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1 MEETING OF SENATE

The Senate met at 9.30 am. The President (Senator the Honourable Margaret Reid) took the chair and read prayers.

2 GOVERNMENT DOCUMENTS

The following government documents were tabled:

Advance to the Finance Minister—Statements and supporting applications for issues—
May 2001.
June 2001.

Council for Aboriginal Reconciliation—Report for the period 1 June 1999 to
31 December 2000 (Final report).

Finance—Departmental items—Adjustments and borrowings—Statements and
supporting applications for issues—June 2001.

Ministerial Council on Education, Employment, Training and Youth Affairs—National
report on schooling in Australia 1999.

**3 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (APPLICATION OF
CRIMINAL CODE) BILL 2001**

The Parliamentary Secretary to the Minister for Health and Aged Care (Senator Tambling),
at the request of the Parliamentary Secretary to the Minister for Communications,
Information Technology and the Arts (Senator Ian Campbell) and pursuant to notice,
moved—That the following bill be introduced:

A Bill for an Act relating to the application of the *Criminal Code* to certain offences,
and for related purposes.

Question put and passed.

Senator Tambling presented the bill and moved—That this bill may proceed without
formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Tambling moved—That this bill be now read a second time.

Explanatory memorandum: Senator Tambling tabled an explanatory memorandum relating
to the bill.

Consideration of legislation: Pursuant to order, the debate was adjourned and the
resumption of the debate made an order of the day for the first day in the next period of
sittings.

4 FAMILY ASSISTANCE ESTIMATE TOLERANCE (TRANSITION) BILL 2001

The Parliamentary Secretary to the Minister for Health and Aged Care (Senator Tambling), at the request of the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell) and pursuant to notice, moved—That the following bill be introduced:

A Bill for an Act to amend the *A New Tax System (Family Assistance) (Administration) Act 1999*, and for related purposes.

Question put and passed.

Senator Tambling presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Tambling moved—That this bill be now read a second time.

Explanatory memorandum: Senator Tambling tabled an explanatory memorandum relating to the bill.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

5 INDUSTRY, SCIENCE AND RESOURCES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

The Parliamentary Secretary to the Minister for Health and Aged Care (Senator Tambling), at the request of the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell) and pursuant to notice, moved—That the following bill be introduced:

A Bill for an Act relating to the application of the *Criminal Code* to certain offences, and for related purposes.

Question put and passed.

Senator Tambling presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Tambling moved—That this bill be now read a second time.

Explanatory memorandum: Senator Tambling tabled an explanatory memorandum relating to the bill.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

6 CONSIDERATION OF LEGISLATION

The Parliamentary Secretary to the Minister for Health and Aged Care (Senator Tambling), pursuant to notice, moved—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Customs Tariff Amendment Bill (No. 5) 2001, allowing it to be considered during this period of sittings.

Question put and passed.

7 ALCOHOL EDUCATION AND REHABILITATION ACCOUNT BILL 2001

Order of the day read for the consideration of the bill in committee of the whole.

In the committee

Bill taken as a whole by leave.

Senator Evans moved the following amendment:

Clause 3, page 2 (after line 11), after paragraph (a), insert:

- (aa) to support programs to reduce domestic violence caused by alcohol or other licit substance abuse;

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Senator Evans moved the following amendment:

Page 6 (after line 13), after clause 13, insert:

13A Conditions of agreement

Any agreement made under section 9 or 12 must include the following conditions:

- (a) the condition that the Foundation or a replacement body must comply with such policies, not inconsistent with any of the purposes referred to in section 3, as the Minister directs should guide the activities of the Foundation or replacement body;
- (b) the condition that the Foundation or a replacement body must consult with the following:
 - (i) the Aboriginal and Torres Strait Islander Commission; and
 - (ii) the National Aboriginal Community Controlled Health Organisation; and
 - (iii) the National Indigenous Substance Abuse Council;
 about priorities for, and ways of funding, indigenous substance abuse programs;
- (c) the condition that not less than 20% of funding in any year must be allocated to indigenous substance abuse programs.

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Document: The Chair of the Community Affairs Legislation Committee (Senator Knowles) tabled the following document:

Community Affairs Legislation Committee—Report—Alcohol Education and Rehabilitation Account Bill 2001—Additional information received by the committee, dated August 2001.

Senator Evans moved the following amendment:

Page 6 (after line 18), at the end of the bill, add:

15 Accountability etc.

- (1) The Foundation and any replacement authority are deemed to be Commonwealth authorities for the purposes of Divisions 2 and 3 of Part 3 of the *Commonwealth Authorities and Companies Act 1997*.
- (2) The Minister must cause a copy of each business plan of the Foundation or a replacement body to be tabled in each House of the Parliament as soon as practicable after it has been finalised by the Foundation or a replacement body, as the case may be.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 25

Senators—

Bishop	Crossin	Hutchins	Ray
Buckland	Denman	Ludwig (Teller)	Schacht
Campbell, George	Evans	Mackay	Sherry
Carr	Forshaw	McKiernan	West
Collins	Gibbs	McLucas	
Conroy	Harradine	Murphy	
Cooney	Hogg	O'Brien	

NOES, 40

Senators—

Abetz	Chapman	Hill	Murray
Allison	Cherry	Kemp	Newman
Alston	Coonan (Teller)	Knowles	Patterson
Bartlett	Crane	Lees	Stott Despoja
Boswell	Eggleston	Lightfoot	Tambling
Bourne	Ellison	Macdonald, Ian	Tchen
Brandis	Ferguson	Macdonald, Sandy	Tierney
Brown	Ferris	Mason	Troeth
Calvert	Greig	McGauran	Vanstone
Campbell, Ian	Herron	Minchin	Watson

Question negatived.

Senator Evans moved the following request for an amendment:

That the House of Representatives be requested to make the following amendment:

Clause 6, page 4 (after line 18), at the end of the clause, add:

Fixed income—uninvested money

- (2) Within 28 days after the end of a financial year, there is to be credited to the Account, in respect of the financial year, an amount equal to the fixed-income percentage of the difference between \$115 million and the amounts credited to the Account as at the end of the financial year.

Fixed-income percentage

- (3) For the purposes of the application of subsection (2) to a particular financial year, the *fixed-income percentage* is:
- (a) the percentage equal to the rate of interest earned by the Commonwealth as at the end of the financial year on deposits held with the Reserve Bank of Australia; or
 - (b) if the Minister for Finance, by written instrument made within 28 days after the end of the financial year, determines a higher percentage—that higher percentage.

Debate ensued.

Question—That the request be agreed to—put and negatived.

On the motion of Senator Lees the following request for an amendment was agreed to:

That the House of Representatives be requested to make the following amendment:

Clause 6, page 4 (after line 18), at the end of the clause, add:

Interest on uninvested money

- (2) There must be credited to the Account by 1 July 2004 an interest amount in respect of each of the financial years commencing on 1 July 2001, 2002 and 2003.
- (3) The interest amount for a financial year is worked out using the formula:

$$\frac{\$115 \text{ million} - \text{Sum of amounts credited}}{\text{Fixed - income percentage}}$$

where:

fixed-income percentage, for a financial year, is:

- (a) the percentage equal to the rate of interest earned by the Commonwealth, as at the end of the financial year, on deposits held with the Reserve Bank of Australia; or
- (b) if the Minister for Finance, by written instrument made within 28 days after the end of the financial year, determines a higher percentage—that higher percentage.

sum of amounts credited, for a financial year, means the sum of all amounts credited to the Account in that financial year or an earlier financial year.

Bill agreed to, subject to a request.

Bill to be reported with a request for an amendment.

The Acting Deputy President (Senator Sherry) resumed the chair and the Chair of Committees (Senator West) reported accordingly.

On the motion of the Parliamentary Secretary to the Minister for Health and Aged Care (Senator Tambling) the report from the committee was adopted.

8 **FINANCIAL SERVICES REFORM BILL 2001**

FINANCIAL SERVICES REFORM (CONSEQUENTIAL PROVISIONS) BILL 2001

CORPORATIONS (FEES) AMENDMENT BILL 2001

CORPORATIONS (NATIONAL GUARANTEE FUND LEVIES) AMENDMENT BILL 2001

CORPORATIONS (COMPENSATION ARRANGEMENTS LEVIES) BILL 2001

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell)—That these bills be now read a second time.

Debate resumed.

Proposed reference to committee: Senator Murray moved the following amendment in respect of the Financial Services Reform Bill 2001:

At the end of the motion, add “and that the requirement in the legislation that commissions on risk products be fully disclosed be referred to the Joint Statutory Committee on Corporations and Securities for inquiry and report by 1 October 2003”.

Debate ensued.

Declaration of interest: Senator Ferguson declared an interest in relation to the bill.

At 12.45 pm: Debate was interrupted while Senator Ferguson was speaking.

9 **MATTERS OF PUBLIC INTEREST**

Matters of public interest were discussed.

At 2 pm—

10 **QUESTIONS**

Questions without notice were answered.

11 TELECOMMUNICATIONS—ANSWER TO QUESTION

Senator Carr moved—That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Bishop today relating to competition in the telecommunications industry.

Debate ensued.

Question put and passed.

12 DAIRY INDUSTRY—DEREGULATION—ANSWER TO QUESTION

Senator Harris moved—That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Harris today relating to the deregulation of the dairy industry.

