

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for

Financial Regulator Reform (No. 1) Bill 2019: ASIC search warrant powers

Commencement information

Column 1**Column 2****Column 3**

Provisions**Commencement****Date/Details**

1. Schedules 1, 2
and 3

1 July 2020.

1 July 2020

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Schedule 1—Main amendments to ASIC Act

Australian Securities and Investments Commission Act 2001

1 After Division 3 of Part 3

Insert:

Division 3A—Extra application of Crimes Act search warrant provisions

39D Extra application of Crimes Act search warrant provisions

- (1) In addition to the application that the applied provisions have (disregarding this subsection) in relation to offences mentioned in subsection (3), the applied provisions also apply under this subsection in relation to those offences, with the modifications set out in this Division.
- (2) To avoid doubt, subsection (1) does not limit the application that the applied provisions have (disregarding that subsection).
- (3) For the purposes of subsection (1), the offences are indictable offences under any of the following:
 - (a) the corporations legislation;
 - (b) a law of the Commonwealth, or of a State or Territory in this jurisdiction, a contravention of which:
 - (i) concerns the management or affairs of a body corporate or managed investment scheme; or
 - (ii) involves fraud or dishonesty and relates to a body corporate or managed investment scheme or to financial products;
 - (c) the *Retirement Savings Accounts Act 1997*;
 - (d) the *Superannuation Industry (Supervision) Act 1993*.
- (4) For the purposes of this Division, the *applied provisions* are as follows:
 - (a) Divisions 1, 2, 4C and 5 of Part IAA of the *Crimes Act 1914*;
 - (b) any other provisions of that Act, to the extent that those other provisions relate to the operation of the provisions mentioned in paragraph (a).

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1 **39E Major modifications—evidential material**

2 For the purposes of subsection 39D(1), omit the words “or a thing
3 relevant to a summary offence” in the definition of *evidential*
4 *material* in subsection 3C(1) of the *Crimes Act 1914*.

5 **39F Major modifications—who may apply for a warrant etc.**

6 (1) For the purposes of subsection 39D(1), in subsection 3E(1) of the
7 *Crimes Act 1914*, after the words “by information on oath or
8 affirmation”, insert “given by a member, staff member or other
9 person authorised in writing by ASIC for the purposes of this
10 subsection”.

11 (2) For the purposes of subsection 39D(1), in subsection 3E(2) of the
12 *Crimes Act 1914*, after the words “by information on oath or
13 affirmation”, insert “given by a member, staff member or other
14 person authorised in writing by ASIC for the purposes of this
15 subsection”.

16 (3) For the purposes of subsection 39D(1), in subsection 3LA(1) of the
17 *Crimes Act 1914*, after the words “A constable”, insert “, or a
18 member, staff member or other person authorised in writing by
19 ASIC for the purposes of this subsection,”.

20 (4) For the purposes of subsection 39D(1), in subsection 3R(1) of the
21 *Crimes Act 1914*, after the words “A constable”, insert “, or a
22 member, staff member or other person authorised in writing by
23 ASIC for the purposes of this subsection,”.

24 **39G Major modifications—purposes for which things may be used** 25 **and shared**

26 For the purposes of subsection 39D(1), replace section 3ZQU of
27 the *Crimes Act 1914* with the following sections.

28 **3ZQU Purposes for which things may be used and shared**

29 (1) A constable or Commonwealth officer may use, or make available
30 to a member of ASIC or a staff member (within the meaning of the
31 *Australian Securities and Investments Commission Act 2001*) to
32 use, a thing seized under this Part for the purpose of the
33 performance of ASIC’s functions or duties or the exercise of
34 ASIC’s powers.

