acting in good faith; and
(c) it is in the best interests of the company that the applicant be granted leave; and
(d) if the applicant is applying for leave to bring proceedings—there is a serious question to be tried; and
(e) either:
(i) at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying; or
(ii) it is appropriate to grant leave even though subparagraph (i) is not satisfied.

(3) (b) the company has decided:
(i) not to bring the proceedings; or
(ii) not to defend the proceedings; or
(iii) to discontinue, settle or compromise the proceedings; and
(c) all of the directors who participated in that decision:
(i) acted in good faith for a proper purpose; and
(ii) did not have a material personal interest in the decision; and
(iii) informed themselves about the subject matter of the decision to the extent they reasonably believed to be appropriate; and
(iv) rationally believed that the decision was in the best interests of the company.

The director’s belief that the decision was in the best interests of the company is a rational one unless the belief is one that no reasonable person in their position would hold.

(4) For the purposes of subsection (3):
(a) a person is a third party if:
(i) the company is a public company and the person is not a related party of the company; or
(ii) the company is not a public company and the person would not be a related party of the company if the company were a public company; and
(b) proceedings by or against the company include any appeal from a decision made in proceedings by or against the company.

S. 238 CA2001
(1) Any of the following persons may apply to the Court for an order that they be substituted for a person to whom leave has been granted under section 237:
(a) a member, former member, or a person entitled to be registered as a member, of the company or of a related body corporate;
(b) an officer, or former officer, of the company.

(2) The Court may make the order if it is satisfied that:
(a) the applicant is acting in good faith; and
(b) it is appropriate to make the order in all the circumstances.

(3) An order substituting one person for another has the effect that:
(a) the grant of leave is taken to have been made in favour of the substituted person; and
(b) if the other person has already brought the proceedings or intervened—the substituted person is taken to have brought those proceedings or to have made that intervention.

S. 239 CA2001
(1) If the members of a company ratify or approve conduct, the ratification or approval:
(a) does not prevent a person from bringing or intervening in proceedings with leave under section 237 or from applying for leave under that section; and
(b) does not have the effect that proceedings brought or intervened in with leave under section 237 must be determined in favour of the defendant, or that an application for leave under that section must be refused.

(2) If members of a company ratify or approve conduct, the Court may take the ratification or approval into account in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 237 or in relation to an application for leave under that section. In doing this, it must have regard to:
(a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct; and
(b) whether the members who ratified or approved the conduct were acting for proper purposes.

S. 240 CA2001
Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

S. 241 CA2001
(1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
(d) an order appointing an independent person to investigate, and report to the Court on:
(i) the financial affairs of the company; or
(ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or
(iii) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.

S. 242 CA2001
The Court may at any time make any orders it considers appropriate about the costs of the following persons in relation to proceedings brought or intervened in with leave under section 237 or an application for leave under that section:
(a) the person who applied for or was granted leave;
(b) the company;
(c) any other party to the proceedings or application.
An order under this section may require indemnification for costs.

Part 2F.2—Class rights

S. 246B CA2001
(1) If a company has a constitution that sets out the procedure for varying or cancelling:
(a) for a company with a share capital—rights attached to shares in a class of shares; or
…
those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.
(2) If a company does not have a constitution, or has a constitution that does not set out the procedure for varying or cancelling:
(a) for a company with a share capital—rights attached to shares in a class of shares; or
…
those rights may be varied or cancelled only by special resolution of the company and:
(c) by special resolution passed at a meeting:
(i) for a company with a share capital of the class of members holding shares in the class; or
…
(d) with the written consent of members with at least 75% of the votes in the class.
(3) The company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.
(4) An offence based on subsection (3) is an offence of strict liability.

S. 246C CA2001
(1) If the shares in a class of shares in a company are divided into further classes, and after the division the rights attached to all of those shares are not the same:
(a) the division is taken to vary the rights attached to every share that was in the class existing before the division; and
(b) members who hold shares to which the same rights are attached after the division form a separate class.
(2) If the rights attached to some of the shares in a class of shares in a company are varied:
(a) the variation is taken to vary the rights attached to every other share that was in the class existing before the variation; and
(b) members who hold shares to which the same rights are attached after the variation form a separate class.
…
(5) If a company with 1 class of shares issues new shares, the issue is taken to vary the rights attached to shares already issued if:
(a) the rights attaching to the new shares are not the same as the rights attached to shares already issued; and
(b) those rights are not provided for in:
   (i) the company’s constitution (if any); or
   (ii) a notice, document or resolution that is lodged with ASIC.
(6) If a company issues new preference shares that rank equally with existing preference shares, the issue is taken to vary the rights attached to the existing preference shares unless the issue is authorised by:
   (a) the terms of issue of the existing preference shares; or
   (b) the company’s constitution (if any) as in force when the existing preference shares were issued.

S. 246D CA2001
(1) If members in a class do not all agree (whether by resolution or written consent) to:
   (a) a variation or cancellation of their rights; or
   (b) a modification of the company’s constitution (if any) to allow their rights to be varied or cancelled;
   members with at least 10% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.
(2) An application may only be made within 1 month after the variation, cancellation or modification is made.
(3) The variation, cancellation or modification takes effect:
   (a) if no application is made to the Court to have it set aside—1 month after the variation, cancellation or modification is made; or
   (b) if an application is made to the Court to have it set aside—when the application is withdrawn or finally determined.
(4) The members of the class who want to have the variation, cancellation or modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.
(5) The Court may set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.
(6) Within 14 days after the Court makes an order, the company must lodge a copy of it with ASIC.
(7) An offence based on subsection (6) is an offence of strict liability.

S. 246E CA2001
If the members in a class all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:
   (a) if no later date is specified in the resolution or consent—on the date of the resolution or consent; or
   (b) on a later date specified in the resolution or consent.

S. 246F CA2001
(1) A company must lodge with ASIC a notice in the prescribed form setting out particulars of any of the following:
   (a) a division of shares in the company into classes if the shares were not previously so divided;
   (b) a conversion of shares in a class of shares in the company into shares in another class.
(2) The notice must be lodged within 14 days after the division or conversion.
(3) A public company must lodge with ASIC a copy of each document (including an agreement or consent) or resolution that:
   (a) does any of the following:
      (i) attaches rights to issued or unissued shares;
      (ii) varies or cancels rights attaching to issued or unissued shares;
      (iii) varies or cancels rights of members in a class of members of a company that does not have a share capital;
      (iv) binds a class of members; and
   (b) is not already lodged with ASIC.
This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.
(3A) An offence based on subsection (1) or (3) is an offence of strict liability.
(4) The document must be lodged within 14 days after it is made. The resolution must be lodged within 14 days after it is passed.

S. 246G CA2001
(1) A member of a company may ask the company in writing for a copy of a document or resolution referred to in section 246F. The company must send the copy to the member.
(1A) An offence based on subsection (1) is an offence of strict liability.
(2) If the company requires the member to pay for the copy, the company must send it:
(a) within 7 days after the company receives the payment; or
(b) within any longer period approved by ASIC.
(3) The amount of any payment the company requires cannot exceed the prescribed amount.
(4) If the company does not require payment for the copy, the company must send it:
(a) within 7 days after the member asks for it; or
(b) within any longer period approved by ASIC.

Part 2F.3—Inspection of books

S. 247A CA2001
(1) On application by a member of a company …, the Court may make an order:
(a) authorising the applicant to inspect books of the company …; or
(b) authorising another person (whether a member or not) to inspect books of the company … on the applicant’s behalf.
The Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.
(2) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.
(3) A person who:
(a) is granted leave under section 237; or
(b) applies for leave under that section; or
(c) is eligible to apply for leave under that section; may apply to the Court for an order under this section.
(4) On application, the Court may make an order authorising:
(a) the applicant to inspect books of the company; or
(b) another person to inspect books of the company on the applicant’s behalf.
(5) The Court may make the order only if it is satisfied that:
(a) the applicant is acting in good faith; and
(b) the inspection is to be made for a purpose connected with:
(i) applying for leave under section 237; or
(ii) bringing or intervening in proceedings with leave under that section.
(6) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.

S. 247B CA2001
If the Court makes an order under section 247A, the Court may make any other orders it considers appropriate, including either or both of the following:
(a) an order limiting the use that a person who inspects books may make of information obtained during the inspection;
(b) an order limiting the right of a person who inspects books to make copies in accordance with subsection 247A(2).

S. 247C CA2001
(1) A person who inspects books on behalf of an applicant under section 247A must not disclose information obtained during the inspection.
(2) Subsection (1) does not apply to the extent that the disclosure is to:
(a) ASIC; or
(b) the applicant.