Question put and passed.

13 NOTICES

Senator Bolkus: To move on the next day of sitting—That there be laid on the table by the Leader of the Government in the Senate (Senator Hill), no later than immediately after questions without notice on the next day of sitting, the report prepared by the Great Barrier Reef Marine Park Authority on water quality targets in the catchments feeding into the Great Barrier Reef region.

The Chair of the Employment, Workplace Relations, Small Business and Education Legislation Committee (Senator Tierney): To move on the next day of sitting—That the time for the presentation of the report of the Employment, Workplace Relations, Small Business and Education Legislation Committee on the provisions of the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2001 be extended to 18 September 2001.

Senator Evans: To move on the next day of sitting—That the Senate—

- (a) notes the failure of the Government:
 - (i) to adequately contribute to the funding of public health services, and
 - (ii) to plan for and fund the aged care services needed by our ageing population; and
- (b) calls on the Government to address the problems now evident in Australia's health and aged care systems.

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hogg): To move on the next day of sitting—That the time for the presentation of the following reports of the Foreign Affairs, Defence and Trade References Committee be extended to 27 September 2001:

- (a) second report on the examination of developments in contemporary Japan and the implications for Australia; and
- (b) the disposal of Defence properties.

Senators Lees and Lundy: To move on the next day of sitting—That the Senate—

- (a) notes that the Australian Broadcasting Corporation (ABC) is currently reviewing its television coverage of sport;
- (b) is concerned that the review will result in the cessation of the television broadcast coverage of women's sport, particularly basketball and netball;
- (c) notes:
 - (i) that over the past decade, and probably more, the ABC has been a leader in the broadcast of women's sport, which has provided a significant boost to the development of women's sport in Australia and which provides audiences with programming not provided elsewhere, in keeping with the ABC's Charter that the ABC provide, amongst other programs, 'specialised broadcasting programs',
 - (ii) that any decision to cancel the television broadcast of women's sport will have a detrimental effect on the sport, particularly on drop out rates amongst adolescent girls, which will reduce the pool of talent available within Australia and therefore the strength and viability of women's netball and basketball, currently well-respected and successful internationally, and
 - (iii) further the disproportionate disadvantage likely to be felt amongst young women in rural and regional centres, who, because of geographical circumstances, are unable to travel to capital cities to watch live sport;
- (d) recognises the strong role models elite women sports athletes are to young women and the positive value this has on young women's self-esteem, health, fitness and general well-being, and that without such television broadcast coverage such positive role models will disappear; and
- (e) calls on the ABC Board to agree to the continuation of the television broadcasting of women's sport.

Senator Conroy: To move on the next day of sitting—That the Senate—

- (a) notes that banking is the most profitable industry in Australia and that these profits have been caused by increased bank fees, increased bank queues and reduced banking services;
- (b) notes, in particular, that:
 - (i) in the past half year the major banks announced record profits of more than \$5 billion and are headed for profits of more than \$10 billion for the full year,
 - (ii) according to the Reserve Bank's recent update *Bank Fees in Australia*, banks earned \$2.1 billion in fees from households in the past 12 months and that in the past 4 years this income has increased by 75 per cent, and
 - (iii) since 1996 banks have closed 1 505 bank branches; and
- (c) calls upon the Government to immediately negotiate a social charter with Australia's banks to ensure that all Australians have access to affordable banking services.

The Minister for the Environment and Heritage (Senator Hill): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to improve the quality of employment services and rehabilitation programs provided for people with disabilities, and for related purposes. ***Disability Services Amendment (Improved Quality Assurance) Bill 2001.***

14 **SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 12 OF 2001**

The Chairman of the Selection of Bills Committee (Senator Calvert) tabled the following report:

SELECTION OF BILLS COMMITTEE**REPORT NO. 12 OF 2001**

1. The committee met on 21 August 2001.
2. The committee resolved to recommend—
 - (a) That the provisions of the following bill be *referred* to a committee as follows:

Bill title	Stage at which referred	Legislation Committee	Reporting date
Trade Practices Amendment (Telecommunications) Bill 2001	Immediately	Environment, Communications, Information Technology and the Arts	17 September 2001

- (b) That the following bills *not* be referred to a committee:

Customs Tariff Amendment Bill (No. 5) 2001
 Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Bill 2001
 Financial Services Reform Bill 2001
 Financial Services Reform (Consequential Provisions) Bill 2001
 Corporations (Compensation Arrangements Levies) Bill 2001
 Corporations (Fees) Amendment Bill 2001
 Corporations (National Guarantee Fund Levies) Amendment Bill 2001
 New Business Tax System (Thin Capitalisation) Bill 2001
 New Business Tax System (Debt and Equity) Bill 2001
 States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2001
 Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2001
 Workplace Relations Amendment (Minimum Entitlements for Victorian Workers) Bill 2001

3. The committee *deferred* consideration of the following bills to the next meeting:

Bill deferred from meeting of 22 May 2001

Aviation Legislation Amendment Bill (No. 2) 2001

Bills deferred from meeting of 7 August 2001

Constitution Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001

Customs Tariff Amendment Bill (No. 4) 2001

General Insurance Reform Bill 2001

Motor Vehicle Standards Amendment Bill 2001

Superannuation Legislation Amendment (Indexation) Bill 2001

Taxation Laws Amendment Bill (No. 4) 2001

Bills deferred from meeting of 21 August 2001

Commonwealth Electoral Amendment Bill 2001

Health and Aged Care Legislation Amendment (Application of Criminal Code)
Bill 2001

State Elections (One Vote, One Value) Bill 2001

Wool International Amendment Bill 2001

Paul Calvert

Chair

22 August 2001.

Senator Calvert moved—That the report be adopted.

Question put and passed.

15 INTELLIGENCE SERVICES—JOINT SELECT COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Calvert, by leave and on behalf of the Joint Select Committee on the Intelligence Services, moved—That the Joint Select Committee on the Intelligence Services be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate from 4 pm today.

Question put and passed.

16 LEAVE OF ABSENCE

Senator O'Brien, by leave, moved—That leave of absence be granted to Senator Crowley for the period 20 August to 23 August 2001, on account of parliamentary business overseas.

Question put and passed.

17 ECONOMICS LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Calvert, at the request of the Chair of the Economics Legislation Committee (Senator Gibson) and pursuant to notice of motion not objected to as a formal motion, moved—That the time for the presentation of the report of the Economics Legislation Committee on annual reports tabled by 30 April 2001 be extended to 19 September 2001.

Question put and passed.

18 ECONOMICS REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT

Senator O'Brien, at the request of the Chair of the Economics References Committee (Senator Murphy) and pursuant to notice of motion not objected to as a formal motion, moved—That the time for the presentation of the report of the Economics References Committee on the framework for the market supervision of Australia's stock exchanges be extended to 27 August 2001.

Question put and passed.

19 TRANSPORT—MERRI CREEK VALLEY—PROPOSED FREEWAY

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved—
That the Senate—

- (a) considers that, as there are viable alternatives to the freeway proposed for the Merri Creek valley in Melbourne between Craigieburn and the Metropolitan Ring Road, the freeway should not be built; and
- (b) supports the National Highway funds being spent instead on these alternatives, each of which is long overdue:
 - (i) improvements to the Hume Highway,
 - (ii) upgrading passenger public transport, and
 - (iii) interstate rail freight infrastructure.

Question put and negatived. Senator Brown, pursuant to standing order 100, recorded his vote for the ayes.

20 FOREIGN AFFAIRS—UNITED STATES—ARREST OF AUSTRALIAN CITIZENS

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved—
That the Senate—

- (a) is concerned by the arrest of Australian citizens, Nicholas Clyde and Stuart Lennox, in the United States during the peaceful Greenpeace protest against the ‘Star Wars’ proposal; and
- (b) calls on the Government to seek their early return to Australia.

Question put and passed.

21 URGENCY MOTION

The Deputy President (Senator West) informed the Senate that the President had received a letter from Senator Greig advising that today he intended to move—That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Senate to acknowledge the increasing community opposition to mandatory sentencing and the imminent repeal of such legislation in the Northern Territory, and to urge the Western Australian Government to repeal mandatory sentencing laws.

The proposal was supported by 4 senators.

Senator Greig moved the motion.

Debate ensued.

Question put.

The Senate divided—

AYES, 10

Senators—

Allison
Bartlett
Bourne (Teller)

Brown
Cherry
Greig

Harradine
Lees

Murray
Stott Despoja

NOES, 47

Senators—

Bishop	Crossin	Hogg	McLucas
Bolkus	Denman	Hutchins	Minchin
Brandis	Eggleston	Kemp	Murphy
Buckland	Evans	Knowles	Patterson
Calvert	Ferguson	Lightfoot	Reid
Campbell, George	Ferris	Ludwig	Schacht
Carr	Forshaw	Macdonald, Ian	Sherry
Chapman	Gibbs	Macdonald, Sandy	Tchen
Conroy	Gibson	Mackay	Troeth
Coonan	Heffernan	Mason	Watson
Cooney	Herron	McGauran (Teller)	West
Crane	Hill	McKiernan	

Question negatived.

**22 SCRUTINY OF BILLS—STANDING COMMITTEE—10TH REPORT AND ALERT DIGEST
No. 10 OF 2001**

Senator Ludwig, at the request of the Chairman of the Standing Committee for the Scrutiny of Bills (Senator Cooney), tabled the following report and document:

10th report of 2001, dated 22 August 2001.