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- 1 (2) Without limiting the scope of subsection (1), a constable or
2 Commonwealth officer may use, or make available to a person
3 covered under subsection (3) to use, a thing seized under this Part
4 for the purpose of any or all of the following if it is necessary to do
5 so for that purpose:
6 (a) preventing or investigating any of the following:
7 (i) a breach of an offence provision;
8 (ii) a breach of a civil penalty provision;
9 (iii) a breach of an obligation (whether under statute or
10 otherwise), other than an obligation of a private nature
11 (such as an obligation under a contract, deed, trust or
12 similar arrangement);
13 (b) prosecuting a breach of an offence provision;
14 (c) prosecuting a breach of a civil penalty provision;
15 (d) taking administrative action, or seeking an order of a court, in
16 response to a breach of an obligation (whether under statute
17 or otherwise), other than an obligation of a private nature
18 (such as an obligation under a contract, deed, trust or similar
19 arrangement).
- 20 (3) A person is covered under this subsection if the person is any of
21 the following:
22 (a) a constable;
23 (b) a Commonwealth officer.
- 24 (4) Without limiting the scope of subsections (1) and (2), a constable
25 or Commonwealth officer may use, or make available to a person
26 covered under subsection (3) to use, a thing seized under this Part
27 for the purpose of any or all of the following if it is necessary to do
28 so for that purpose:
29 (a) proceedings under the *Proceeds of Crime Act 1987* or the
30 *Proceeds of Crime Act 2002*;
31 (b) proceedings under a corresponding law (within the meaning
32 of either of the Acts mentioned in paragraph (a)) that relate to
33 a State offence that has a federal aspect;
34 (c) proceedings for the forfeiture of the thing under a law of the
35 Commonwealth, a State or a Territory;
36 (d) the performance of a function or duty, or the exercise of a
37 power, by a person, court or other body under, or in relation
38 to a matter arising under, Division 104, 105 or 105A of the
39 *Criminal Code*;
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- 1 (e) investigating or resolving a complaint or an allegation of
2 misconduct relating to an exercise of a power or the
3 performance of a function or duty under this Part;
- 4 (f) investigating or resolving an AFP conduct or practices issue
5 (within the meaning of the *Australian Federal Police Act*
6 *1979*) under Part V of that Act;
- 7 (g) investigating or resolving a complaint under the *Ombudsman*
8 *Act 1976* or the *Privacy Act 1988*;
- 9 (h) investigating or inquiring into a corruption issue under the
10 *Law Enforcement Integrity Commissioner Act 2006*;
- 11 (i) proceedings in relation to a complaint, allegation or issue
12 mentioned in paragraph (e), (f), (g) or (h);
- 13 (j) deciding whether to institute proceedings, to make an
14 application or request, or to take any other action, mentioned
15 in:
- 16 (i) any of the preceding paragraphs of this subsection; or
17 (ii) subsection (1) or (2);
- 18 (k) the performance of the functions of the Australian Federal
19 Police under section 8 of the *Australian Federal Police Act*
20 *1979*.
- 21 (5) A constable or Commonwealth officer may use a thing seized
22 under this Part for any other use that is required or authorised by or
23 under a law of a State or a Territory.
- 24 (6) A constable or Commonwealth officer may make available to
25 another constable or Commonwealth officer to use a thing seized
26 under this Part for any purpose for which the making available of
27 the thing is required or authorised by a law of a State or Territory.
- 28 (7) To avoid doubt, this section does not limit any other law of the
29 Commonwealth that:
- 30 (a) requires or authorises the use of a document or other thing; or
31 (b) requires or authorises the making available (however
32 described) of a document or other thing.
- 33 (8) A constable or Commonwealth officer may make available to an
34 agency that has responsibility for:
- 35 (a) law enforcement in a foreign country; or
36 (b) intelligence gathering for a foreign country; or
37 (c) the security of a foreign country;
- 38 a thing seized under this Part to be used by that agency for:
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- 1 (d) a purpose mentioned in subsection (1), (2), (4), (5) or (6); or
2 (e) the purpose of performing a function, or exercising a power,
3 conferred by a law in force in that foreign country.