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

S. 247D CA2001

The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

Part 2G.2—Meetings of members of companies
Division 1—Resolutions without meetings

S. 249A CA2001

(2) A company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Each member of a joint membership must sign.

(3) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.

(4) The resolution is passed when the last member signs.

S. 249B CA2001

(1) A company that has only 1 member may pass a resolution by the member recording it and signing the record.

(2) If this Act requires information or a document relating to the resolution to be lodged with ASIC, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Division 2—Who may call meetings of members

S. 249D CA2001

(1) The directors of a company must call and arrange to hold a general meeting on the request of:

(a) members with at least 5% of the votes that may be cast at the general meeting; or

(b) at least 100 members who are entitled to vote at the general meeting.

(2) The request must:

(a) be in writing; and

(b) state any resolution to be proposed at the meeting; and

(c) be signed by the members making the request; and

(d) be given to the company.

S. 249E CA2001

(1) Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.

(2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.

(3) To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.

(4) The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.

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

(5) The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.
S. 249F CA2001
(1) Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
(2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called.
(3) The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

S. 249G CA2001
(1) The Court may order a meeting of the company’s members to be called if it is impracticable to call the meeting in any other way.
(2) The Court may make the order on application by:
(a) any director; or
(b) any member who would be entitled to vote at the meeting.

Division 3—How to call meetings of members

S. 249H CA2001
(1) Subject to subsection (2), at least 21 days notice must be given of a meeting of a company’s members. However, if a company has a constitution, it may specify a longer minimum period of notice.
(2) A company may call on shorter notice:
(a) an AGM, if all the members entitled to attend and vote at the AGM agree beforehand; and
(b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

A company cannot call an AGM or other general meeting on shorter notice if it is a meeting of the kind referred to in subsection (3) or (4).

S. 249L CA2001
A notice of a meeting of a company’s members must:
(c) if a special resolution is to be proposed at the meeting—set out an intention to propose the special resolution and state the resolution;

Division 4—Members’ rights to put resolutions etc. at general meetings

S. 249N CA2001
(1) The following members may give a company notice of a resolution that they propose to move at a general meeting:
(a) members with at least 5% of the votes that may be cast on the resolution; or
(b) at least 100 members who are entitled to vote at a general meeting.
(2) The notice must:
(a) be in writing; and:
(b) set out the wording of the proposed resolution; and
(c) be signed by the members proposing to move the resolution.
(3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
(4) The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

Division 5—Holding meetings of members

S. 249T CA2001
(1) The quorum for a meeting of a company's members is 2 members and the quorum must be present at all times during the meeting.
(2) In determining whether a quorum is present, count individuals attending as proxies¹ or body corporate representatives². However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

(3) A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
   (a) if the date is not specified—the same day in the next week; and
   (b) if the time is not specified—the same time; and
   (c) if the place is not specified—the same place.

(4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

Division 6—Proxies and body corporate representatives

S. 249X CA2001
(1) A member of a company who is entitled to attend and cast a vote at a meeting of the company’s members may appoint a person as the member’s proxy to attend and vote for the member at the meeting.
(1A) The person appointed as the member’s proxy may be an individual or a body corporate.
(2) The appointment may specify the proportion or number of votes that the proxy may exercise.
(3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member’s votes each proxy may exercise, each proxy may exercise half of the votes.
(4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

Division 7—Voting at meetings of members

S. 250E CA2001
(1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:
   (a) on a show of hands, each member has 1 vote; and
   (b) on a poll, each member has 1 vote for each share they hold.

S. 250J CA2001
(1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.
(1A) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
(2) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

S. 250K CA2001
(1) A poll may be demanded on any resolution.
(2) If a company has a constitution, the constitution may provide that a poll cannot be demanded on any resolution concerning:
   (a) the election of the chair of a meeting; or
   (b) the adjournment of a meeting.
(3) A demand for a poll may be withdrawn.

¹ Vgl. s. 249X CA2001 voor het recht om ‘proxies’ te benoemen.
² Vgl. s. 250D CA2001 voor de betekenis van ‘body corporate representatives’.
S. 250L CA2001
(1) At a meeting of a company's members, a poll may be demanded by:
(a) at least 5 members entitled to vote on the resolution; or
(b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
(c) the chair.
(2) If a company has a constitution, the constitution may provide that fewer members or members with
a lesser percentage of votes may demand a poll.
(3) The poll may be demanded:
(a) before a vote is taken; or
(b) before the voting results on a show of hands are declared; or
(c) immediately after the voting results on a show of hands are declared.
(4) The percentage of votes that members have is to be worked out as at the midnight before the poll is
demanded.

Part 2G.3—Minutes and members’ access to minutes

S. 251A CA2001
(1) A company must keep minute books in which it records within 1 month:
(a) proceedings and resolutions of meetings of the company’s members; and
(b) proceedings and resolutions of directors’ meetings (including meetings of a committee of
directors); and
(c) resolutions passed by members without a meeting; and
(d) resolutions passed by directors without a meeting; and
(e) if the company is a proprietary company with only 1 director—the making of declarations by the
director.
(2) The company must ensure that minutes of a meeting are signed within a reasonable time after the
meeting by 1 of the following:
(a) the chair of the meeting;
(b) the chair of the next meeting.
(3) The company must ensure that minutes of the passing of a resolution without a meeting are signed
by a director within a reasonable time after the resolution is passed.
(4) The director of a proprietary company with only 1 director must sign the minutes of the making of
a declaration by the director within a reasonable time after the declaration is made.
(5) A company must keep its minute books at:
(a) its registered office; or
(b) its principal place of business in this jurisdiction; or
(c) another place in this jurisdiction approved by ASIC.
(5A) An offence based on subsection (1), (2), (3), (4) or (5) is an offence of strict liability.
(6) A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to
which it relates, unless the contrary is proved.

Chapter 2H—Shares
Part 2H.1—Issuing and converting shares

S. 254A CA2001
(1) A company’s power under section 124 to issue shares includes the power to issue:
(a) bonus shares (shares for whose issue no consideration is payable to the issuing company); and
(b) preference shares (including redeemable preference shares); and
(c) partly-paid shares (whether or not on the same terms for the amount of calls to be paid or the time
for paying calls).
(2) A company can issue preference shares only if the rights attached to the preference shares with
respect to the following matters are set out in the company’s constitution (if any) or have been
otherwise approved by special resolution of the company:
(a) repayment of capital;
(b) participation in surplus assets and profits;
(c) cumulative and non-cumulative dividends;
(d) voting;
(e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

S. 254D CA2001
(1) Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.
(2) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
(a) the number of shares offered; and
(b) the period for which it will remain open.
(3) The directors may issue any shares not taken up under the offer under subsection (1) as they see fit.
(4) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with subsection (1).

S. 254G CA2001
(2) A company can convert ordinary shares into preference shares only if the holders’ rights with respect to the following matters are set out in the company’s constitution (if any) or have been otherwise approved by special resolution of the company:
(a) repayment of capital;
(b) participation in surplus assets and profits;
(c) cumulative and non-cumulative dividends;
(d) voting;
(e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

Part 2H.3—Partly-paid shares

S. 254M CA2001
If shares in a company are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue.

Part 2H.4—Capitalisation of profits

S. 254S CA2001
A company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

Part 2H.5—Dividends

S. 254T CA2001
A dividend may only be paid out of profits of the company.

S. 254U(1) CA2001
(1) The directors may determine that a dividend is payable and fix:
(a) the amount; and
(b) the time for payment; and
(c) the method of payment.
The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

S. 254V CA2001
(1) A company does not incur a debt merely by fixing the amount or time for payment of a dividend. The debt arises only when the time fixed for payment arrives and the decision to pay the dividend may be revoked at any time before then.
(2) However, if the company has a constitution and it provides for the declaration of dividends, the company incurs a debt when the dividend is declared.