Alert Digest No. 10 of 2001, dated 22 August 2001.

Report ordered to be printed on the motion of Senator Ludwig.

23 DOCUMENTS

The following documents were tabled by the Clerk:

Australian Meat and Live-stock Industry Act—Australian Meat and Live-stock Industry (Live Sheep Exports to Saudi Arabia) Amendment Order 2001 (No. 2).

Fuel Quality Standards Act—

Fuel Standard (Diesel) Determination 2001.

Fuel Standard (Petrol) Determination 2001.

Veterans' Entitlements Act—Instruments under section 196B—Instruments Nos 57-64 of 2001.

**24 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF
DOCUMENTS—DOCUMENT**

The following document was tabled pursuant to the order of the Senate of 30 May 1996 as amended 3 December 1998:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2001—Statements of compliance—Department of Foreign Affairs and Trade.

25 COMMUNITY AFFAIRS REFERENCES COMMITTEE—CHANGE IN MEMBERSHIP

The Acting Deputy President (Senator Lightfoot) informed the Senate that the President had received a letter requesting a change in the membership of a committee.

The Minister for Industry, Science and Resources (Senator Minchin), by leave, moved—That Senator Crowley be discharged from and Senator West be appointed to the Community Affairs References Committee from 31 August 2001.

Question put and passed.

26 VETERANS' AFFAIRS LEGISLATION AMENDMENT (FURTHER BUDGET 2000 AND OTHER MEASURES) BILL 2001

A message from the House of Representatives was reported transmitting for the concurrence of the Senate the following bill:

Message no. 776, dated 21 August 2001—A Bill for an Act to amend the *Veterans' Entitlements Act 1986*, and for related purposes.

The Minister for Industry, Science and Resources (Senator Minchin) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Minchin moved—That this bill be now read a second time.

On the motion of Senator Denman the debate was adjourned till the next day of sitting.

27 TRANSPORT—BLACK SPOT PROJECT—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Minister for Industry, Science and Resources (Senator Minchin), by leave, made a statement relating to the order of the Senate of 21 August 2001 for the production of documents concerning Black Spot Project reference number N00752 (*see entry no. 14, 21 August 2001*).

**28 FINANCIAL SERVICES REFORM BILL 2001
FINANCIAL SERVICES REFORM (CONSEQUENTIAL PROVISIONS) BILL 2001
CORPORATIONS (FEES) AMENDMENT BILL 2001
CORPORATIONS (NATIONAL GUARANTEE FUND LEVIES) AMENDMENT BILL 2001
CORPORATIONS (COMPENSATION ARRANGEMENTS LEVIES) BILL 2001**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell)—That these bills be now read a second time—and *on the amendment moved by Senator Murray in respect of the Financial Services Reform Bill 2001 (see entry no. 8)*.

Debate resumed.

Question—That the amendment be agreed to—put and passed.

Main question, as amended, put and passed.

Bills read a second time.

The Senate resolved itself into committee for the consideration of the bills.

In the committee

Explanatory memoranda: Senator Ian Campbell tabled supplementary explanatory memoranda [2] relating to the government amendments to be moved to the Financial Services Reform Bill 2001 and the Financial Services Reform (Consequential Provisions) Bill 2001.

FINANCIAL SERVICES REFORM BILL 2001—

Bill taken as a whole by leave.

On the motion of Senator Ian Campbell the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, item 1, page 6 (lines 26 to 30), omit paragraph (d), substitute:

(d) funds are able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor:

- (i) without any prior notice to the ADI that makes the facility available; or
- (ii) if the ADI that makes the facility available is included in a class of ADIs specified in regulations made for the purposes of this subparagraph—subject to a prior notice requirement that does not exceed the period specified in those regulations in relation to that class of ADIs;

whether or not the withdrawal or transfer will attract a reduction in the return generated for the depositor as mentioned in subparagraph (c)(i); and

Schedule 1, item 1, page 8 (after line 8), after the definition of *disqualified individual*, insert:

execution-related telephone advice has the meaning given by subsection 946B(1).

Schedule 1, item 1, page 8 (lines 14 and 15), omit “subsection 766B(1)”, substitute “section 766B”.

Schedule 1, item 1, page 9 (after line 30), after the definition of *general insurance product*, insert:

holder, in relation to a financial product, means the person to whom the financial product was issued, or if it has (since issue) been disposed of to another person who has not themselves disposed of it, that other person (and *hold* has a corresponding meaning).

Schedule 1, item 1, page 11 (line 2), omit “or (l)”.

Schedule 1, item 1, page 13 (after line 9), after the definition of *recognised affiliate*, insert:

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

Schedule 1, item 1, page 17 (before line 1), after subsection (3), insert:

- (3A) For the avoidance of doubt, none of the following are taken to give rise to the issue of a financial product to a person (the *client*):
- (a) the client making a further contribution to a superannuation fund of which the client is already a member;
 - (b) the client making a further deposit into an RSA maintained in the client's name;
 - (c) the client making a further payment under a life insurance investment product;
 - (d) the client making a further deposit into a deposit product;
 - (e) the client engaging in conduct specified in regulations made for the purposes of this paragraph in relation to a financial product already held by the client.

Schedule 1, item 1, page 20 (line 30), omit “subsection (5) or (7)”, substitute “subsection (5), (6) or (7)”.

Schedule 1, item 1, page 22 (lines 13 to 19), omit subsection (6), substitute:

Superannuation products and RSA products

- (6) For the purposes of this Chapter:
- (a) if a financial product provided to a person is a superannuation product or an RSA product, the product is provided to the person as a retail client; and
 - (b) if a financial service (other than the provision of a financial product) provided to a person who is not covered by subparagraph (c)(i) or (ii) relates to a superannuation product or an RSA product, the service is provided to the person as a retail client; and
 - (c) if a financial service (other than the provision of a financial product) provided to a person who is:
 - (i) the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that has net assets of at least \$10 million; or
 - (ii) an RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*);
 relates to a superannuation product or an RSA product, that does not constitute the provision of a financial service to the person as a retail client.

Schedule 1, item 1, page 23 (line 33) to page 24 (line 5), omit notes 1, 2 and 3 to subsection (9), substitute:

Note 1: There is no such presumption in relation to the provision of a product or service that is or relates to a general insurance product, a superannuation product or an RSA product. Whether or not such a product, or a service relating to such a product, was provided to a person as a retail client is to be resolved as provided in subsection (5) or (6), as the case requires.

Note 2: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in paragraphs (7)(a) to (d) (see subsection (8)).

Schedule 1, item 1, page 30 (line 15), omit “may be still be”, substitute “may still be”.

Schedule 1, item 1, page 30 (after line 33), after paragraph 764A(1)(b), insert:

(ba) any of the following in relation to a managed investment scheme that is not a registered scheme, other than a scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED(1)(a), (b) and (c) are satisfied:

- (i) an interest in the scheme;
- (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
- (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

Schedule 1, item 1, page 32 (lines 17 to 20), omit subparagraph (k)(ii), substitute:

- (ii) a contract to exchange one currency (whether Australian or not) for another that is to be settled immediately;

Schedule 1, item 1, page 32 (lines 21 to 29), omit paragraph (l).

Schedule 1, item 1, page 34 (lines 18 to 21), omit paragraph (m), substitute:

- (m) a contract to exchange one currency (whether Australian or not) for another that is to be settled immediately;

Schedule 1, item 1, page 34 (lines 24 and 25), omit paragraph (o).

Schedule 1, item 1, page 35 (lines 1 to 9), omit paragraph (s), substitute:

- (s) any of the following in relation to a managed investment scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED(1)(a), (b) and (c) are satisfied and that is not a registered scheme:

- (i) an interest in the scheme;
- (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
- (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

Schedule 1, item 1, page 37 (line 5), omit “the provision of an exempt document”, substitute “the provision or giving of an exempt document or statement”.

Schedule 1, item 1, page 37 (lines 12 to 15), omit paragraphs (3)(a) and (b), substitute:

- (a) the provider of the advice has considered one or more of the person’s objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider to have considered one or more of those matters.

Schedule 1, item 1, page 37 (lines 21 to 29), omit subsection (6), substitute:

- (9) In this section:

exempt document or statement means:

- (a) a document prepared, or a statement given, in accordance with requirements of this Chapter, other than:

- (i) a Statement of Advice; or
- (ii) a document or statement of a kind prescribed by regulations made for the purposes of this subparagraph; or
- (b) any other document or statement of a kind prescribed by regulations made for the purposes of this paragraph.

Schedule 1, item 1, page 37 (line 31), after “conduct”, insert “(whether engaged in as principal or agent)”.

Schedule 1, item 1, page 38 (line 10), after “own behalf”, insert “(whether directly or through an agent or other representative)”.

Schedule 1, item 1, page 38 (after line 12), after subsection (3), insert:

- (3A) For the purposes of subsection (3), a person (the *agent*) who deals in a product as an agent or representative of another person (the *principal*) is not taken to deal in the product on the agent’s own behalf, even if that dealing, when considered as a dealing by the principal, is a dealing by the principal on the principal’s own behalf.