4 *Ministerial arrangements for sharing*

- 5 (9) This Division does not prevent the Minister from making an
6 arrangement with a Minister of a State or Territory for:
7 (a) the making available to a State or Territory law enforcement
8 agency of that State or Territory, for purposes mentioned in
9 subsections (1), (2), (4), (6) and (8), of things seized under
10 this Part; and
11 (b) the disposal by the agency of such things, originals and
12 copies when they are no longer of use to that agency for
13 those purposes.

14 Note: This subsection does not empower the Minister to make such an
15 arrangement.

16 *Definition*

- 17 (10) In this section:

18 ***State or Territory law enforcement agency*** means:

- 19 (a) the police force or police service of a State or Territory; or
20 (b) the New South Wales Crime Commission; or
21 (c) the Independent Commission Against Corruption of New
22 South Wales; or
23 (d) the Law Enforcement Conduct Commission of New South
24 Wales; or
25 (e) the Independent Broad-based Anti-corruption Commission of
26 Victoria; or
27 (f) the Crime and Corruption Commission of Queensland; or
28 (g) the Corruption and Crime Commission of Western Australia;
29 or
30 (h) the Independent Commissioner Against Corruption of South
31 Australia.

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3ZQUA Commonwealth law permitting access to things seized under this Part does not apply (subject to court order)

- (1) This section applies if, disregarding this section, a law of the Commonwealth permits any of the following to be made available to a person covered under subsection (3):
- (a) a thing seized under this Part;
 - (b) a thing containing data that ASIC or the Australian Federal Police came into possession of as a result of exercising powers under this Part.
- (2) Subject to subsection (4), that law does not permit the thing to be made available to the person.
- (3) A person is covered under this subsection if the person is not, and is not representing, the Commonwealth, a State or a Territory.
- (4) This section does not affect any of the following:
- (a) the power of a court to make an order;
 - (b) the effect of an order of a court.

39H Minor modifications

- (1) For the purposes of subsection 39D(1), the applied provisions apply with the modifications set out in this section.
- (2) To avoid doubt, those modifications have no effect other than for the purposes mentioned in subsection (1).
- (3) In section 3CA of the *Crimes Act 1914*:
- (a) omit the words “3ZI, 3ZJ, 3ZK, 3ZN or” in subsections (1), (2) and (3) of that section; and
 - (b) omit the words “sections 3ZI, 3ZJ, 3ZK, 3ZN and 3ZQZB” and substitute the words “section 3ZQZB” in subsection (4) of that section.
- (4) In section 3E of that Act:
- (a) omit the note to subsection (1) of that section; and
 - (b) omit the words “is a member or special member of the Australian Federal Police and” in subsection (4) of that section.
- (5) Treat the references in sections 3ZQX and 3ZQZB of that Act to the Commissioner as being references to the Chairperson of ASIC.
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- 1 (6) In subsections 3L(1B) and 3LAA(3) of that Act:
- 2 (a) treat the references to the Commissioner as being references
- 3 to the responsible Commissioner in relation to the data; and
- 4 (b) treat the references to the Australian Federal Police as being
- 5 references to the responsible agency in relation to the data.
- 6 (7) Insert the following definitions into subsection 3C(1) of that Act:
- 7 ***responsible agency***, in relation to data, means:
- 8 (a) if the data, or a device containing the data, is in the control of
- 9 the Australian Federal Police—the Australian Federal Police;
- 10 or
- 11 (b) if the data, or a device containing the data, is in the control of
- 12 ASIC—ASIC.
- 13 ***responsible Commissioner***, in relation to data, means:
- 14 (a) if the data, or a device containing the data, is in the control of
- 15 the Australian Federal Police—the Commissioner of the
- 16 Australian Federal Police; or
- 17 (b) if the data, or a device containing the data, is in the control of
- 18 ASIC—the Chairperson of ASIC.
- 19 (8) At the end of section 3ZW of that Act, add the following
- 20 subsection:
- 21 (3) The Chairperson of ASIC may delegate to a senior staff member
- 22 (within the meaning of the *Australian Securities and Investments*
- 23 *Commission Act 2001*) any or all of the Chairperson’s powers,
- 24 functions or duties under this Part.