S. 254W CA2001
(1) Each share in a class of shares in a public company has the same dividend rights unless:
(a) the company has a constitution and it provides for the shares to have different dividend rights; or
(b) different dividend rights are provided for by special resolution of the company.
(2) Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

**Part 2H.6—Notice requirements**

S. 254X CA2001
(1) Within 28 days after issuing shares, a company must lodge with ASIC a notice in the prescribed form that sets out:
(a) the number of shares that were issued; and
(b) if the company has different classes of shares—the class to which each of those shares belongs; and
(c) the amount (if any) paid, or agreed to be considered as paid, on each of those shares; and
(d) the amount unpaid (if any) on each of those shares; and
(e) if the company is a public company and the shares were issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares were issued under a written contract and a copy of the contract is lodged with the notice.
(2) If the shares were issued for non-cash consideration under a contract, the company must also lodge with ASIC a certificate stating that all stamp duty payable on the contract under any applicable law relating to stamp duty has been paid. This certificate must be lodged with the subsection (1) notice or at a later time permitted by the regulations or by ASIC.
(2A) An offence based on subsection (1) or (2) is an offence of strict liability.
(3) The company does not have to lodge a subsection (1) notice about the issue of shares to a person on the registration of the company or on the company changing its type from a company limited by guarantee to a company limited by shares.

S. 254Y CA2001
(1) Within 1 month after shares are cancelled, the company must lodge with ASIC a notice in the prescribed form that sets out:
(a) the number of shares cancelled; and
(b) any amount paid by the company (in cash or otherwise) on the cancellation of the shares; and
(c) if the shares are cancelled following a share buy-back—the amount paid by the company (in cash or otherwise) on the buy-back; and
(d) if the company has different classes of shares—the class to which each cancelled share belonged.
(2) An offence based on subsection (1) is an offence of strict liability.

**Chapter 2J—Transactions affecting share capital**

**Part 2J.1—Share capital reductions and share buy-backs**

S. 256A CA2001
This Part states the rules to be followed by a company for reductions in share capital and for share buy-backs. The rules are designed to protect the interests of shareholders and creditors by:
(a) addressing the risk of these transactions leading to the company's insolvency
(b) seeking to ensure fairness between the company's shareholders
(c) requiring the company to disclose all material information.
Division 1—Reductions in share capital not otherwise authorised by law

S. 256B CA2001
(1) A company may reduce its share capital in a way that is not otherwise authorised by law if the reduction:
(a) is fair and reasonable to the company's shareholders as a whole; and
(b) does not materially prejudice the company's ability to pay its creditors; and
(c) is approved by shareholders under section 256C.
A cancellation of a share for no consideration is a reduction of share capital, but paragraph (b) does not apply to this kind of reduction.
(2) The reduction is either an equal reduction or a selective reduction. The reduction is an equal reduction if:
(a) it relates only to ordinary shares; and
(b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
(c) the terms of the reduction are the same for each holder of ordinary shares.
Otherwise, the reduction is a selective reduction.
(3) In applying subsection (2), ignore differences in the terms of the reduction that are:
(a) attributable to the fact that shares have different accrued dividend entitlements; or
(b) attributable to the fact that shares have different amounts unpaid on them; or
(c) introduced solely to ensure that each shareholder is left with a whole number of shares.

S. 256C CA2001
(1) If the reduction is an equal reduction, it must be approved by a resolution passed at a general meeting of the company.
(2) If the reduction is a selective reduction, it must be approved by either:
(a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
(b) a resolution agreed to, at a general meeting, by all ordinary shareholders.
If the reduction involves the cancellation of shares, the reduction must also be approved by a special resolution passed at a meeting of the shareholders whose shares are to be cancelled.
(3) The company must lodge with ASIC a copy of any resolution under subsection (2) within 14 days after it is passed. The company must not make the reduction until 14 days after lodgment.
(4) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision on how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.
(5) Before the notice of the meeting is sent to shareholders, the company must lodge with ASIC a copy of:
(a) the notice of the meeting; and
(b) any document relating to the reduction that will accompany the notice of the meeting sent to shareholders.

S. 256D CA2001
(1) The company must not make the reduction unless it complies with subsection 256B(1).
(2) If the company contravenes subsection (1):
(a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
(b) the company is not guilty of an offence.
(3) Any person who is involved in a company's contravention of subsection (1) contravenes this subsection.
(4) A person commits an offence if they are involved in a company's contravention of section 256B and the involvement is dishonest.
The following table lists other provisions of this Act that are relevant to reductions in share capital.

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<th>Other provisions relevant to reductions in share capital</th>
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<td>liability of directors on insolvency Under the combined operation of these sections the directors may have to compensate the company if the company is, or becomes, insolvent when the company reduces its share capital.</td>
</tr>
<tr>
<td>2</td>
<td>section 1324</td>
<td>injunctions to restrain contravention Under this section the Court may grant an injunction against conduct that constitutes or would constitute a contravention of this Act.</td>
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<td>4</td>
<td>Chapter 6CA</td>
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<td>5</td>
<td>Chapter 2E</td>
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<td>6</td>
<td>section 125</td>
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<td>7</td>
<td>sections 246B-246G</td>
<td>variation of class rights These sections deal with the variation of rights attached to a class of shares. This variation may be governed by the provisions of the company’s constitution.</td>
</tr>
</tbody>
</table>

**Division 2—Share buy-backs**

S. 257A CA2001
A company may buy back its own shares if:
(a) the buy-back does not materially prejudice the company’s ability to pay its creditors; and
(b) the company follows the procedures laid down in this Division.

S. 257B CA2001
(1)
(2) An equal access scheme is a scheme that satisfies all the following conditions:
(a) the offers under the scheme relate only to ordinary shares;
(b) the offers are to be made to every person who holds ordinary shares to buy back the same percentage of their ordinary shares;
(c) all of those persons have a reasonable opportunity to accept the offers made to them;
(d) buy-back agreements are not entered into until a specified time for acceptances of offers has closed;
(e) the terms of all the offers are the same.

(3) In applying subsection (2), ignore:
(a) differences in consideration attributable to the fact that the offers relate to shares having different accrued dividend entitlements;
(b) differences in consideration attributable to the fact that the offers relate to shares on which different amounts remain unpaid;
(c) differences in the offers introduced solely to ensure that each shareholder is left with a whole number of shares.

(4) The 10/12 limit for a company proposing to make a buy-back is 10% of the smallest number, at any time during the last 12 months, of votes attaching to voting shares of the company.

(5) A proposed buy-back would exceed the 10/12 limit if the number of votes attaching to:
(a) all the voting shares in the company that have been bought back during the last 12 months; and
(b) the voting shares that will be bought back if the proposed buy-back is made;
would exceed the 10/12 limit.
(6) A buy-back is an on-market buy-back if it results from an offer made by a listed corporation on a prescribed financial market in the ordinary course of trading on that market.

(7) A buy-back by a company (whether listed or not) is also an on-market buy-back if it results from an offer made in the ordinary course of trading in a financial market outside Australia which ASIC declares in writing to be an approved overseas financial market for the purposes of this subsection. A buy-back by a listed company is an on-market buy-back under this subsection only if an offer to buy-back those shares is also made on a prescribed financial market at the same time.

(8) A declaration under paragraph (7)(b) may be subject to conditions. Notice of the making of the declaration must be published in the Gazette.

S. 257C CA2001
(1) If section 257B applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by a resolution passed at a general meeting of the company, or the agreement must be conditional on such an approval.

(2) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

S. 257D CA2001
(1) If section 257B applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by either:
(a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or by their associates; or
(b) a resolution agreed to, at a general meeting, by all ordinary shareholders;
or the agreement must be conditional on such an approval.

(2) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

(3) Before the notice of the meeting is sent to shareholders, the company must lodge with ASIC a copy of:
(a) the notice of the meeting; and
(b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.

(4) ASIC may exempt a company from the operation of this section. The exemption:
(a) must be in writing; and
(b) must be granted before the buy-back agreement is entered into; and
(c) may be granted subject to conditions.

S. 257E CA2001
If section 257B applies this section to a buy-back, the company must lodge with ASIC, before the buy-back agreement is entered into, a copy of:
(a) a document setting out the terms of the offer; and
(b) any document that is to accompany the offer.

S. 257F CA2001
(1) If section 257B applies this section to a buy-back, the company must satisfy the lodgment requirement in subsection (2) at least 14 days before:
(a) if the buy-back agreement is conditional on the passing of a resolution under subsection 257C(1) or 257D(1)—the resolution is passed; or
(b) if it is not—the agreement is entered into.

(2) The company satisfies the lodgment requirement when it lodges with ASIC:
(a) documents under subsection 257C(3) or 257D(3) or section 257E; or
(b) a notice that the company intends to carry out the buy-back.
S. 257G CA2001
If section 257B applies this section to a buy-back, the company must include with the offer to buy back shares a statement setting out all information known to the company that is material to the decision whether to accept the offer.

s. 257H CA2001
(1) Once a company has entered into an agreement to buy back shares, all rights attaching to the shares are suspended. The suspension is lifted if the agreement is terminated.
(2) A company must not dispose of shares it buys back. An agreement entered into in contravention of this subsection is void.
(3) Immediately after the registration of the transfer to the company of the shares bought back, the shares are cancelled.