Schedule 1, item 1, page 39 (after line 12), at the end of section 766D, add:

- (2) Paragraph (1)(a) does not apply to a person stating prices at which they propose to acquire or dispose of financial products if:
 - (a) the person is the issuer of the products; and
 - (b) the products are superannuation products, managed investment products or financial products referred to in paragraph 764A(1)(ba) (which relates to unregistered managed investment schemes).

Schedule 1, item 1, page 39 (lines 14 to 34), omit subsections 766E(1) and (2), substitute:

- (1) For the purposes of this Chapter, a person (the *provider*) provides a *custodial or depository service* to another person (the *client*) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement, (whether or not there are also other parties to any such arrangement), a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.
- (2) The following provisions apply in relation to a custodial or depository service:
 - (a) subject to paragraph (b), for the purposes of this Chapter, the time at which a custodial or depository service is provided is the time when the financial product or beneficial interest concerned is first held by the provider as mentioned in subsection (1);
 - (b) for the purposes of Part 7.6, and of any other provisions of this Act prescribed by regulations made for the purposes of this paragraph, the continued holding of the financial product or beneficial interest concerned by the provider as mentioned in subsection (1) also constitutes the provision of a custodial or depository service.

Note: Because of paragraph (a) (subject to regulations made for the purposes of paragraph (b)), the requirements of Part 7.7 relating to financial services disclosure need only be complied with before the product or interest is first held by the provider. However, because of paragraph (b), the provider will be subject to the licensing and related requirements of Part 7.6 for so long as they continue to hold the product or interest.

Schedule 1, item 1, page 40 (line 4), after “registered scheme”, insert “, or the holding of the assets of a registered scheme”.

Schedule 1, item 1, page 44 (after line 35), after subsection (8), insert:

- (8A) Nothing in this section, other than subsections (7) and (8), excludes or limits the operation of subsection 601FB(2) in relation to the provisions of this Chapter or to proceedings under this Chapter.

Schedule 1, item 1, page 46 (lines 5 to 9), omit the definition of *clearing and settlement arrangements*, substitute:

clearing and settlement arrangements, for transactions effected through a financial market, means arrangements for the clearing and settlement of those transactions. The arrangements may be part of the market’s operating rules or be separate from those operating rules.

Schedule 1, item 1, page 48 (line 19), omit “in”, substitute “on or in relation to”.

Schedule 1, item 1, page 50 (line 35), omit “an individual”, substitute “a person”.

Schedule 1, item 1, page 53 (lines 1 to 20), omit section 792G, substitute:

792G Obligations to notify people about clearing and settlement arrangements in certain circumstances

- (1) If, in relation to a category of transactions, being all transactions or a class of transactions effected through a licensed market, the market licensee:
 - (a) does not have any clearing and settlement arrangements for transactions in that category; or
 - (b) has clearing and settlement arrangements for transactions in that category, but they are not arrangements with the operator of a clearing and settlement facility for the clearing and settlement of such transactions through the facility;
 the market licensee must, before a person becomes a participant in the market, give the person written advice:
 - (c) if paragraph (a) applies—that the licensee does not have any clearing and settlement arrangements for transactions in that category, and that it is the responsibility of the parties to such transactions to make their own arrangements for the clearing and settlement of such transactions; or
 - (d) if paragraph (b) applies—setting out particulars of the clearing and settlement arrangements for transactions in that category.

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

- (2) Within a reasonable time before a market licensee ceases, in relation to a category of transactions, being all transactions or a class of transactions effected through a licensed market, to have clearing and settlement arrangements (the *terminating arrangements*) with the operator of a particular clearing and settlement facility for the clearing and settlement of such transactions through the facility, the market licensee must give the participants in the market written advice:
- (a) if the terminating arrangements are not being replaced by any other clearing and settlement arrangements—that the licensee will no longer have clearing and settlement arrangements for that category of transactions, and that it will be the responsibility of the parties to such transactions to make their own arrangements for the clearing and settlement of such transactions; or
 - (b) if the terminating arrangements are being replaced by new clearing and settlement arrangements—setting out particulars of the new arrangements.

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

Schedule 1, item 1, page 62 (line 13), omit “in”, substitute “on or in relation to”.

Schedule 1, item 1, page 77 (line 17), omit “an individual”, substitute “a person”.

Schedule 1, item 1, page 112 (line 22), omit “**Record-keeping etc.**”, substitute “**Miscellaneous**”.

Schedule 1, item 1, page 113 (after line 24), at the end of Part 7.4, add:

854B Exemptions and modifications by regulations

- (1) The regulations may:
 - (a) exempt a person or class of persons from all or specified provisions of this Part; or
 - (b) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of this section may declare that provisions of this Part are modified so that they apply (with or without further modifications) in relation to persons, bodies or situations to which they would not otherwise apply.
- (3) For the purpose of this section, the *provisions of this Part* include:
 - (a) definitions in this Act, or in the regulations, as they apply to references in this Part; and
 - (b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

Schedule 1, item 1, page 120 (lines 8 to 11), omit paragraph (c), substitute:

- (c) the operator of a clearing and settlement facility, if:
 - (i) there are clearing and settlement arrangements (as defined in section 790A) for some or all transactions effected through the market; and

- (ii) those arrangements are with the operator of the facility; or

Schedule 1, item 1, page 156 (lines 6 to 11), omit the definition of **representative**, substitute:

representative of a person means:

- (a) if the person is a financial services licensee:
 - (i) an authorised representative of the licensee; or
 - (ii) an employee or director of the licensee; or
 - (iii) an employee or director of a related body corporate of the licensee; or
 - (iv) any other person acting on behalf of the licensee; or
- (b) in any other case:
 - (i) an employee or director of the person; or
 - (ii) an employee or director of a related body corporate of the person; or
 - (iii) any other person acting on behalf of the person.

Schedule 1, item 1, page 157 (lines 3 to 12), omit paragraph (b), substitute:

- (b) the service is the issue, variation or disposal of a financial product by the person (the **product provider**) pursuant to an arrangement (an **intermediary authorisation**) between the product provider and a financial services licensee under which:
 - (i) the financial services licensee, or their authorised representatives, may make offers to people to arrange for the issue, variation or disposal of financial products by the product provider; and
 - (ii) the product provider is to issue, vary or dispose of financial products in accordance with such offers, if they are accepted; provided that the offer pursuant to which the issue, variation or disposal is made was covered by the financial services licensee's Australian financial services licence;
- (ba) the service is the entry into of an intermediary authorisation referred to in paragraph (b);

Schedule 1, item 1, page 157 (after line 26), after paragraph (e), insert:

- (ea) the service is the provision of general advice and all of the following apply:
 - (i) the advice is provided in a newspaper or periodical of which the person is the proprietor or publisher;
 - (ii) the newspaper or periodical is generally available to the public otherwise than only on subscription;
 - (iii) the sole or principal purpose of the newspaper or periodical is not the provision of financial product advice;
- (eb) the service is the provision of general advice and all of the following apply:
 - (i) the advice is provided in the course of, or by means of, transmissions that the person makes by means of an information service (see subsection (6)), or that are made by

- means of an information service that the person owns, operates or makes available;
- (ii) the transmissions are generally available to the public;
- (iii) the sole or principal purpose of the transmissions is not the provision of financial product advice;
- (ec) the service is the provision of general advice and all of the following apply:
 - (i) the advice is provided in sound recordings, video recordings, or data recordings;
 - (ii) the person makes the recordings available to the public by supplying copies of them to the public and/or by causing the recordings (if they are sound recordings) to be heard by the public, causing the recordings (if they are video recordings) to be seen and heard by the public, or the contents of the recordings (if they are data recordings) to be displayed or reproduced for the public;
 - (iii) the sole or principal purpose of the recordings is not the provision of financial product advice;

Schedule 1, item 1, page 158 (lines 14 to 16), omit subparagraph (g)(ii), substitute:

- (ii) the service is one in relation to which APRA has regulatory or supervisory responsibilities;

Schedule 1, item 1, page 159 (lines 11 to 16), omit subsection (5), substitute:

- (5) The exemption under paragraph (2)(ea), (eb) or (ec), or an exemption under paragraph (2)(k) or (l), may apply unconditionally or subject to conditions:
 - (a) in the case of the exemption under paragraph (2)(ea), (eb) or (ec), or an exemption under paragraph (2)(k)—specified in regulations made for the purposes of this paragraph; or
 - (b) in the case of an exemption under paragraph (2)(l)—specified by ASIC in writing published in the *Gazette*.
- (6) In this section:

information service means:

- (a) a broadcasting service; or
- (b) an interactive or broadcast videotext or teletext service or a similar service; or
- (c) an online database service or a similar service; or
- (d) any other service identified in regulations made for the purposes of this paragraph.

Schedule 1, item 1, page 161 (after line 3), at the end of section 911B, add:

- (3) If, as mentioned in paragraph (1)(d), the provider holds their own Australian financial services licence covering the provision of the service, then, for the purposes of the other provisions of this Chapter, the service is taken to be provided by the provider (and not by the principal) unless regulations made for the purposes of this subsection provide otherwise.