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Schedule 2—Main amendments to NCCP Act

National Consumer Credit Protection Act 2009

1 After Part 6-3

Insert:

Part 6-3A—Search warrants

Division 1—Introduction

272A Guide to this Part

<p>This Part allows the grant of search warrants in respect of indictable offences under the credit legislation, etc.</p>

Division 2—Extra application of Crimes Act search warrant provisions

272B Extra application of Crimes Act search warrant provisions

- (1) In addition to the application that the applied provisions have (disregarding this subsection) in relation to offences mentioned in subsection (3), the applied provisions also apply under this subsection in relation to those offences, with the modifications set out in this Division.
- (2) To avoid doubt, subsection (1) does not limit the application that the applied provisions have (disregarding that subsection).
- (3) For the purposes of subsection (1), the offences are indictable offences under any of the following:
 - (a) the credit legislation;
 - (b) a law of the Commonwealth, or of a law of a referring State or a Territory, a contravention of which:
 - (i) concerns the management, conduct or affairs of a licensee, credit representative or other person who engages, or has engaged, in a credit activity; or

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1 (ii) involves fraud or dishonesty and relates to a credit
2 activity engaged in by a person, or a credit contract,
3 mortgage, guarantee or consumer lease.

4 (4) For the purposes of this Division, the *applied provisions* are as
5 follows:

- 6 (a) Divisions 1, 2, 4C and 5 of Part IAA of the *Crimes Act 1914*;
7 (b) any other provisions of that Act, to the extent that those other
8 provisions relate to the operation of the provisions mentioned
9 in paragraph (a).

10 **272C Major modifications—evidential material**

11 For the purposes of subsection 272B(1), omit the words “or a thing
12 relevant to a summary offence” in the definition of *evidential*
13 *material* in subsection 3C(1) of the *Crimes Act 1914*.

14 **272D Major modifications—who may apply for a warrant etc.**

15 (1) For the purposes of subsection 272B(1), in subsection 3E(1) of the
16 *Crimes Act 1914*, after the words “by information on oath or
17 affirmation”, insert “given by a member, staff member or other
18 person authorised in writing by ASIC for the purposes of this
19 subsection”.

20 (2) For the purposes of subsection 272B(1), in subsection 3E(2) of the
21 *Crimes Act 1914*, after the words “by information on oath or
22 affirmation”, insert “given by a member, staff member or other
23 person authorised in writing by ASIC for the purposes of this
24 subsection”.

25 (3) For the purposes of subsection 272B(1), in subsection 3LA(1) of
26 the *Crimes Act 1914*, after the words “A constable”, insert “, or a
27 member, staff member or other person authorised in writing by
28 ASIC for the purposes of this subsection,”.

29 (4) For the purposes of subsection 272B(1), in subsection 3R(1) of the
30 *Crimes Act 1914*, after the words “A constable”, insert “, or a
31 member, staff member or other person authorised in writing by
32 ASIC for the purposes of this subsection,”.

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272E Major modifications—purposes for which things may be used and shared

For the purposes of subsection 272B(1), replace section 3ZQU of the *Crimes Act 1914* with the following sections.

3ZQU Purposes for which things may be used and shared

- (1) A constable or Commonwealth officer may use, or make available to a member of ASIC or a staff member (within the meaning of the *Australian Securities and Investments Commission Act 2001*) to use, a thing seized under this Part for the purpose of the performance of ASIC's functions or duties or the exercise of ASIC's powers.
- (2) Without limiting the scope of subsection (1), a constable or Commonwealth officer may use, or make available to a person covered under subsection (3) to use, a thing seized under this Part for the purpose of any or all of the following if it is necessary to do so for that purpose:
 - (a) preventing or investigating any of the following:
 - (i) a breach of an offence provision;
 - (ii) a breach of a civil penalty provision;
 - (iii) a breach of an obligation (whether under statute or otherwise), other than an obligation of a private nature (such as an obligation under a contract, deed, trust or similar arrangement);
 - (b) prosecuting a breach of an offence provision;
 - (c) prosecuting a breach of a civil penalty provision;
 - (d) taking administrative action, or seeking an order of a court, in response to a breach of an obligation (whether under statute or otherwise), other than an obligation of a private nature (such as an obligation under a contract, deed, trust or similar arrangement).
- (3) A person is covered under this subsection if the person is any of the following:
 - (a) a constable;
 - (b) a Commonwealth officer.
- (4) Without limiting the scope of subsections (1) and (2), a constable or Commonwealth officer may use, or make available to a person

