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| **EXPOSURE DRAFT** |

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. |  |

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:

(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.

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

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

Strict liability offence—failure to take reasonable steps

(3) A person commits an offence of strict liability 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:

(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 document is materially false or misleading because of the statement or omission; and

(d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

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

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

Civil penalty

(4) A person contravenes this subsection 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:

(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, or is reckless as to whether, the document is materially false or misleading because of the statement or omission.

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

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

Civil penalty—failure to take reasonable steps

(5) A person contravenes this subsection 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:

(i) makes, or authorises the making of, a statement in a document; or

(ii) omits, or authorises the omission of, a matter or thing from a document; and

(c) the document is materially false or misleading because of the statement or omission; and

(d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

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

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

When a document is materially false or misleading

(6) For the purposes of this section, a document is ***materially*** ***false or misleading*** if:

(a) the document includes a statement that:

(i) is false in a material particular or materially misleading; or

(ii) is based on information that is false in a material particular or materially misleading, or has omitted from it a matter or thing the omission of which renders the document materially misleading; or

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

Other interpretive provisions

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

(a) the making of any statement in the document; and

(b) the omission of any matter or thing from the document.

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

(a) relates to affairs of a company or of a subsidiary of a company; and

(b) is attached to or included with a report of the directors provided under section 314 to members of the company or laid before the company at an annual general meeting of the company;

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

(9) For the purposes of this section:

(a) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and

(b) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be misleading in a material respect if it fails to comply with paragraph 708AA(7)(d), 708A(6)(e), 1012DAA(7)(e) or 1012DA(6)(f).

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

Insert:

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

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

Repeal the items, substitute:

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| --- | --- |
| 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

(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 document is materially false or misleading because of the statement or omission; and

(d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

Criminal penalty: 20 penalty units.

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

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

Civil penalty

(3) A person contravenes this subsection 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, or is reckless as to whether, the document is materially false or misleading because of the statement or omission.

Civil penalty: 5,000 penalty units.

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

Civil penalty—failure to take reasonable steps

(4) A person contravenes this subsection 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 a document; or

(ii) omits, or authorises the omission of, a matter or thing from a document; and

(c) the document is materially false or misleading because of the statement or omission; and

(d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

Civil penalty: 5,000 penalty units.

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

When a document is materially false or misleading

(5) For the purposes of this section, a document is ***materially*** ***false or misleading*** if:

(a) the document includes a statement that:

(i) is false in a material particular or materially misleading; or

(ii) is based on information that is false in a material particular or materially misleading, or has omitted from it a matter or thing the omission of which renders the document materially misleading; or

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

Authorisations

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

(a) the making of any statement in the document; and

(b) the omission of any matter or thing from the document.