Schedule 1, item 1, page 162 (lines 21 to 26), omit paragraph (g), substitute:

- (g) if those financial services are provided to persons as retail clients—
have a dispute resolution system complying with subsection (2); and

Schedule 1, item 1, page 162 (after line 30), at the end of section 912A, add:

- (2) To comply with this subsection, a dispute resolution system must consist of:
 - (a) an internal dispute resolution procedure that:
 - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
 - (ii) covers complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the licence; and
 - (b) membership of one or more external dispute resolution schemes that:
 - (i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
 - (ii) covers, or together cover, complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*) against the licensee made by retail clients in connection with the provision of all financial services covered by the licence.
- (3) Regulations made for the purposes of subparagraph (2)(a)(i) or (2)(b)(i) may also deal with the variation or revocation of:
 - (a) standards or requirements made by ASIC; or
 - (b) approvals given by ASIC.

Schedule 1, item 1, page 164 (line 31), omit “this Act”, substitute “the financial services laws”.

Schedule 1, item 1, page 168 (lines 12 and 13), omit “significantly limiting or restricting the APRA body’s ability to carry on”, substitute “preventing the APRA body from being able to carry on”.

Schedule 1, item 1, page 168 (lines 32 and 33), omit “significantly limiting or restricting the ADI’s ability to carry on”, substitute “preventing the ADI from being able to carry on”.

Schedule 1, item 1, page 171 (after line 14), at the end of section 915B, add:

- (4) ASIC may suspend or cancel an Australian financial services licence held by the trustees of a trust, by giving written notice to the trustees, if:
 - (a) the trustees of the trust cease to carry on the financial services business; or
 - (b) a trustee who is a natural person:
 - (i) becomes an insolvent under administration; or
 - (ii) is convicted of serious fraud; or
 - (iii) becomes incapable of managing their affairs because of physical or mental incapacity; or

- (c) a trustee that is a body corporate becomes an externally-administered body corporate; or
- (d) the trustees lodge with ASIC an application for ASIC to do so, which is accompanied by the documents, if any, required by regulations made for the purposes of this paragraph.

Note 1: For fees in respect of lodging applications, see Part 9.10.

Note 2: If there is only one trustee, subsection (1) will apply (if the trustee is a natural person), and subsection (3) will apply (if the trustee is a body corporate).

Schedule 1, item 1, page 173 (lines 14 to 28), omit subsection (1), substitute:

- (1) If a financial services licensee, or a related body corporate, is a body (the **APRA body**) regulated by APRA, other than an ADI (within the meaning of the *Banking Act 1959*),

the following provisions apply:

- (a) ASIC cannot suspend or cancel the licensee's licence if doing so would, in ASIC's opinion, have the result of preventing the APRA body from being able to carry on all or any of its usual activities (being activities in relation to which APRA has regulatory or supervisory responsibilities), unless ASIC has first consulted APRA about the proposed action;
- (b) if ASIC suspends or cancels the licensee's licence and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

Schedule 1, item 1, page 174 (lines 1 and 2), omit "significantly limiting or restricting the ADI's ability to carry on", substitute "preventing the ADI from being able to carry on".

Schedule 1, item 1, page 175 (after line 7), after subsection 916A(3), insert:

- (3A) A person must not give a purported authorisation if that purported authorisation is void to any extent under subsection (3).

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

Schedule 1, item 1, page 175 (after line 15), after subsection 916B(2), insert:

- (2A) A person must not give a purported authorisation if that purported authorisation is contrary to this section.

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

Schedule 1, item 1, page 175 (line 20), at the end of subsection 916B(3), add "in writing given to the body corporate".

Schedule 1, item 1, page 175 (after line 25), after subsection (5), insert:

- (5A) If a licensee gives consent under subsection (3) to a body corporate, the licensee must keep a copy of the consent for 5 years after the day on which it ceases to have effect.

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

Schedule 1, item 1, page 175 (after line 27), at the end of section 916B, add:

- (7) An authorisation of an individual as mentioned in subsection (3) may be revoked at any time by:
 - (a) the licensee; or
 - (b) the body corporate that gave the individual the authorisation; giving written notice to the individual.
- (8) If a person revokes the authorisation of an individual under subsection (7), that person must inform, in writing, the other person who could have revoked the authorisation.
- (9) To avoid doubt, an authorisation given as mentioned in subsection (3) is taken, for the purposes of sections 916C to 916F, to be given by the body corporate, not the licensee.

Schedule 1, item 1, page 176 (lines 8 to 10), omit subsection 916C(3), substitute:

- (3) A person must not give a purported authorisation if that purported authorisation is in breach of this requirement.

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

Schedule 1, item 1, page 176 (after line 20), after subsection 916D(2), insert:

- (2A) A person must not give a purported authorisation if that purported authorisation is given in breach of this requirement.

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

- (2B) The requirement in subsection (1) does not prohibit a financial services licensee from being an authorised representative in circumstances covered by section 916E.

Note: In a prosecution for an offence based on subsection (2A), a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Schedule 1, item 1, page 177 (line 5), after “ASIC”, insert “etc.”.

Schedule 1, item 1, page 177 (after line 11), after subsection 916F(1), insert:

- (1A) A person who authorises an individual to provide a financial service on behalf of a financial services licensee as mentioned in section 916B must give the licensee written notice (in accordance with subsection (2)), within 10 business days of the individual being authorised to provide the financial service, if the licensee’s consent to the authorisation was given in respect of a specified class of individuals.

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

Schedule 1, item 1, page 177 (lines 19 to 23), omit subsection (3), substitute:

- (3) A person must notify ASIC, by lodging a written notice, within 10 business days if:
 - (a) the person authorised a representative under section 916A or 916B and there is a change in any details relating to the representative that are required to be included under subsection (2); or
 - (b) the person revokes the authorisation of a representative under section 916A or 916B.

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

Schedule 1, item 1, page 181 (lines 5 to 15), omit subsection (3), substitute:

Financial service covered by multiple authorities: conduct within authority for one or more of them

- (3) If:
 - (a) the representative is the representative of more than one of the licensees in respect of a particular class of financial service; and
 - (b) the conduct relates to that class of service; and
 - (c) the conduct is within authority in relation to:
 - (i) only one of those licensees (the **authorising licensee**); or
 - (ii) two or more of those licensees (the **authorising licensees**);

then:

- (d) if subparagraph (c)(i) applies—the authorising licensee is responsible for the conduct, as between that licensee and the client; or
- (e) if subparagraph (c)(ii) applies—the authorising licensees are jointly and severally responsible for the conduct, as between themselves and the client.

Schedule 1, item 1, page 186 (lines 22 to 27), omit paragraph (e), substitute:

- (e) if members of the body provide that kind of financial product advice to persons as retail clients—ensure that each of its members has a dispute resolution system complying with subsection (2); and

Schedule 1, item 1, page 187 (after line 2), at the end of section 919A, add:

- (2) To comply with this subsection, a dispute resolution system must consist of:
 - (a) an internal dispute resolution procedure that:
 - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
 - (ii) covers complaints made by retail clients in connection with the provision by the member of the kind of financial product advice covered by the declaration; and
 - (b) membership of one or more external dispute resolution schemes that:
 - (i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and

- (ii) covers, or together cover, complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*) made by retail clients in connection with the provision by the member of the kind of financial product advice covered by the declaration.
- (3) Regulations made for the purposes of subparagraph (2)(a)(i) or (2)(b)(i) may also deal with the variation or revocation of:
 - (a) standards or requirements made by ASIC; or
 - (b) approvals given by ASIC.

Schedule 1, item 1, page 195 (line 10), omit “(ii)”, substitute “(iii)”.

Schedule 1, item 1, page 204 (line 14), omit “and”.

Schedule 1, item 1, page 209 (after line 4), after subsection (4), insert:

- (4A) The regulations may define what constitutes a public forum for the purposes of subsection (4).

Schedule 1, item 1, page 211 (lines 5 to 8), omit paragraph 941F(b), substitute:

- (b) the following conditions are satisfied:
 - (i) there is a change in circumstances before the service is provided, and the Financial Services Guide does not contain the information it would be required to contain if it were given to a person immediately after that change;
 - (ii) the fact that the Financial Services Guide does not contain the up to date information is materially adverse from the point of view of a reasonable person deciding, as a retail client, whether to proceed to be provided with the financial service;

Schedule 1, item 1, page 212 (lines 24 to 33), omit paragraph (g), substitute:

- (g) if the providing entity provides execution-related telephone advice (see section 946B)—a statement in relation to which the following requirements are satisfied:
 - (i) the statement must indicate that the client may request a record of execution-related telephone advice that is provided to them, if they have not already been provided with a record of that advice;
 - (ii) the statement must set out particulars of how the client may request such a record;
 - (iii) any limitations in those particulars on the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and

Schedule 1, item 1, page 212 (lines 34 to 38), omit paragraph (h), substitute:

- (h) information about the dispute resolution system that covers complaints by persons to whom the providing entity provides financial services, and about how that system may be accessed; and

Schedule 1, item 1, page 214 (after line 5), at the end of section 942B, add:

(8) If:

- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of execution-related telephone advice; and
- (b) the client is provided with execution-related telephone advice to which that statement applies; and
- (c) the client has not already been provided with a record of that advice; the providing entity must comply with a request made in accordance with that statement for a record of that advice.