S. 257J CA2001
The following table sets out other provisions of this Act that are relevant to buy-backs.

<table>
<thead>
<tr>
<th>provision</th>
<th>comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 section 388G</td>
<td>liability of directors on insolvency</td>
</tr>
<tr>
<td>section 1317H</td>
<td>The directors may have to compensate the company if the company is, or becomes, insolvent when the company enters into the buy-back agreement.</td>
</tr>
<tr>
<td>2 section 1324</td>
<td>injunctions to restrain contravention</td>
</tr>
<tr>
<td></td>
<td>The Court may grant an injunction against conduct that constitutes, or would constitute, a contravention of this Act.</td>
</tr>
<tr>
<td>4 subsection 609(4)</td>
<td>application of takeover provisions</td>
</tr>
<tr>
<td>section 611 (item 19 of the table)</td>
<td>These sections deal with the application of Chapter 6 to buy-backs.</td>
</tr>
<tr>
<td>5 section 256A</td>
<td>consequences of failure to follow procedures—the company and the officers</td>
</tr>
<tr>
<td></td>
<td>If a company fails to follow the procedure in this Division, the company contravenes this section and the officers who are involved in the contravention are liable to a civil penalty under Part 9.4B and may commit an offence.</td>
</tr>
<tr>
<td>6 section 256D</td>
<td>consequences of failure to follow procedures if reduction in share capital involved—the company and the officers</td>
</tr>
<tr>
<td></td>
<td>If the buy-back involves a reduction in share capital and the company fails to follow the procedures in this Division, the company contravenes this section and the officers who are involved in the contravention are liable to a civil penalty under Part 9.4B and may commit an offence.</td>
</tr>
<tr>
<td>7 section 256D</td>
<td>consequences of failure to follow procedures if reduction in share capital involved—the transaction</td>
</tr>
<tr>
<td></td>
<td>This section provides that a failure to follow the procedures for share capital reductions does not affect the validity of the buy-back transaction itself.</td>
</tr>
</tbody>
</table>
Division 3—Other share capital reductions

S. 258B CA2001
(1) If a company has a constitution, under it the company may grant to a shareholder, as a shareholder, a right to occupy or use real property that the company owns or holds under lease, whether the right is a lease or licence or a contractual right.
(2) A company may transfer to a person an interest in land in exchange for, or in satisfaction of, a right to occupy or use the land of the kind referred to in subsection (1).

S. 258C CA2001
A company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the company.

S. 258D CA2001
A company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.

S. 258E CA2001
(1) Any reduction in share capital involved in:
(a) the redemption of redeemable preference shares out of the proceeds of a new issue of shares made for the purpose of the redemption (see section 254K); or
(b) a company's buying-back of its own shares under sections 257A to 257J if the shares are paid for out of share capital is authorised by this section.
(2) A company may cancel shares returned to it under section 651C, 724(2), 737 or 738 and any reduction in the company's share capital that is involved is authorised by this subsection.
(3) Any reduction in a company's share capital because of an order under section 1325A is authorised by this subsection.

S. 258F CA2001
A company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets. This power does not apply if the company also cancels shares.

Part 2J.2—Self-acquisition and control of shares
S. 259A CA2001
A company must not acquire shares (or units of shares) in itself except:
(a) in buying back shares under section 257A; or
(b) in acquiring an interest (other than a legal interest) in fully-paid shares in the company if no
consideration is given for the acquisition by the company or an entity it controls; or
(c) under a court order; or
(d) in circumstances covered by subsection 259B(2) or (3).

s. 259B CA2001
(1) A company must not take security over shares (or units of shares) in itself or in a company that
controls it, except as permitted by subsection (2) or (3).
(2) A company may take security over shares in itself under an employee share scheme that has been
approved by:
(a) a resolution passed at a general meeting of the company; and
(b) if the company is a subsidiary of a listed domestic corporation—a resolution passed at a general
meeting of the listed domestic corporation; and
(c) if paragraph (b) does not apply but the company has a holding company that is a domestic
corporation and that is not itself a subsidiary of a domestic corporation—a resolution passed at a
general meeting of that holding company.
(3) A company's taking security over shares (or units of shares) in itself or in a company that controls
it is exempted from subsection (1) if:
(a) the company's ordinary business includes providing finance; and
(b) the security is taken in the ordinary course of that business and on ordinary commercial terms.
(4) If a company acquires shares (or units of shares) in itself because it exercises rights under a
security permitted by subsection (2) or (3), then, within the following 12 months, the company must
cease to hold those shares (or units of shares). ASIC may extend this period of 12 months if the
company applies for the extension before the end of the period.
(5) Any voting rights attached to the shares (or units of shares) cannot be exercised while the company
continues to hold them.
(6) If, at the end of the 12 months (or extended period), the company still holds any of the shares (or
units of shares), the company commits an offence for each day while that situation continues.
(7) An offence based on subsection (6) is an offence of strict liability.

S. 259C CA2001
(1) The issue or transfer of shares (or units of shares) of a company to an entity it controls is void
unless:
(a) the issue or transfer is to the entity as a personal representative; or
(b) the issue or transfer is to the entity as trustee and neither the company nor any entity it controls has
a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:
(i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary
course of business in connection with providing finance; and
(ii) that transaction was not entered into with an associate of the company or an entity it controls; or
(c) the issue to the entity is made as a result of an offer to all the members of the company who hold
shares of the class being issued and is made on a basis that does not discriminate unfairly, either
directly or indirectly, in favour of the entity; or
(d) the transfer to the entity is by a wholly-owned subsidiary of a body corporate and the entity is also
a wholly-owned subsidiary of that body corporate.
(2) ASIC may exempt a company from the operation of this section. The exemption:
(a) must be in writing; and
(b) may be granted subject to conditions.
(3) If paragraph (1)(c) or (d) applies to an issue or transfer of shares (or units of shares), section 259D
applies.

S. 259D CA2001
(1) If any of the following occur:
(a) a company obtains control of an entity that holds shares (or units of shares) in the company;
(b) a company's control over an entity that holds shares (or units of shares) in the company increases;
(c) a company issues shares (or units of shares) to an entity it controls in the situation covered by paragraph 259C(1)(c);
(d) shares (or units of shares) in the company are transferred to an entity it controls in the situation covered by paragraph 259C(1)(d);
then, within 12 months after it occurs either:
(e) the entity must cease to hold the shares (or units); or
(f) the company must cease to control the entity.

S. 259E CA2001
(1) For the purposes of this Part, a company controls an entity if the company has the capacity to determine the outcome of decisions about the entity's financial and operating policies.
(2) (a) the practical influence the company can exert (rather than the rights it can enforce) is the issue to be addressed; and
(b) any practice or pattern of behaviour affecting the entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
(3) Merely because the company and an unrelated entity jointly have the capacity to determine the outcome of decisions about another entity's financial and operating policies, the company does not control the other entity.
De situatie in subsection 3 kan zich bijvoorbeeld voordoen in geval van een joint venture.
(4) A company is not taken to control an entity merely because of a capacity that it is under a legal obligation to exercise for the benefit of someone other than its shareholders.
De situatie in subsection 4 kan zich bijvoorbeeld voordoen indien de vennootschap aandelen houdt als 'trustee' of indien de vennootschap optreedt als 'liquidator'.

S. 259F(1)(a),(b) en (2), (3) CA2001
(1) If a company contravenes section 259A or subsection 259B(1):
(a) the contravention does not affect the validity of the acquisition or security or of any contract or transaction connected with it;
(b) the company is not guilty of an offence.
(2) Any person who is involved in a company's contravention of section 259A or subsection 259B(1) contravenes this subsection.
(3) A person commits an offence if they are involved in a company's contravention of section 259A or subsection 259B(1) and the involvement is dishonest.

