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Inserts for
**Financial Regulator Reform (No. 1) Bill
2019: (Penalties)**

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

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Schedule 1—False or misleading documents

Corporations Act 2001

1 Subsection 922M(4) (note)

Repeal the note, substitute:

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

2 Subsection 922N(1) (note)

Repeal the note, substitute:

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

3 Section 1308

Repeal the section, substitute:

1308B False or misleading statements about share capital

(1) A corporation must not advertise or publish:

- (a) a statement of the amount of its capital that is misleading; or
- (b) a statement in which the total of all amounts paid and unpaid on shares in the company is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated.

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

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

1308 False or misleading documents

Fault-based offence

(1) A person commits an offence if:

- (a) a document:
 - (i) is required under or for the purposes of this Act; or
 - (ii) is lodged with or submitted to ASIC; and
- (b) the person:

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- 1 (i) makes, or authorises the making of, a statement in the
2 document; or
3 (ii) omits, or authorises the omission of, a matter or thing
4 from the document; and
5 (c) the person knows that the document is materially false or
6 misleading because of the statement or omission.

7 Note: For when a document is *materially false or misleading*, see
8 subsection (6).

- 9 (2) A person is not liable to be proceeded against for an offence in
10 consequence of a regulation made under section 1364 as well as for
11 an offence against subsection (1) of this section.

12 *Strict liability offence—failure to take reasonable steps*

- 13 (3) A person commits an offence of strict liability if:
14 (a) a document:
15 (i) is required under or for the purposes of this Act; or
16 (ii) is lodged with or submitted to ASIC; and
17 (b) the person:
18 (i) makes, or authorises the making of, a statement in the
19 document; or
20 (ii) omits, or authorises the omission of, a matter or thing
21 from the document; and
22 (c) the document is materially false or misleading because of the
23 statement or omission; and
24 (d) the person did not take all reasonable steps to ensure that the
25 document was not materially false or misleading because of
26 the statement or omission.

27 Note 1: For when a document is *materially false or misleading*, see
28 subsection (6).

29 Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

30 *Civil penalty*

- 31 (4) A person contravenes this subsection if:
32 (a) a document:
33 (i) is required under or for the purposes of this Act; or
34 (ii) is lodged with or submitted to ASIC; and
35 (b) the person:

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- 1 (i) makes, or authorises the making of, a statement in the
2 document; or
3 (ii) omits, or authorises the omission of, a matter or thing
4 from the document; and
5 (c) the person knows that, or is reckless as to whether, the
6 document is materially false or misleading because of the
7 statement or omission.

8 Note 1: For when a document is *materially false or misleading*, see
9 subsection (6).

10 Note 2: This subsection is a civil penalty provision (see section 1317E).

11 *Civil penalty—failure to take reasonable steps*

- 12 (5) A person contravenes this subsection if:
13 (a) a document:
14 (i) is required under or for the purposes of this Act; or
15 (ii) is lodged with or submitted to ASIC; and
16 (b) the person:
17 (i) makes, or authorises the making of, a statement in a
18 document; or
19 (ii) omits, or authorises the omission of, a matter or thing
20 from a document; and
21 (c) the document is materially false or misleading because of the
22 statement or omission; and
23 (d) the person did not take all reasonable steps to ensure that the
24 document was not materially false or misleading because of
25 the statement or omission.

26 Note 1: For when a document is *materially false or misleading*, see
27 subsection (6).

28 Note 2: This subsection is a civil penalty provision (see section 1317E).

29 *When a document is materially false or misleading*

- 30 (6) For the purposes of this section, a document is *materially false or*
31 *misleading* if:
32 (a) the document includes a statement that:
33 (i) is false in a material particular or materially misleading;
34 or
35 (ii) is based on information that is false in a material
36 particular or materially misleading, or has omitted from

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1 it a matter or thing the omission of which renders the
2 document materially misleading; or

- 3 (b) a matter or thing is omitted from the document and, without
4 the matter or thing, the document is false in a material
5 particular or materially misleading.

6 *Other interpretive provisions*

- 7 (7) For the purposes of this section, a person who votes in favour of a
8 resolution approving, or who otherwise approves, a document is
9 taken to have authorised:

- 10 (a) the making of any statement in the document; and
11 (b) the omission of any matter or thing from the document.

- 12 (8) For the purposes of this section, a statement, report or other
13 document that:

- 14 (a) relates to affairs of a company or of a subsidiary of a
15 company; and
16 (b) is attached to or included with a report of the directors
17 provided under section 314 to members of the company or
18 laid before the company at an annual general meeting of the
19 company;

20 is taken to be part of the report referred to in paragraph (b) of this
21 subsection, even if it is not otherwise required by this Act to be laid
22 before the company in general meeting.