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

Schedule 1, item 1, page 215 (lines 18 to 28), omit paragraph (h), substitute:

- (h) if the providing entity, when acting as representative of the authorising licensee or any of the authorising licensees, provides execution-related telephone advice (see section 946B)—a statement in relation to which the following requirements are satisfied:
 - (i) the statement must indicate that the client may request a record of execution-related telephone advice that is provided to them, if they have not already been provided with a record of that advice;
 - (ii) the statement must set out particulars of how the client may request such a record;
 - (iii) any limitations in those particulars on the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and

Schedule 1, item 1, page 215 (lines 29 to 34), omit paragraph (i), substitute:

- (i) information about the dispute resolution system that covers complaints by persons to whom the providing entity provides financial services when acting as representative of the authorising licensee or any of the authorising licensees, and about how that system may be accessed; and

Schedule 1, item 1, page 217 (after line 7), at the end of section 942C, add:

(8) If:

- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of execution-related telephone advice; and

- (b) the client is provided with execution-related telephone advice to which that statement applies; and
- (c) the client has not already been provided with a record of that advice; the providing entity must comply with a request made in accordance with that statement for a record of that advice.

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

Schedule 1, item 1, page 222 (lines 5 to 15), omit subsection (1), substitute:

- (1) The providing entity must only provide the advice to the client if:
 - (a) the providing entity:
 - (i) determines the relevant personal circumstances in relation to giving the advice; and
 - (ii) makes reasonable inquiries in relation to those personal circumstances; and
 - (b) having regard to information obtained from the client in relation to those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
 - (c) the advice is appropriate to the client, having regard to that consideration and investigation.

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

Schedule 1, item 1, page 223 (line 4), omit “the client”, substitute “the client’s relevant personal circumstances”.

Schedule 1, item 1, page 223 (lines 12 and 13), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

Schedule 1, item 1, page 223 (line 16), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

Schedule 1, item 1, page 224 (lines 17 to 32), omit subsection (2), substitute:

- (2) The providing entity does not have to give the client a Statement of Advice if, before the execution-related telephone advice is provided, the client agrees to a Statement of Advice not being given in respect of the advice, or advice of that kind.

Schedule 1, item 1, page 225 (after line 3), after subsection (3), insert:

- (3A) The providing entity must keep a record of the advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

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

Note 2: For the client’s right to a record of the advice, see subsections 942B(8) and 942C(8).

Schedule 1, item 1, page 225, lines 4 to 11, omit subsection (4).

Schedule 1, item 1, page 225 (line 16), omit “(c)”, substitute “(b)”.

Schedule 1, item 1, page 232 (line 6), omit “**financial situation and needs**”, substitute “**financial situation or needs**”.

Schedule 1, item 1, page 232 (line 19), omit “financial situation and needs”, substitute “financial situation or needs”.

Schedule 1, item 1, page 235 (lines 5 to 16), omit section 950B, substitute:

950B Requirement to have reasonable basis for the advice

The providing entity must only provide the advice to the client if:

- (a) the providing entity:
 - (i) determines the relevant personal circumstances in relation to giving the advice; and
 - (ii) makes reasonable inquiries in relation to those personal circumstances; and
- (b) having regard to information obtained from the client in relation to those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
- (c) the advice is appropriate to the client, having regard to that consideration and investigation.

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

Schedule 1, item 1, page 235 (line 20), omit “the client”, substitute “the client’s relevant personal circumstances”.

Schedule 1, item 1, page 235 (lines 28 and 29), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

Schedule 1, item 1, page 235 (line 32), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

Schedule 1, item 1, page 237 (after line 7), at the end of section 950D, add:

- (4) The providing entity must also, at or before the giving of the advice, give the client any other information required by regulations made for the purposes of this subsection.

Schedule 1, item 1, page 257 (after line 6), after subsection (3), insert:

- (3A) For the purposes of paragraph (3)(c):
 - (a) section 917C is taken to apply, despite section 917F; and
 - (b) section 917D is taken not to apply.

Schedule 1, item 1, page 259 (line 13), after “client”, insert “;”.

Schedule 1, item 1, page 259 (line 14), omit subparagraph (iii), substitute:

- (iii) to the licensee in the licensee’s capacity as a person acting on behalf of the client.

Schedule 1, item 1, page 263 (after line 8), at the end of Subdivision A, add:

981H Money to which Subdivision applies taken to be held in trust

- (1) Subject to subsections (2) and (3), money to which this Subdivision applies that is paid to the licensee:
 - (a) by the client; or

- (b) by a person acting on behalf of the client; or
 - (c) in the licensee's capacity as a person acting on behalf of the client;
- is taken to be held in trust by the licensee for the benefit of the client.
- (2) Subsection (1) does not apply to money that the licensee and the client agree in writing is not held in trust by the licensee for the benefit of the client.
 - (3) The regulations may:
 - (a) provide that subsection (1) does not apply in relation to money in specified circumstances; and
 - (b) provide for matters relating to the taking of money to be held in trust (including, for example, terms on which the money is taken to be held in trust and circumstances in which it is no longer taken to be held in trust).

Schedule 1, item 1, page 268 (line 14), omit "money", substitute "property".

Schedule 1, item 1, page 292 (lines 3 to 6), omit section 1011A, substitute:

1011A Jurisdictional scope of Division

- (1) Subject to subsection (2), sections 1012A, 1012B and 1012C only apply in relation to offers and recommendations referred to in those sections that are received in this jurisdiction.
- (2) Section 1012B also applies in relation to issues referred to in subparagraph 1012B(3)(a)(iii) that are made in this jurisdiction.
- (3) The regulations may make provision dealing with the jurisdictional scope of some or all of the other provisions of this Division. The other provisions of this Division have effect subject to any such regulations.

Schedule 1, item 1, page 301 (line 22) to page 302 (line 2), omit subsection (4).

Schedule 1, item 1, page 303 (lines 8 to 10), omit paragraphs (8)(a) and (b), substitute:

- (a) the financial product is a financial product described in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes); and
 - (b) the holder of the office (by whatever name it is known), in relation to the managed investment scheme, that corresponds most closely to the office of responsible entity of a registered scheme is an exempt body;
- and

Schedule 1, item 1, page 303 (lines 14 and 15), omit "responsible entity of the scheme", substitute "office holder referred to in paragraph (b)".

Schedule 1, item 1, page 303 (line 17), omit "responsible entity of the scheme", substitute "office holder referred to in paragraph (b)".

Schedule 1, item 1, page 303 (after line 29), after subsection (9), insert:

Recommendation, issue or sale situation—client is associated with registered scheme

- (9A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:
- (a) the financial product is a managed investment product; and
 - (b) the client is associated (within the meaning of subsection (9B)) with the scheme's responsible entity.
- (9B) For the purposes of subsection (9A), the client is associated with the scheme's responsible entity if the client is:
- (a) an executive officer of the responsible entity or of a related body corporate; or
 - (b) a spouse, parent, child, brother or sister of a person who is an executive officer of the responsible entity or a related body corporate; or
 - (c) a body corporate controlled by a person referred to in paragraph (a) or (b).

Schedule 1, item 1, page 305 (line 29), omit "992A", substitute "992A".

Schedule 1, item 1, page 311 (after line 8), after section 1012I, insert:

1012IA Treatment of arrangements under which a person can instruct another person to acquire a financial product

Definitions

- (1) In this section:

acquirer, in relation to a custodial arrangement, has the meaning given by the definition of *custodial arrangement*.

client, in relation to a custodial arrangement, has the meaning given by the definition of *custodial arrangement*.

custodial arrangement means an arrangement between a person (the **provider**) and another person (the **client**) (whether or not there are also other parties to the arrangement) under which:

- (a) the client is, or is entitled, to give an instruction that a particular financial product, or a financial product of a particular kind, is to be acquired; and
- (b) if the client gives such an instruction, a person (the **acquirer**), being the provider or a person with whom the provider has or will have an arrangement, must (subject to any discretion they have to refuse) acquire the financial product, or a financial product of that kind; and
- (c) if the acquirer acquires the financial product, or a financial product of that kind, pursuant to an instruction given by the client, either:
 - (i) the product is to be held on trust for the client or another person nominated by the client; or
 - (ii) the client, or another person nominated by the client, is to have rights or benefits in relation to the product or a beneficial interest in the product, or in relation to, or calculated by reference to, dividends or other benefits derived from the product.

instruction includes a direction or request.

provider, in relation to a custodial arrangement, has the meaning given by the definition of **custodial arrangement**.

regulated acquisition means an acquisition of a financial product pursuant to an instruction by the client under a custodial arrangement, being an acquisition:

- (a) by way of issue by the issuer (the **regulated person**); or
- (b) pursuant to a sale by a person (the **regulated person**) in circumstances described in subsection 1012C(5), (6) or (8).

regulated person, in relation to a regulated acquisition of a financial product, has the meaning given by paragraph (a) or (b) (as the case requires) of the definition of **regulated acquisition**.

Obligation on provider to give client a PDS

- (2) Before a regulated acquisition of a financial product occurs pursuant to an instruction given by the client under a custodial arrangement, the provider must give the client a Product Disclosure Statement for the product if a Product Disclosure Statement for the product would, if there were an equivalent direct acquisition by the client, be required by subsection 1012B(3) or 1012C(3) (see subsection (3) of this section) to be given to the client by the regulated person before that acquisition occurred. For this purpose, an **equivalent direct acquisition** is an acquisition that would occur if:
 - (a) the product were instead being offered for issue or sale direct to the client by the regulated person for the same price (or for the appropriate proportion of that price, if the transaction for the regulated acquisition also covers other products); and
 - (b) the circumstances of that issue or sale to the client were otherwise the same as those in which the regulated acquisition will occur.