Part 2J.3—Financial assistance

S. 260A CA2001
(1) A company may financially assist a person to acquire shares (or units of shares) in the company or a holding company of the company only if:
(a) giving the assistance does not materially prejudice:
(i) the interests of the company or its shareholders; or
(ii) the company's ability to pay its creditors; or
(b) the assistance is approved by shareholders under section 260B (that section also requires advance notice to ASIC); or
(c) the assistance is exempted under section 260C
(2) Without limiting subsection (1), financial assistance may:
(a) be given before or after the acquisition of shares (or units of shares); and
(b) take the form of paying a dividend.
(3) Subsection (1) extends to the acquisition of shares (or units of shares) by:
(a) issue; or
(b) transfer; or
(c) any other means.
S. 260B CA2001
(1) Shareholder approval for financial assistance by a company must be given by:
(a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by the person acquiring the shares (or units of shares) or by their associates; or
(b) a resolution agreed to, at a general meeting, by all ordinary shareholders.
(2) If the company will be a subsidiary of a listed domestic corporation immediately after the acquisition referred to in section 260A occurs, the financial assistance must also be approved by a special resolution passed at a general meeting of that corporation.
(3) If, immediately after the acquisition, the company will have a holding company that:
(a) is a domestic corporation but not listed; and
(b) is not itself a subsidiary of a domestic corporation;
the financial assistance must also be approved by a special resolution passed at a general meeting of the body corporate that will be the holding company.
(4) A company or other body that calls a meeting for the purpose of subsection (1), (2) or (3) must include with the notice of the meeting a statement setting out all the information known to the company or body that is material to the decision on how to vote on the resolution. However, the company or body does not have to disclose information if it would be unreasonable to require the company or body to do so because the company or body had previously disclosed the information to its members.
(5) Before the notice of a meeting for the purpose of subsection (1), (2) or (3) is sent to members of a company or other body, the company or body must lodge with ASIC a copy of:
(a) the notice of the meeting; and
(b) any document relating to the financial assistance that will accompany the notice of the meeting sent to the members.
(6) The company must lodge with ASIC, at least 14 days before giving the financial assistance, a notice in the prescribed form stating that the assistance has been approved under this section.
(7) A special resolution passed for the purpose of subsection (1), (2) or (3) must be lodged with ASIC by the company, listed domestic corporation or holding company within 14 days after it is passed.

S. 260C CA2001
(1) Financial assistance is exempted from section 260A if it is given in the ordinary course of commercial dealing and consists of:
(a) acquiring or creating a lien on partly-paid shares in the company for amounts payable to the company on the shares; or
(b) entering into an agreement with a person under which the person may make payments to the company on shares by instalments.
(2) Financial assistance is exempted from section 260A if:
(a) the company's ordinary business includes providing finance; and
(b) the financial assistance is given in the ordinary course of that business and on ordinary commercial terms.
(3) Financial assistance is exempted from section 260A if:
(a) the company is a subsidiary of a borrower in relation to debentures; and
(b) the financial assistance is a guarantee or other security given by the company for the repayment by the borrower of money that it is or will be liable to repay; and
(c) the borrower is a borrower in relation to the debentures because it is or will be liable to repay the money; and
(d) the guarantee or security is given by the company in the ordinary course of commercial dealing.
(4) Financial assistance is exempted from section 260A if it is given under an employee share scheme that has been approved by:
(a) a resolution passed at a general meeting of the company; and
(b) if the company is a subsidiary of a listed domestic corporation—a resolution passed at a general meeting of the listed domestic corporation; and
(c) if paragraph (b) does not apply but the company has a holding company that is a domestic
corporation and that is not itself a subsidiary of a domestic corporation—a resolution passed at a
general meeting of that holding company.
(5) The following types of financial assistance are exempted from section 260A:
(a) a reduction of share capital in accordance with Division 1 of Part 2J.1;
(b) a share buy-back in accordance with Division 2 of Part 2J.1;
(c) assistance given under a court order;
(d) a discharge on ordinary commercial terms of a liability that the company incurred as a result of a
transaction entered into on ordinary commercial terms.

S. 260D CA2001
(1) If a company provides financial assistance in contravention of section 260A:
(a) the contravention does not affect the validity of the financial assistance or of any contract or
transaction connected with it; and
(b) the company is not guilty of an offence.
(2) Any person who is involved in a company's contravention of section 260A contravenes this
subsection.
(3) A person commits an offence if they are involved in a company's contravention of section 260A
and the involvement is dishonest.

Chapter 2M—Financial reports and audit
Part 2M.1—Overview

S. 285 CA2001
(1) Under this Chapter, all companies, registered schemes and disclosing entities must keep financial
records (see sections 286-291)—and some must prepare financial reports (see sections 292-323D). All
those that have to prepare financial reports have to prepare them annually; disclosing entities have to
prepare half-year financial reports as well. The following table sets out what is involved in annual
financial reporting:
### Annual financial reporting

<table>
<thead>
<tr>
<th>steps</th>
<th>sections</th>
<th>comments</th>
</tr>
</thead>
</table>
| 1     | prepare financial report | s. 295  | The financial report includes:  
* financial statements  
* disclosures and notes  
* directors’ declaration. |
| 2     | prepare directors’ report | s. 298  | The report has a general component (sections 299 and 299A), a specific component (section 300) and a special component for listed companies (section 300A). |
| 3     | have the financial report audited and obtain auditor’s report | s. 301, 307, 308 | A small proprietary company preparing a financial report in response to a shareholder direction under s. 293 only has to have an audit if the direction asks for it.  
Under s. 312, officers must assist the auditor in the conduct of the audit.  
ASIC may use its exemption powers under s. 340 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases (s. 342(2) and (3)). |
| 4     | send the financial report, directors’ report and auditor’s report to members | s. 314  | A concise financial report may be sent to members instead of the full financial statements (s. 314(1)-(2)).  
For deadline see s. 315(1)-(4). |
| 5     | lodge the financial report, directors’ report and auditor’s report with ASIC | s. 319  | For deadline see s. 319(3).  
Companies that have the benefit of the grandfathering in the relevant Part 10.1.  
transitional do not have to lodge. |
| 6     | [public companies only] lay financial report, directors’ report and auditor’s report before AGM | s. 317  | For the AGM deadline see s. 250N. |

### Part 2M.3—Financial reporting

**Division 1—Annual financial reports and directors’ reports**

S. 292 CA2001

1. A financial report and a directors’ report must be prepared for each financial year by:
   - (a) all disclosing entities; and
   - (b) all public companies; and
   - (c) all large proprietary companies; and
   - (d) all registered schemes.

2. A small proprietary company has to prepare the financial report and directors' report only if:
(a) it is directed to do so under section 293 or 294; or
(b) it was controlled by a foreign company for all or part of the year and it is not consolidated for that period in financial statements for that year lodged with ASIC by:
   (i) a registered foreign company; or
   (ii) a company, registered scheme or disclosing entity.
The rest of this Part does not apply to any other small proprietary company.

S. 293 CA2001
(1) Shareholders with at least 5% of the votes in a small proprietary company may give the company a direction to:
   (a) prepare a financial report and directors' report for a financial year; and
   (b) send them to all shareholders.
(2) The direction must be:
   (a) signed by the shareholders giving the direction; and
   (b) made no later than 12 months after the end of the financial year concerned.
(3) The direction may specify all or any of the following:
   (a) that the financial report does not have to comply with some or all of the accounting standards;
   (b) that a directors' report or a part of that report need not be prepared;
   (c) that the financial report is to be audited.

S. 294 CA2001
(1) ASIC may give a small proprietary company a direction to comply with requirements of this Division and Divisions 3, 4, 5 and 6 for a financial year.
   (1A) An offence based on subsection (1) is an offence of strict liability.
(2) The direction may be general or may specify the particular requirements that the company is to comply with.
(3) The direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.
(4) The direction must:
   (a) be made in writing; and
   (b) specify the financial year concerned; and
   (c) be made no later than 6 years after the end of that financial year.

S. 295 CA2001
(1) The financial report for a financial year consists of:
   (a) the financial statements for the year; and
   (b) the notes to the financial statements; and
   (c) the directors’ declaration about the statements and notes.
(2) The financial statements for the year are:
   (a) the financial statements in relation to the entity reported on that are required by the accounting standards; and
   (b) if required by the accounting standards—the financial statements in relation to the consolidated entity that are required by the accounting standards.
(3) The notes to the financial statements are:
   (a) disclosures required by the regulations; and
   (b) notes required by the accounting standards; and
   (c) any other information necessary to give a true and fair view (see section 297).
(4) The directors’ declaration is a declaration by the directors:
   (c) whether, in the directors’ opinion, there are reasonable grounds to believe that the company ... will be able to pay its debts as and when they become due and payable; and
   (d) whether, in the directors’ opinion, the financial statement and notes are in accordance with this Act, including:
      (i) section 296 (compliance with accounting standards); and
      (ii) section 297 (true and fair view); and
(e) if the company ... is listed—that the directors have been given the declarations required by section 295A.