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1 covered under subsection (3) to use, a thing seized under this Part
2 for the purpose of any or all of the following if it is necessary to do
3 so for that purpose:

- 4 (a) proceedings under the *Proceeds of Crime Act 1987* or the
5 *Proceeds of Crime Act 2002*;
- 6 (b) proceedings under a corresponding law (within the meaning
7 of either of the Acts mentioned in paragraph (a)) that relate to
8 a State offence that has a federal aspect;
- 9 (c) proceedings for the forfeiture of the thing under a law of the
10 Commonwealth, a State or a Territory;
- 11 (d) the performance of a function or duty, or the exercise of a
12 power, by a person, court or other body under, or in relation
13 to a matter arising under, Division 104, 105 or 105A of the
14 *Criminal Code*;
- 15 (e) investigating or resolving a complaint or an allegation of
16 misconduct relating to an exercise of a power or the
17 performance of a function or duty under this Part;
- 18 (f) investigating or resolving an AFP conduct or practices issue
19 (within the meaning of the *Australian Federal Police Act*
20 *1979*) under Part V of that Act;
- 21 (g) investigating or resolving a complaint under the *Ombudsman*
22 *Act 1976* or the *Privacy Act 1988*;
- 23 (h) investigating or inquiring into a corruption issue under the
24 *Law Enforcement Integrity Commissioner Act 2006*;
- 25 (i) proceedings in relation to a complaint, allegation or issue
26 mentioned in paragraph (e), (f), (g) or (h);
- 27 (j) deciding whether to institute proceedings, to make an
28 application or request, or to take any other action, mentioned
29 in:
- 30 (i) any of the preceding paragraphs of this subsection; or
31 (ii) subsection (1) or (2);
- 32 (k) the performance of the functions of the Australian Federal
33 Police under section 8 of the *Australian Federal Police Act*
34 *1979*.

35 (5) A constable or Commonwealth officer may use a thing seized
36 under this Part for any other use that is required or authorised by or
37 under a law of a State or a Territory.

38 (6) A constable or Commonwealth officer may make available to
39 another constable or Commonwealth officer to use a thing seized

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1 under this Part for any purpose for which the making available of
2 the thing is required or authorised by a law of a State or Territory.

3 (7) To avoid doubt, this section does not limit any other law of the
4 Commonwealth that:

- 5 (a) requires or authorises the use of a document or other thing; or
- 6 (b) requires or authorises the making available (however
7 described) of a document or other thing.

8 (8) A constable or Commonwealth officer may make available to an
9 agency that has responsibility for:

- 10 (a) law enforcement in a foreign country; or
- 11 (b) intelligence gathering for a foreign country; or
- 12 (c) the security of a foreign country;

13 a thing seized under this Part to be used by that agency for:

- 14 (d) a purpose mentioned in subsection (1), (2), (4), (5) or (6); or
- 15 (e) the purpose of performing a function, or exercising a power,
16 conferred by a law in force in that foreign country.

17 *Ministerial arrangements for sharing*

18 (9) This Division does not prevent the Minister from making an
19 arrangement with a Minister of a State or Territory for:

- 20 (a) the making available to a State or Territory law enforcement
21 agency of that State or Territory, for purposes mentioned in
22 subsections (1), (2), (4), (6) and (8), of things seized under
23 this Part; and
- 24 (b) the disposal by the agency of such things, originals and
25 copies when they are no longer of use to that agency for
26 those purposes.