- 23 (9) For the purposes of this section:

- 24 (a) a notice under subsection 708AA(2), 708A(5), 1012DAA(2)
25 or 1012DA(5) is taken to be a notice required for the
26 purposes of this Act; and
27 (b) a notice under subsection 708AA(2), 708A(5), 1012DAA(2)
28 or 1012DA(5) is taken to be misleading in a material respect
29 if it fails to comply with paragraph 708AA(7)(d), 708A(6)(e),
30 1012DAA(7)(e) or 1012DA(6)(f).

31 **4 Subsection 1317E(3) (after table item dealing with**
32 **subsections 1211B(1) and (2))**

33 Insert:

34 subsections 1308(4) and false or misleading uncategorised
35 (5) documents

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5 Schedule 3 (table items dealing with subsections 1308(1), (2), (4) and (8))

Repeal the items, substitute:

Subsection 1308B(1)	20 penalty units
Subsection 1308(1)	5 years imprisonment
Subsection 1308(3)	20 penalty units

National Consumer Credit Protection Act 2009

6 Section 225

Repeal the section, substitute:

225 False or misleading documents

Fault-based offence

(1) A person commits an offence if:

(a) a document:

- (i) is required under or for the purposes of this Act; or
- (ii) is lodged with or submitted to ASIC under or for the purposes of this Act; and

(b) the person:

- (i) makes, or authorises the making of, a statement in the document; or
- (ii) omits, or authorises the omission of, a matter or thing from the document; and

(c) the person knows that the document is materially false or misleading because of the statement or omission.

Criminal penalty: 5 years imprisonment.

Note: For when a document is *materially false or misleading*, see subsection (5).

Strict liability offence—failure to take reasonable steps

(2) A person commits an offence of strict liability if:

(a) a document:

- (i) is required under or for the purposes of this Act; or

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- 1 (ii) is lodged with or submitted to ASIC under or for the
2 purposes of this Act; and
3 (b) the person:
4 (i) makes, or authorises the making of, a statement in the
5 document; or
6 (ii) omits, or authorises the omission of, a matter or thing
7 from the document; and
8 (c) the document is materially false or misleading because of the
9 statement or omission; and
10 (d) the person did not take all reasonable steps to ensure that the
11 document was not materially false or misleading because of
12 the statement or omission.

13 Criminal penalty: 20 penalty units.

14 Note 1: For when a document is *materially false or misleading*, see
15 subsection (5).

16 Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

17 *Civil penalty*

- 18 (3) A person contravenes this subsection if:
19 (a) a document:
20 (i) is required under or for the purposes of this Act; or
21 (ii) is lodged with or submitted to ASIC under or for the
22 purposes of this Act; and
23 (b) the person:
24 (i) makes, or authorises the making of, a statement in the
25 document; or
26 (ii) omits, or authorises the omission of, a matter or thing
27 from the document; and
28 (c) the person knows that, or is reckless as to whether, the
29 document is materially false or misleading because of the
30 statement or omission.

31 Civil penalty: 5,000 penalty units.

32 Note: For when a document is *materially false or misleading*, see
33 subsection (5).

34 *Civil penalty—failure to take reasonable steps*

- 35 (4) A person contravenes this subsection if:
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- 1 (a) a document:
2 (i) is required under or for the purposes of this Act; or
3 (ii) is lodged with or submitted to ASIC under or for the
4 purposes of this Act; and
5 (b) the person:
6 (i) makes, or authorises the making of, a statement in a
7 document; or
8 (ii) omits, or authorises the omission of, a matter or thing
9 from a document; and
10 (c) the document is materially false or misleading because of the
11 statement or omission; and
12 (d) the person did not take all reasonable steps to ensure that the
13 document was not materially false or misleading because of
14 the statement or omission.

15 Civil penalty: 5,000 penalty units.

16 Note: For when a document is *materially false or misleading*, see
17 subsection (5).

18 *When a document is materially false or misleading*

- 19 (5) For the purposes of this section, a document is *materially false or*
20 *misleading* if:
21 (a) the document includes a statement that:
22 (i) is false in a material particular or materially misleading;
23 or
24 (ii) is based on information that is false in a material
25 particular or materially misleading, or has omitted from
26 it a matter or thing the omission of which renders the
27 document materially misleading; or
28 (b) a matter or thing is omitted from the document and, without
29 the matter or thing, the document is false in a material
30 particular or materially misleading.

31 *Authorisations*

- 32 (6) For the purposes of this section, a person who votes in favour of a
33 resolution approving, or who otherwise approves, a document is
34 taken to have authorised:
35 (a) the making of any statement in the document; and
36 (b) the omission of any matter or thing from the document.