S. 298 CA2001
(1) The company, registered scheme or disclosing entity must prepare a directors’ report for each financial year. The report must include:
(a) the general information required by sections 299 (all entities) and 299A (additional requirements for listed public companies); and
(b) the specific information required by sections 300 and 300A; and
(c) a copy of the auditor’s declaration under section 307C in relation to the audit for the financial year.
(1A) If the financial report for a financial year includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the directors’ report for the financial year must also:
(a) set out the directors’ reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 297; and
(b) specify where that additional information can be found in the financial report.
(2) The report must:
(a) be made in accordance with a resolution of the directors; and
(b) specify the date on which the report is made; and
(c) be signed by a director.
(3) A small proprietary company does not have to comply with subsection (1) for a financial year if:
(a) it is preparing financial statements for that year in response to a shareholder direction under section 293; and
(b) the direction specified that a directors’ report need not be prepared.

S. 299 CA2001
(1) The directors’ report for a financial year must:
(a) contain a review of operations during the year of the entity reported on and the results of those operations; and
(b) give details of any significant changes in the entity’s state of affairs during the year; and
(c) state the entity’s principal activities during the year and any significant changes in the nature of those activities during the year; and
(d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect:
(i) the entity’s operations in future financial years; or
(ii) the results of those operations in future financial years; or
(iii) the entity’s state of affairs in future financial years; and
(e) refer to likely developments in the entity’s operations in future financial years and the expected results of those operations; and
(f) if the entity’s operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory—give details of the entity’s performance in relation to environmental regulation.

S. 300 CA2001
(1) The directors’ report for a financial year must include details of:
(a) dividends or distributions paid to members during the year; and
(b) dividends or distributions recommended or declared for payment to members, but not paid, during the year;
(2) Details do not have to be included in the directors’ report under this section if they are included in the company’s financial report for the financial year.

Part 2M.5—Accounting and auditing standards

S.334 CA2001
(1) The AASB may make accounting standards for the purposes of this Act. The standards must be in writing and must not be inconsistent with this Act or the regulations.

Chapter 2N—Updating ASIC information about companies and registered schemes
Part 2N.1—Review date

S. 345A CA2001
(1) The review date for a company is:
(a) either:
(i) if the company became registered as a company after the commencement of this Act—the anniversary of the company’s registration as a company under this Act; or
(ii) otherwise—the date of the company’s incorporation or registration as a company, as recorded in a register maintained by ASIC under section 1274; or
(b) if a choice of a different date has effect under section 345C—that different date.
(1A) If:
(a) a company was incorporated as a company or became registered as a company before the commencement of this Act; and
(b) there is no date of incorporation of the company as a company or registration of the company as a company recorded in a register maintained by ASIC under section 1274; and
(c) paragraph (1)(b) does not apply to the company;
the review date for the company is the date determined by ASIC and notified to the company.

Part 2N.2—Extract of particulars

S. 346A CA2001
(1) ASIC must, within 2 weeks after each review date for a company or a registered scheme, give to the company or responsible entity of the scheme an extract of particulars for the company or scheme.
(2) If an agreement or approval under subsection 352(1) covers the lodgment of a response to an extract of particulars for a company, ASIC may satisfy subsection (1) by making the extract available to the company or its agent by electronic means.
(3) An extract of particulars must specify the date of issue.

S. 346B CA2001
ASIC may include, in an extract of particulars for a company or a registered scheme, a requirement that the company or responsible entity of the scheme provide a particular prescribed by the regulations for the purposes of this section.

S. 346C CA2001
(1) A company, or responsible entity of a registered scheme, must respond to an extract of particulars that it receives if any particular set out in the extract is not correct as at the date of receipt. The response must comply with subsection (3).
(2) A company, or responsible entity of a registered scheme, must respond to an extract of particulars that it receives if the extract includes a requirement to provide a particular under section 346B. The response must comply with subsection (3).
(3) The response to an extract of particulars by a company, or by the responsible entity of a registered scheme:
(a) must be lodged within 28 days after the date of issue of the extract; and
(b) must be in the prescribed form; and
(c) must be signed or authenticated; and
(d) if subsection (1) applies—must be such that the particulars set out in the extract, taken together with the response, are correct as at the date the response is signed or authenticated; and
(e) if subsection (2) applies—must provide the required particular, correct as at the date the response is signed or authenticated.
(4) If a company responds to an extract of particulars:
(a) correcting a particular; or
(b) providing a particular;
in accordance with subsection (3), any requirement elsewhere in this Act to lodge a prescribed form in relation to the particular is satisfied by the response.
(5) Subsection (4) does not affect the company’s liability for late lodgment fees incurred before the response to the extract of particulars is lodged or continuing offences committed before that time.
(6) An offence based on subsection (1) or (2) is an offence of strict liability.

Part 2N.3—Solvency resolution

S. 347A CA 2001
(1) The directors of a company must pass a solvency resolution within 2 months after each review date for the company.
(2) Subsection (1) does not apply to the directors of a company that has lodged a financial report with ASIC under Chapter 2M within the period of 12 months before the review date.
(3) An offence based on this section is an offence of strict liability.

S. 347B CA2001
(1) If the directors of a company pass a negative solvency resolution under section 347A, the company must notify ASIC of that fact, in the prescribed form, within 7 days after the resolution is passed.
(2) If:
(a) subsection 347A(1) applies to the directors of a company; and
(b) the directors have not passed a solvency resolution under section 347A within 2 months after a review date;
the company must notify ASIC of that fact, in the prescribed form, within 7 days after the end of the 2 month period following the review date.
(3) An offence based on this section is an offence of strict liability.

Part 5.4A—Winding up by the Court on other grounds

S. 461 CA2001
(1) The Court may order the winding up of a company if:
(e) directors have acted in affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members; or
(f) affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole; or
(g) an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members of the company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole; or
(k) the Court is of opinion that it is just and equitable that the company be wound up.

Part 5.4B—Winding up in insolvency or by the Court

Division 1—General

S. 467 CA2001
(4) Where the application is made by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner that appears to be unfair or unjust to other members, the Court, if it is of the opinion that:
(a) the applicants are entitled to relief either by winding up the company or by some other means; and
(b) in the absence of any other remedy it would be just and equitable that the company should be wound up;
must make a winding up order unless it is also of the opinion that some other remedy is available to
the applicants and that they are acting unreasonably in seeking to have the company wound up instead
of pursuing that other remedy.

Part 5.6—Winding up generally
Division 2—Contributories

S. 516 CA2001
Subject to sections 518 and 519, if the company is a company limited by shares, a member need not
contribute more than the amount (if any) unpaid on the shares in respect of which the member is liable
as a present or past member.

Part 5.7B—Recovering property or compensation for the benefit of creditors of insolvent
company
Division 2—Voidable transactions

S. 588FA CA2001
A transaction is an unfair preference given by a company to a creditor of the company if, and only if:
(a) the company and the creditor are parties to the transaction (even if someone else is also a party);
and
(b) the transaction results in the creditor receiving from the company, in respect of an unsecured debt
that the company owes to the creditor, more than the creditor would receive from the company in
respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a
winding up of the company;
even if the transaction is entered into, is given effect to, or is required to be given effect to, because of
an order of an Australian court or a direction by an agency.

S. 588FB CA2001
(1) A transaction of a company is an uncommercial transaction of the company if, and only if, it may
be expected that a reasonable person in the company’s circumstances would not have entered into the
transaction, having regard to:
(a) the benefits (if any) to the company of entering into the transaction; and
(b) the detriment to the company of entering into the transaction; and
(c) the respective benefits to other parties to the transaction of entering into it; and
(d) any other relevant matter.
(2) A transaction may be an uncommercial transaction of a company because of subsection (1):
(a) whether or not a creditor of the company is a party to the transaction; and
(b) even if the transaction is given effect to, or is required to be given effect to, because of an order of
an Australian court or a direction by an agency.

S. 588FD CA2001
(1) A loan to a company is unfair if, and only if:
(a) the interest on the loan was extortionate when the loan was made, or has since become extortionate
because of a variation; or
(b) the charges in relation to the loan were extortionate when the loan was made, or have since become
extortionate because of a variation;
even if the interest is, or the charges are, no longer extortionate.
(2) In determining:
(a) whether interest on a loan was or became extortionate at a particular time as mentioned in
paragraph (1)(a); or
(b) whether charges in relation to a loan were or became extortionate at a particular time as mentioned
in paragraph (1)(b);
regard is to be had to the following matters as at that time:
(c) the risk to which the lender was exposed; and
(d) the value of any security in respect of the loan; and
(e) the term of the loan; and
(f) the schedule for payments of interest and charges and for repayments of principal; and
(g) the amount of the loan; and
(h) any other relevant matter.