27 Note: This subsection does not empower the Minister to make such an
28 arrangement.

29 *Definition*

30 (10) In this section:

31 ***State or Territory law enforcement agency*** means:

- 32 (a) the police force or police service of a State or Territory; or
- 33 (b) the New South Wales Crime Commission; or
- 34 (c) the Independent Commission Against Corruption of New
35 South Wales; or

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- 1 (d) the Law Enforcement Conduct Commission of New South
2 Wales; or
3 (e) the Independent Broad-based Anti-corruption Commission of
4 Victoria; or
5 (f) the Crime and Corruption Commission of Queensland; or
6 (g) the Corruption and Crime Commission of Western Australia;
7 or
8 (h) the Independent Commissioner Against Corruption of South
9 Australia.

10 **3ZQUA Commonwealth law permitting access to things seized** 11 **under this Part does not apply (subject to court order)**

- 12 (1) This section applies if, disregarding this section, a law of the
13 Commonwealth permits any of the following to be made available
14 to a person covered under subsection (3):
15 (a) a thing seized under this Part;
16 (b) a thing containing data that ASIC or the Australian Federal
17 Police came into possession of as a result of exercising
18 powers under this Part.
- 19 (2) Subject to subsection (4), that law does not permit the thing to be
20 made available to the person.
- 21 (3) A person is covered under this subsection if the person is not, and
22 is not representing, the Commonwealth, a State or a Territory.
- 23 (4) This section does not affect any of the following:
24 (a) the power of a court to make an order;
25 (b) the effect of an order of a court.

26 **272F Minor modifications**

- 27 (1) For the purposes of subsection 272B(1), the applied provisions
28 apply with the modifications set out in this section.
- 29 (2) To avoid doubt, those modifications have no effect other than for
30 the purposes mentioned in subsection (1).
- 31 (3) In section 3CA of the *Crimes Act 1914*:
32 (a) omit the words “3ZI, 3ZJ, 3ZK, 3ZN or” in subsections (1),
33 (2) and (3) of that section; and

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- 1 (b) omit the words “sections 3ZI, 3ZJ, 3ZK, 3ZN and 3ZQZB”
2 and substitute the words “section 3ZQZB” in subsection (4)
3 of that section.
- 4 (4) In section 3E of that Act:
5 (a) omit the note to subsection (1) of that section; and
6 (b) omit the words “is a member or special member of the
7 Australian Federal Police and” in subsection (4) of that
8 section.
- 9 (5) Treat the references in sections 3ZQX and 3ZQZB of that Act to
10 the Commissioner as being references to the Chairperson of ASIC.
- 11 (6) In subsections 3L(1B) and 3LAA(3) of that Act:
12 (a) treat the references to the Commissioner as being references
13 to the responsible Commissioner in relation to the data; and
14 (b) treat the references to the Australian Federal Police as being
15 references to the responsible agency in relation to the data.
- 16 (7) Insert the following definitions into subsection 3C(1) of that Act:
- 17 **responsible agency**, in relation to data, means:
18 (a) if the data, or a device containing the data, is in the control of
19 the Australian Federal Police—the Australian Federal Police;
20 or
21 (b) if the data, or a device containing the data, is in the control of
22 ASIC—ASIC.
- 23 **responsible Commissioner**, in relation to data, means:
24 (a) if the data, or a device containing the data, is in the control of
25 the Australian Federal Police—the Commissioner of the
26 Australian Federal Police; or
27 (b) if the data, or a device containing the data, is in the control of
28 ASIC—the Chairperson of ASIC.
- 29 (8) At the end of section 3ZW of that Act, add the following
30 subsection:
- 31 (3) The Chairperson of ASIC may delegate to a senior staff member
32 (within the meaning of the *Australian Securities and Investments*
33 *Commission Act 2001*) any or all of the Chairperson’s powers,
34 functions or duties under this Part.
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Schedule 3—Consequential amendments

Australian Securities and Investments Commission Act 2001

1 Section 28

Omit “, 35, 36”.

2 Sections 35 to 36A

Repeal the sections.