Determining whether a PDS would have to be given for an equivalent direct acquisition

- (3) The following provisions apply for the purpose of determining whether the regulated person would be required by subsection 1012B(3) or 1012C(3) to give the client a Product Disclosure Statement for the financial product:
 - (a) the effect of the provisions referred to in subsection 1012B(5) or 1012C(10), as the case requires, as they have effect subject to the following paragraphs, must be taken into account;
 - (b) subsections 1012D(1) and (2) apply as if references in those subsections to the regulated person's belief in relation to a matter were instead references to the provider's belief in relation to that matter;
 - (c) subsections 1012D(2) and (3) apply as if references to the client already holding a financial product of the same kind also included a reference to a person already holding a financial product of the same

kind as a result of an instruction given by the client under a custodial arrangement;

- (d) sections 1012E and 1012F are to be disregarded;
- (e) section 1012G has effect in accordance with subsection (4).

Modification of section 1012G

- (4) The following provisions apply in relation to section 1012G:
 - (a) in determining for the purposes of subsection (2) whether the regulated person would be required by subsection 1012B(3) or 1012C(3) to give the client a Product Disclosure Statement for the financial product, subsection 1012G(2) applies as if the reference to the client instructing the regulated person (in an issue situation) that they require the financial product to be provided or issued immediately, or by a specified time, were instead a reference to the client instructing the provider that they require the financial product to be acquired immediately, or by a specified time;
 - (b) if, because of subsection 1012G(2) as it applies because of paragraph (a) of this subsection, the provider does not have to give the client a Product Disclosure Statement for a financial product before a regulated acquisition of the financial product occurs pursuant to an instruction given by the client under a custodial arrangement:
 - (i) subsection 1012G(2) applies in relation to the provider, the client and the regulated acquisition as if the obligation it imposes to comply with subsection 1012G(3) were imposed on the provider; and
 - (ii) subsection 1012G(3) applies in relation to the provider, the client and the regulated acquisition as if the reference to the regulated person were instead a reference to the provider, as if subparagraph 1012G(3)(b)(i) were omitted and as if the reference in subparagraph 1012G(3)(b)(ii) to the day on which the financial product was issued or sold to the client were instead a reference to the day on which the regulated acquisition occurs.

Modification of section 1013A

- (5) Section 1013A applies in relation to a regulated acquisition as if:
 - (a) paragraph 1013A(1)(b) also covered a Product Disclosure Statement that is required to be given by subsection (2) of this section in relation to an acquisition covered by paragraph (a) of the definition of **regulated acquisition** in subsection (1) of this section; and
 - (b) paragraph 1013A(2)(b) also covered a Product Disclosure Statement that is required to be given by subsection (2) of this section in relation to an acquisition covered by paragraph (b) of the definition of **regulated acquisition** in subsection (1) of this section.

Provider is not an agent for the purposes of section 1015C

- (6) For the purposes of the application of section 1015C in relation to a regulated acquisition, the provider in relation to the relevant custodial arrangement is taken not to be an agent of the client.

Provider is covered by sections 1015E, 1021F and 1021I

- (7) Sections 1015E, 1021F and 1021I apply in relation to a regulated acquisition as if the references to a regulated person were instead references to the provider in relation to the relevant custodial arrangement.

Regulations may provide for other modifications

- (8) The regulations may provide for other modifications of provisions of this Part that are to have effect in relation to regulated acquisitions.

Schedule 1, item 1, page 316 (lines 1 to 4), omit paragraph (g), substitute:

- (g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed; and

Schedule 1, item 1, page 316 (line 15), at the end of subsection (1), add:

- ; and (k) any other statements or information required by the regulations.

Schedule 1, item 1, page 330 (line 3), at the end of subsection (2), add:

- ; or (f) it is a restricted issue that occurs in a situation covered by regulations made for the purposes of this paragraph.

Schedule 1, item 1, page 339 (line 22), after “managed investment product”, insert “that is an ED security”.

Schedule 1, item 1, page 339 (line 24), after “managed investment products”, insert “that are ED securities”.

Schedule 1, item 1, page 348 (after line 31), after subsection (2), insert:

- (2A) Subject to subsections (2B) and (2C), the money is taken to be held in trust by the product provider for the benefit of the person who paid the money.
- (2B) Subsection (2A) does not apply to money that the product provider and the person who paid the money agree in writing is not held in trust by the product provider for the benefit of the person.
- (2C) The regulations may:
- (a) provide that subsection (2A) does not apply in relation to money in specified circumstances; and
 - (b) provide for matters relating to the taking of money to be held in trust (including, for example, terms on which the money is taken to be held in trust and circumstances in which it is no longer taken to be held in trust).

Schedule 1, item 1, page 354 (lines 5 to 9), omit subsection (7), substitute:

Content of confirmation

- (7) The confirmation of the transaction must give the holder the information that the responsible person reasonably believes the holder needs (having

regard to the information the holder has received before the transaction) to understand the nature of the transaction.

Schedule 1, item 1, page 355 (lines 7 to 22), omit section 1017G, substitute:

1017G Certain product issuers and regulated persons must meet appropriate dispute resolution requirements

- (1) If:
- (a) particular financial products are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and
 - (b) the issue or sale of those products is not covered by an Australian financial services licence;

both the issuer, and any regulated person obliged under subsection 1012C(5), (6) or (8) to give a retail client a Product Disclosure Statement for one or more of those financial products, must each have a dispute resolution system complying with subsection (2).

Note 1: If the issue of particular financial products is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the products is imposed by paragraph 912A(1)(g).

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

- (2) To comply with this subsection, a dispute resolution system must consist of:
- (a) an internal dispute resolution procedure that:
 - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
 - (ii) covers complaints, against the person required to have the system, made by retail clients in relation to financial services provided in relation to any of those products; and
 - (b) membership of one or more external dispute resolution schemes that:
 - (i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
 - (ii) covers, or together cover, complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*), against the person required to have the system, made by retail clients in relation to financial services provided in relation to any of those products.
- (3) Regulations made for the purposes of subparagraph (2)(a)(i) or (2)(b)(i) may also deal with the variation or revocation of:
- (a) standards or requirements made by ASIC; or
 - (b) approvals given by ASIC.

Schedule 1, item 1, page 361 (after line 21), after subsection (5), insert:

- (5A) The regulations may specify other circumstances in which the right to return the product (and have money paid to acquire it repaid) cannot be exercised.

Schedule 1, item 1, page 361 (line 35), after “is to be”, insert “increased or”.

Schedule 1, item 1, page 362 (line 2), omit “**of managed investment products**”, substitute “**relating to certain managed investment schemes**”.

Schedule 1, item 1, page 362 (line 5), omit “managed investment product”, substitute “financial product described in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes)”.

Schedule 1, item 1, page 367 (line 7), omit “taken”, substitute “if the acquisition occurs in circumstances in which the party is required by a provision of this Part to have been given a Product Disclosure Statement for the product—taken”.

Schedule 1, item 1, page 387 (after line 20), after subsection (4), insert:

- (4A) For the purposes of paragraph (4)(b):
 (a) section 917C is taken to apply, despite section 917F; and
 (b) section 917D is taken not to apply.

Schedule 1, item 1, page 392 (line 25), after paragraph 1041E(b), insert:

- ; and (c) when the person makes the statement, or disseminates the information:
 (i) the person does not care whether the statement or information is true or false; or
 (ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

Schedule 1, item 1, page 392 (line 26), omit “this section”, substitute “this subsection”.

Schedule 1, item 1, page 392 (line 29), omit “this section”, substitute “this subsection”.

Schedule 1, item 1, page 392 (after line 31), at the end of section 1041E, add:

- (2) For the purposes of the application of the *Criminal Code* in relation to an offence based on subsection (1), paragraph (1)(a) is a physical element, the fault element for which is as specified in paragraph (1)(c).
 (3) For the purposes of an offence based on subsection (1), strict liability applies to subparagraphs (1)(b)(i), (ii) and (iii).

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

Schedule 1, item 1, page 444 (after line 31), at the end of section 1074C, add:

- (3) Nothing in subsection (1) or (2) confers a discretion to deal with a matter in the operating rules of a prescribed CS facility if there is an obligation under section 822A for that matter to be dealt with in those rules.

Schedule 1, item 1, page 460 (line 20), omit “**relating to financial products**”.

Schedule 1, item 1, page 461 (after line 11), before subsection (1), insert:

- (1A) A person must not engage in conduct that results in the falsification of:

- (a) a book required to be kept by a provision of this Chapter; or
- (b) a register or any accounting or other record referred to in section 1101C.

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

Schedule 1, item 1, page 461 (line 16), omit “1101D”, substitute “1101C”.

Schedule 1, item 1, page 461 (line 32), after “subsection”, insert “(1A) or”.

Schedule 1, item 1, page 462 (after line 7), after section 1101G, insert:

1101GA How Part 9.3 applies to books required to be kept by this Chapter etc.

- (1) In this section:

Chapter 7 book means:

- (a) a book (by whatever name it is known) that a provision of this Chapter requires to be kept; or
- (b) a document lodged under, or for the purposes of, a provision of this Chapter; or
- (c) a book relating to the business carried on by a financial services licensee or an authorised representative of a financial services licensee; or
- (d) a register or accounting record referred to in section 1101C.