S. 588FE CA2001
(1) If a company is being wound up:
(a) a transaction of the company may be voidable because of any one or more of subsections (2) to (6) if the transaction was entered into on or after 23 June 1993; and
(b) a transaction of the company may be voidable because of subsection (6A) if the transaction was entered into on or after the commencement of the Corporations Amendment (Repayment of Directors’ Bonuses) Act 2003.

(2) The transaction is voidable if:
(a) it is an insolvent transaction of the company; and
(b) it was entered into, or an act was done for the purpose of giving effect to it:
(i) during the 6 months ending on the relation-back day; or
(ii) after that day but on or before the day when the winding up began.

(3) The transaction is voidable if:
(a) it is an insolvent transaction, and also an uncommercial transaction, of the company; and
(b) it was entered into, or an act was done for the purpose of giving effect to it, during the 2 years ending on the relation-back day.

(4) The transaction is voidable if:
(a) it is an insolvent transaction of the company; and
(b) a related entity of the company is a party to it; and
(c) it was entered into, or an act was done for the purpose of giving effect to it, during the 4 years ending on the relation-back day.

(5) The transaction is voidable if:
(a) it is an insolvent transaction of the company; and
(b) the company became a party to the transaction for the purpose, or for purposes including the purpose, of defeating, delaying, or interfering with, the rights of any or all of its creditors on a winding up of the company; and
(c) the transaction was entered into, or an act done was for the purpose of giving effect to the transaction, during the 10 years ending on the relation-back day.

(6) The transaction is voidable if it is an unfair loan to the company made at any time on or before the day when the winding up began.

(6A) The transaction is voidable if:
(a) it is an unreasonable director-related transaction of the company; and
(b) it was entered into, or an act was done for the purposes of giving effect to it:
(i) during the 4 years ending on the relation-back day; or
(ii) after that day but on or before the day when the winding up began.

(7) A reference in this section to doing an act includes a reference to making an omission.

Division 3—Director’s duty to prevent insolvent trading

S. 588G CA2001
(1) This section applies if:
(a) a person is a director of a company at the time when the company incurs a debt; and
(b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
(c) at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and
(d) that time is at or after the commencement of this Act.

(1A) For the purposes of this section, if a company takes action set out in column 2 of the following table, it incurs a debt at the time set out in column 3.
<table>
<thead>
<tr>
<th>Action of company</th>
<th>When debt is incurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 paying a dividend</td>
<td>when the dividend is paid or, if the company has a constitution that provides for the declaration of dividends, when the dividend is declared</td>
</tr>
<tr>
<td>2 making a reduction of share capital to which Division 1 of Part 27.1 applies (other than a reduction that consists only of the cancellation of a share or shares for no consideration)</td>
<td>when the reduction takes effect</td>
</tr>
<tr>
<td>3 buying back shares (even if the consideration is not a sum certain in money)</td>
<td>when the buy-back agreement is entered into</td>
</tr>
<tr>
<td>4 redeeming redeemable preference shares that are redeemable at its option</td>
<td>when the company exercises the option</td>
</tr>
<tr>
<td>5 issuing redeemable preference shares that are redeemable otherwise than at its option</td>
<td>when the shares are issued</td>
</tr>
<tr>
<td>6 financially assisting a person to acquire shares (or units of shares) in itself or a holding company</td>
<td>when the agreement to provide the assistance is entered into or, if there is no agreement, when the assistance is provided</td>
</tr>
<tr>
<td>7 entering into an uncommercial transaction (within the meaning of section 588FB) other than one that a court orders, or a prescribed agency directs, the company to enter into</td>
<td>when the transaction is entered into</td>
</tr>
</tbody>
</table>

(2) By failing to prevent the company from incurring the debt, the person contravenes this section if:
(a) the person is aware at that time that there are such grounds for so suspecting; or
(b) a reasonable person in a like position in a company in the company’s circumstances would be so aware.
(3) A person commits an offence if:
(a) a company incurs a debt at a particular time; and
(aa) at that time, a person is a director of the company; and
(b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
(c) the person suspected at the time when the company incurred the debt that the company was insolvent or would become insolvent as a result of incurring that debt or other debts (as in paragraph (1)(b)); and
(d) the person’s failure to prevent the company incurring the debt was dishonest.
(3A) For the purposes of an offence based on subsection (3), absolute liability applies to paragraph (3)(a).
(3B) For the purposes of an offence based on subsection (3), strict liability applies to paragraphs (3)(aa) and (b).
(4) The provisions of Division 4 of this Part are additional to, and do not derogate from, Part 9.4B as it applies in relation to a contravention of this section.
**Division 4—Director liable to compensate company**

**Subdivision A—Proceedings against director**

S. 588J CA2001

(1) Where, on an application for a civil penalty order against a person in relation to a contravention of subsection 588G(2), the Court is satisfied that:
(a) the person committed the contravention in relation to the incurring of a debt by a company; and
(b) the debt is wholly or partly unsecured; and
(c) the person to whom the debt is owed has suffered loss or damage in relation to the debt because of the company’s insolvency;
the Court may (whether or not it makes a pecuniary penalty order under section 1317G or an order under section 206C disqualifying a person from managing corporations) order the first-mentioned person to pay to the company compensation equal to the amount of that loss or damage.

(2) A company’s liquidator may intervene in an application for a civil penalty order against a person in relation to a contravention of subsection 588G(2).

(3) A company’s liquidator who so intervenes is entitled to be heard:
(a) only if the Court is satisfied that the person committed the contravention in relation to the incurring of a debt by that company; and
(b) only on the question whether the Court should order the person to pay compensation to the company.

S. 588K CA2001

If:
(a) a court finds a person guilty of an offence under subsection 588G(3) in relation to the incurring of a debt by a company; and
(b) the court is satisfied that:
(i) the debt is wholly or partly unsecured; and
(ii) the person to whom the debt is owed has suffered loss or damage in relation to the debt because of the company’s insolvency;
the court may (whether or not it imposes a penalty) order the first-mentioned person to pay to the company compensation equal to the amount of that loss or damage.

S. 588M CA2001

(1) This section applies where:
(a) a person (in this section called the *director*) has contravened subsection 588G(2) or (3) in relation to the incurring of a debt by a company; and
(b) the person (in this section called the *creditor*) to whom the debt is owed has suffered loss or damage in relation to the debt because of the company’s insolvency; and
(c) the debt was wholly or partly unsecured when the loss or damage was suffered; and
(d) the company is being wound up;
whether or not:
(e) the director has been convicted of an offence in relation to the contravention; or
(f) a civil penalty order has been made against the director in relation to the contravention.

(2) The company’s liquidator may recover from the director, as a debt due to the company, an amount equal to the amount of the loss or damage.

(3) The creditor may, as provided in Subdivision B but not otherwise, recover from the director, as a debt due to the creditor, an amount equal to the amount of the loss or damage.

(4) Proceedings under this section may only be begun within 6 years after the beginning of the winding up.

**Chapter 5B—Bodies corporate registered as companies, and registrable bodies**

**Part 5B.1—Registering a body corporate as a company**

**Division 1—Registration**
S. 601BC CA2001
(1) To register the body as a company under this Part, a person must lodge an application with ASIC.
(2) The application must state the following:
(i) for a body proposed to be registered as a company limited by shares or an unlimited company—the following:
(iii) the amount unpaid on each share;

S. 601BD CA2001
(1) If an application is lodged under section 601BC, ASIC may:
(a) give the body an ACN; and
(b) register the body as a company of the proposed type specified in the application; and
(c) issue a certificate that states:
(i) the company’s name; and
(ii) the company’s ACN; and
(iii) the company’s type; and
(iv) that the company is registered as a company under this Act; and
(v) the State or Territory in which the company is taken to be registered; and
(vi) the date of registration.
(2) ASIC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with ASIC.