3 Paragraph 37(1)(b)

Omit “section 36”, substitute “Division 2 of Part IAA of the *Crimes Act 1914*, as applied under section 39D of this Act”.

4 After subsection 37(1)

Insert:

(1A) However, if paragraph (1)(b) applies, subsections (4), (5), (6), (7) and (8) do not apply.

5 Subsection 37(9)

Omit “or a person”, substitute “or if paragraph (1)(a) applies, a person”.

6 Paragraph 39B(1)(b)

Omit “section 36”, substitute “Division 2 of Part IAA of the *Crimes Act 1914*, as applied under section 39D of this Act”.

7 Paragraph 39B(1)(d)

Omit “section 36”, substitute “Division 2 of Part IAA of the *Crimes Act 1914*, as applied under section 39D of this Act”.

8 Subsection 65(1)

Repeal subsection, substitute:

(1) A person must not engage in conduct that results in the obstruction or hindering of a person in the exercise of the power under this Part.

Penalty: 2 years imprisonment.

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1 **9 Subsection 65(2)**

2 Repeal the subsection.

3 *National Consumer Credit Protection Act 2009*

4 **10 Section 262**

5 Omit:

6 Division 2 also allows ASIC to seize books in certain
7 circumstances, and sets out procedures to be followed in relation to
8 such a seizure, including in relation to the granting of warrants.

9 **11 Section 263**

10 Omit “265, 269 and 270”, substitute “and 265”.

11 **12 Sections 269 and 270**

12 Repeal the sections.

13 **13 Paragraph 271(1)(b)**

14 Omit “section 270”, substitute “Division 2 of Part IAA of the *Crimes*
15 *Act 1914*, as applied under section 272B of this Act”.

16 **14 After subsection 271(1)**

17 Insert:

18 (1A) However, if paragraph (1)(b) applies, subsections (4), (5), (6), (7)
19 and (8) do not apply.

20 **15 Subsection 271(9)**

21 Omit “or a person”, substitute “or if paragraph (1)(a) applies, a person”.

22 **16 Section 292**

23 Repeal the section.

24 *Retirement Savings Accounts Act 1997*

25 **17 At the end of section 102**

26 Add:

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1 (3) The reference in subsection (1) to an inspector does not include:

2 (a) an inspector that is appointed by ASIC; or

3 (b) ASIC, where ASIC is exercising the powers of an inspector
4 under section 98.

5 **18 Paragraph 104(1)(b)**

6 After “section 103,” insert “or Division 2 of Part IAA of the *Crimes*
7 *Act 1914*, as applied under section 39D of the *Australian Securities and*
8 *Investments Commission Act 2001*.”.

9 **19 After subsection 104(1)**

10 Insert:

11 (1A) However, if paragraph (1)(b) applies because of the operation of
12 section 39D of the *Australian Securities and Investments*
13 *Commission Act 2001*, subsections (4), (5), (6), (7) and (8) do not
14 apply.

15 **20 Subsection 104(9)**

16 Omit “or a person”, substitute “or if paragraph (1)(a) applies, a person”.

17 ***Superannuation Industry (Supervision) Act 1993***

18 **21 At the end of section 271**

19 Add:

20 (3) The reference in subsection (1) to an inspector does not include:

21 (a) an inspector that is appointed by ASIC; or

22 (b) ASIC, where ASIC is exercising the powers of an inspector
23 under section 267.

24 **22 Paragraph 273(1)(b)**

25 After “section 272,” insert “or Division 2 of Part IAA of the *Crimes*
26 *Act 1914*, as applied under section 39D of the *Australian Securities and*
27 *Investments Commission Act 2001*.”.

28 **23 After subsection 273(1)**

29 Insert:

30 (1A) However, if paragraph (1)(b) applies because of the operation of
31 section 39D of the *Australian Securities and Investments*

EXPOSURE DRAFT

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Commission Act 2001, subsections (4), (5), (6), (7) and (8) do not apply.

24 Subsection 273(9)

Omit “or a person”, substitute “or if paragraph (1)(a) applies, a person”.