- (2) Part 9.3 does not apply in relation to a Chapter 7 book except as provided in the following paragraphs:

- (a) section 1303 applies to a Chapter 7 book;
- (b) section 1305, and subsections 1306(5) and (6), apply to a Chapter 7 book as if references in section 1305 to a body corporate were instead references to a person;
- (c) regulations made for the purposes of this paragraph may provide that other provisions of Part 9.3 apply in relation to a Chapter 7 book, or a class of Chapter 7 books, with such modifications (if any) as are specified in the regulations.

Schedule 1, item 20, page 471 (line 6), omit “registered scheme”, substitute “managed investment scheme”.

Schedule 1, item 20, page 471 (line 33) to page 472 (line 4), omit paragraph (l).

Schedule 1, item 20, page 473 (lines 24 to 32), omit paragraph (l).

Schedule 1, item 20, page 475 (lines 1 to 3), omit subsection (3).

Schedule 1, item 20, page 476 (line 23) to page 477 (line 10), omit subsections (12) and (13), substitute:

Meaning of provide a custodial or depository service

- (12) For the purposes of this section, a person (the **provider**) provides a **custodial or depository service** to another person (the **client**) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement, (whether or not there are also other parties to any such arrangement), a financial

product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.

Schedule 1, item 20, page 477 (line 14), after “registered scheme”, insert “, or the holding of the assets of a registered scheme”.

Schedule 1, page 506 (after line 20), after item 252, insert:

252A Section 9 (definition of *on-market buy-back*)

Repeal the definition, substitute:

on-market buy-back means a buy-back by a listed corporation on a prescribed financial market in the ordinary course of trading on that market.

Schedule 1, item 261, page 507 (line 30), after “APRA”, insert “, other than a trustee of a fund or trust referred to in any of subparagraphs (d)(i) to (iv)”.

Schedule 1, page 513 (after line 15), after item 302, insert:

302A Section 9 (definition of *trading day*)

Repeal the definition, substitute:

trading day of a financial market means a day on which the market is open for trading in financial products.

Schedule 1, item 323, page 516 (line 1), omit “an option approved by a securities exchange as”.

Schedule 1, page 520 (after line 4), after item 357, insert:

357A Section 350

Repeal the section, substitute:

350 Forms for documents to be lodged with ASIC

- (1) A document that this Act requires to be lodged with ASIC in a prescribed form must:
 - (a) if a form for the document is prescribed in the regulations:
 - (i) be in the prescribed form; and
 - (ii) include the information, statements, explanations or other matters required by the form; and
 - (iii) be accompanied by any other material required by the form; or
 - (b) if a form for the document is not prescribed in the regulations but ASIC has approved a form for the document:
 - (i) be in the approved form; and
 - (ii) include the information, statements, explanations or other matters required by the form; and
 - (iii) be accompanied by any other material required by the form.
- (2) A reference in this Act to a document that has been lodged (being a document to which subsection (1) applies), includes, unless a contrary

intention appears, a reference to any other material lodged with the document as required by the relevant form.

(3) If:

- (a) this Act requires a document to be lodged with ASIC in a prescribed form; and
- (b) a provision of this Act either specifies, or provides for regulations to specify, information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the prescribed form (and so the prescribed form may also require information etc. to be included in the form or material to accompany the form).

Schedule 1, page 523 (before line 1), after item 377, insert:

377A Subsection 633(1) (table item 14)

Repeal the item, substitute:

- | | | |
|----|--|--|
| 14 | The target must send a copy of the target's statement (and any accompanying report) to the operator of each prescribed financial market on which the target's securities are quoted. | To be done on the day the target's statement is sent to the bidder
<i>See also subsection (7)</i> |
|----|--|--|

Schedule 1, page 524 (before line 4), after item 382, insert:

382A Paragraph 636(1)(g)

After "if any securities", insert "(other than managed investment products)".

382B After paragraph 636(1)(g)

Insert:

- (ga) if any managed investment products are offered as consideration under the bid and the bidder is:
 - (i) the responsible entity of the managed investment scheme; or
 - (ii) a person who controls the responsible entity of the managed investment scheme;
 all material that would be required by section 1013C to be included in a Product Disclosure Statement given to a person in an issue situation (within the meaning of section 1012B) in relation to those managed investment products;

Schedule 1, page 526 (after line 29), after item 398, insert:

398A Paragraph 662B(1)(d)

Omit "securities exchange", substitute "market operator".

Schedule 1, page 533 (after line 3), after item 426, insert:

426A Paragraph 724(1)(b)

Omit "stock market of a securities exchange", substitute "financial market".

Schedule 1, item 457, page 542 (after table item 265A), insert:

265AA	Subsection 916A(3A)	100 penalty units or imprisonment for 2 years, or both.
265AB	Subsection 916B(2A)	100 penalty units or imprisonment for 2 years, or both.
265AC	Subsection 916B(5A)	50 penalty units or imprisonment for 1 year, or both.
265AD	Subsection 916C(3)	100 penalty units or imprisonment for 2 years, or both.
265AE	Subsection 916D(2A)	100 penalty units or imprisonment for 2 years, or both.

Schedule 1, item 457, page 542 (after table item 265B), insert:

265BA	Subsection 916F(1A)	25 penalty units or imprisonment for 6 months, or both.
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Schedule 1, item 457, page 543 (after table item 269A), insert:

269AA	Subsection 942B(8)	50 penalty units or imprisonment for 1 year, or both.
269AB	Subsection 942C(8)	50 penalty units or imprisonment for 1 year, or both.

Schedule 1, item 457, page 543 (after table item 270C), insert:

270CA	Subsection 946B(3A)	50 penalty units.
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Schedule 1, item 457, page 543 (table item 271A), omit the table item.

Schedule 1, item 457, page 548 (table item 299A), omit “Section 1017G”, substitute “Subsection 1017G(1)”.

Schedule 1, item 457, page 549 (after table item 307C), insert:

307CA	Subsection 1021M(1)	50 penalty units.
307CB	Subsection 1021M(3)	100 penalty units or imprisonment for 2 years, or both.

Schedule 1, item 457, page 549 (table item 308B), omit the table item.

Schedule 1, item 457, page 550 (table item 310C), omit “Section 1041E”, substitute “Subsection 1041E(1)”.

Schedule 1, page 550 (after table item 317B), insert:

317BA	Subsection 1101F(1A)	50 penalty units or imprisonment for 12 months, or both.
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Schedule 3, page 565 (after line 22), after item 10, insert:

10A Section 9 (definition of *old Corporations Law*)

Omit “Part 11.1”, substitute “Part 10.1”.

Senator Ian Campbell moved—That the committee report progress and ask leave to sit again.

Question put and passed.

The Acting Deputy President (Senator Calvert) resumed the chair and the Temporary Chair of Committees (Senator Sherry) reported that the committee had considered the bills, made progress and asked leave to sit again.

Ordered, on the motion of Senator Ian Campbell, that the committee have leave to sit again on the next day of sitting.

**29 ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 2) 2000 [2001]
AUSTRALIAN HERITAGE COUNCIL BILL 2000 [2001]
AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS)
BILL 2000 [2001]**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell)—That these bills be now read a second time.

Debate resumed.

Senator Lees moved the following amendment:

At the end of the motion, add “but the Senate calls on the Government:

- (a) to engage in discussions with Indigenous peoples about the relationship between:
 - (i) the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*,
 - (ii) the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*,
 - (iii) the *Native Title Act 1993*, and
 - (iv) the proposed insertion of a new heritage protection regime into the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act); and
- (b) to include in these discussions, consideration of Indigenous heritage as another matter of national environmental significance under the EPBC Act”.

Debate ensued.

Question—That the amendment be agreed to—put and passed.

Main question, as amended, put.

The Senate divided—

AYES, 39

Senators—

Abetz	Coonan (Teller)	Hill	Newman
Allison	Crane	Kemp	Patterson
Bartlett	Eggleston	Knowles	Stott Despoja
Boswell	Ellison	Lees	Tambling
Bourne	Ferguson	Lightfoot	Tchen
Brandis	Ferris	Macdonald, Ian	Tierney
Calvert	Gibson	Macdonald, Sandy	Troeth
Campbell, Ian	Greig	Mason	Vanstone
Chapman	Heffernan	McGauran	Watson
Cherry	Herron	Murray	

NOES, 28

Senators—

Bolkus	Cook	Harradine	McLucas
Brown	Cooney	Hogg	Murphy
Buckland	Crossin	Hutchins	O'Brien
Campbell, George	Denman	Ludwig (Teller)	Ray
Carr	Evans	Lundy	Schacht
Collins	Forshaw	Mackay	Sherry
Conroy	Gibbs	McKiernan	West

Question agreed to.

Bills read a second time.

After 6.50 pm—

30 GOVERNMENT DOCUMENTS—CONSIDERATION

The following government document tabled earlier today (*see entry no. 2*) was considered:

Ministerial Council on Education, Employment, Training and Youth Affairs—National report on schooling in Australia 1999. Motion to take note of document moved by Senator Carr, debated and agreed to.

31 ADJOURNMENT

The Acting Deputy President (Senator McKiernan) proposed the question—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 7.41 pm till Thursday, 23 August 2001 at 9.30 am.

32 ATTENDANCE

Present, all senators except Senators Crowley*, Payne and Ridgeway (* on leave).

HARRY EVANS
Clerk of the Senate