Chapter 6D—Fundraising
Part 6D.2—Disclosure to investors about securities
Division 4—Disclosure requirements

S. 711 CA2001
(2) The prospectus must set out the nature and extent of the interests (if any) that each person referred to in subsection (4) holds, or held at any time during the last 2 years, in:
(a) the formation or promotion of the body; or
(b) property acquired or proposed to be acquired by the body in connection with:
(i) its formation or promotion; or
(ii) the offer of the securities; or
(c) the offer of the securities.
(4) Disclosures need to be made under subsections (2) and (3) in relation to:
(a) any directors and proposed directors of the body;
(b) a person named in the prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of the prospectus;
(d) a promoter of the body;
(e) an underwriter (but not a sub-underwriter) to the issue or sale or a financial services licensee named in the prospectus as a financial services licensee involved in the issue or sale.

S. 714 CA2001
(1) A profile statement must:
(c) give details of all amounts payable in respect of the securities (including any amounts by way of fee, commission or charge);

S. 715 CA2001
(1) An offer information statement for the issue of a body's securities must:
(e) give details of all amounts payable in respect of the securities (including any amounts by way of fee, commission or charge);

Division 5—Procedure for offering securities

S. 723(2) CA2001
If a disclosure document for an offer of securities states that the securities will not be issued or transferred unless:

(a) applications for a minimum number of the securities are received; or

(b) a minimum amount is raised;

the person making the offer must not issue or transfer any of the securities until that condition is satisfied. For the purpose of working out whether the condition has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those securities.

S. 724 CA2001

(1) If a person offers securities under a disclosure document and:

(a) the disclosure document states that the securities will not be issued or transferred unless:

(i) applications for a minimum number of the securities are received; or

(ii) a minimum amount raised;

and that condition is not satisfied within 4 months after the date of the disclosure document;

(2) The person must either:

(a) repay the money received by the person from the applicants; or

(b) give the applicants:

(i) the documents required by subsection (3); and

(ii) 1 month to withdraw their application and be repaid; or

(c) issue or transfer the securities to the applicants and give them:

(i) the documents required by subsection (3); and

(ii) 1 month to withdraw their application and be repaid.

(3) The documents to be given are set out in the following table:

<table>
<thead>
<tr>
<th>Circumstances</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 the sole disclosure document is a prospectus</td>
<td>a supplementary or replacement prospectus that corrects the deficiency or changes the terms of the offer</td>
</tr>
<tr>
<td>2 the disclosure documents are a prospectus and a profile statement and subsection (1) applies to the prospectus</td>
<td>a statement that sets out the changes needed to the prospectus to correct the deficiency or change the terms of offer; and a statement that the person is entitled to a copy of the prospectus free of charge</td>
</tr>
<tr>
<td>3 the disclosure documents are a prospectus and a profile statement and subsection (1) applies to the profile statement Note that item 2 and this item may both apply to the offer.</td>
<td>a supplementary or replacement profile statement that corrects the deficiency or changes the terms of the offer</td>
</tr>
<tr>
<td>4 the disclosure document is an offer information statement</td>
<td>a supplementary or replacement offer information statement that corrects the deficiency or changes the terms of the offer</td>
</tr>
</tbody>
</table>
Part 6D.3—Prohibitions, liabilities and remedies
Division 2—Remedies

S. 737 CA2001
(1) If securities are issued to a person in contravention of section 724 (situation calling for a supplementary or replacement document), the person has the right to return the securities and to have their application money repaid. This is so even if the company that issued the securities is being wound up.
(2) A right referred to in subsection (1) is exercisable by written notice given to the company within 1 month after the date of the issue.
(3) If the body or the seller does not repay the money as required by subsection (1), the directors of the body or seller are personally liable to repay the money.

Part 7.11—Title and transfer
Division 2—Transfer of certain securities
Subdivision B—Special provisions for shares

S. 1072G CA2001
The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

Part 9.4—Offences
Division 2—Offences generally

S. 1311 CA2001
(1) A person who:
(a) does an act or thing that the person is forbidden to do by or under a provision of this Act; or
(b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or
(c) otherwise contravenes a provision of this Act;
is guilty of an offence by virtue of this subsection, unless that or another provision of this Act provides that the person:
(d) is guilty of an offence; or
(e) is not guilty of an offence.

Part 9.4B—Civil consequences of contravening civil penalty provisions

S. 1317E CA2001
(1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
(a) subsections 180(1) and 181(1) and (2), 182(1) and (2), 183(1) and (2) (officers’ duties);
(b) subsection 209(2) (related parties rules);
(c) subsections 254L(2), 256D(3), 259F(2) and 260D(2) (share capital transactions);
(d) subsection 344(1) (requirements for financial reports);
(e) subsection 588G(2) (insolvent trading);
(f) subsection 601FC(5) (duties of responsible entity)
(g) subsection 601FD(3) (duties of officers of responsible entity)
(h) subsection 601FE(3) (duties of employees of responsible entity)
(i) subsection 601FG(2) (acquisition of interest in scheme by responsible entity)
(j) subsection 601JD(3) (duties of members)
(ja) subsection 674(2), 674(2A), 675(2) or 675(2A) (continuous disclosure);
(jb) section 1041A (market manipulation);
(jc) subsection 1041B(1) (false trading and market rigging— creating a false or misleading appearance of active trading etc.)

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(jd) subsection 1041C(1) (false trading and market rigging— artificially maintaining etc. market price);
(je) section 1041D (dissemination of information about illegal transactions);
(jf) subsection 1043A(1) (insider trading);
(jg) subsection 1043A(2) (insider trading);
(k) subclause 29(6) of Schedule 4.
These provisions are the civil penalty provisions.
(2) A declaration of contravention must specify the following:
(a) the Court that made the declaration;
(b) the civil penalty provision that was contravened;
(c) the person who contravened the provision;
(d) the conduct that constituted the contravention;
(e) if the contravention is of a corporation/scheme civil penalty provision—the corporation or registered scheme to which the conduct related.

S. 1317G CA2001
1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to $200,000 if:
(a) a declaration of contravention by the person has been made under section 1317E; and
(aa) the contravention is of a corporation/scheme civil penalty provision; and
(b) the contravention:
(i) materially prejudices the interests of the corporation or scheme, or its members; or
(ii) materially prejudices the corporation’s ability to pay its creditors; or
(iii) is serious.
(2) The penalty is a civil debt payable to ASIC on the Commonwealth’s behalf. ASIC or the Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

S. 1317H CA2001
1) A Court may order a person to compensate a corporation or registered scheme for damage suffered by the corporation or scheme if:
(a) the person has contravened a corporation/scheme civil penalty provision in relation to the corporation or scheme; and
(b) the damage resulted from the contravention.
The order must specify the amount of the compensation.
(2) In determining the damage suffered by the corporation or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.
(3) In determining the damage suffered by the scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.
(4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.
(5) A compensation order may be enforced as if it were a judgment of the Court.

S. 1317J CA2001
1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.
(2) The corporation ... may apply for a compensation order.
(3) The corporation ..., may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation ... The corporation ... is entitled to be heard on all matters other than whether the declaration or order should be made.

Part 9.5—Powers of Courts
S. 1322 CA2001
(3B) If voting rights are exercised in contravention of subsection 259D(3) (company controlling entity that holds shares in it), the meeting or the resolution on which the voting rights were exercised will only be invalid on that ground if:
(a) the court is of the opinion that:
(i) a substantial injustice has been caused or may be caused; and
(ii) the injustice cannot be remedied by any order of the court; and
(b) the court declares the meeting or resolution invalid.

S. 1324 CA2001
(1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
(a) a contravention of this Act; or
(b) attempting to contravene this Act; or
(c) aiding, abetting, counselling or procuring a person to contravene this Act; or
(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
(f) conspiring with others to contravene this Act; the Court may, on the application of ASIC, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(1A) For the purposes of subsection (1):
(a) a contravention of this Act affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention; and
(b) a company’s contravention of:
(i) paragraph 257A(1)(a) (share buy-back not to prejudice ability to pay creditors); or
(ii) paragraph 260A(1)(a) (financial assistance for share acquisition not to prejudice company or shareholders or ability to pay creditors);
affects the interests of a creditor or member of the company; and
(c) a company’s contravention of paragraph 256B(1)(a) (fair and reasonable test for share capital reduction) affects the interests of a member of the company.
This subsection does not limit subsection (1) in any way.

(1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:
(a) a contravention of paragraph 256B(1)(a) or (b), section 257A or paragraph 260A(1)(a); or
(b) a contravention of a provision of this Act involving the insolvency of the company because of:
(i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or
(ii) the company buying back its shares; or
(iii) the company giving financial assistance to which Part 2J.3 applies;
the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of:
(a) ASIC; or
(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;
grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.
(3) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(8) Where ASIC applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) In proceedings under this section against a person the Court may make an order under section 1323 in respect of the person.

(10) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.