



CLERP guide

On 13 March 2000, the package of legislative changes known as CLERP 1-4 came into effect. The new legislation affects many of the basic rules and procedures that are now second nature to most practitioners. Our quick reference guide on page 2 gives you an overview of key changes and where to go for more information.

Free company alert service launched

Company Alert is Australia's first free company alert service via the internet.

This exciting new service will alert you to changes that any of Australia's 1.1 million companies make to the information on our national companies database.

To use *Company Alert*, you register a "profile" through our website at www.asic.gov.au and select the companies and the type of information you are interested in. You will need the ACN or ARBN of each company, but you can also find these on the site.

When one of the companies you have registered for lodges a document with us, *Company Alert* will send out an overnight email notifying you of the change. You can then decide whether to purchase a company extract, or the relevant document, online through an ASIC information broker. Alternatively, for listed public companies, you can seek extra information through the ASX website.

Small businesses are expected to be among the biggest beneficiaries of the new system,

which can help manage both investment and credit risks by emailing any changes to:

- company directors
- deeds of company arrangement
- applications for winding up a company and external administration
- company financial statements (when lodged)
- company takeovers.

Company Alert will cut down the overall costs of obtaining information, and make it easier to keep a "watching brief" on a company's activities.

For the estimated 5.7 million Australians who own shares directly, *Company Alert* can help them make better investment decisions by giving them more information, faster, about the companies they hold shares in. The service will benefit shareholders in smaller companies whose affairs are covered in less depth by the media.

Before the launch of this new service, accounting professionals, credit providers and mercantile agents could only receive notification of changes to a company by fax, for a fee. ■

RECORD NUMBER OF ADVISERS BANNED

If advisers fail to act honestly, efficiently and fairly, we can ban them from the industry. So far this financial year, we have banned 27 advisers, compared with 17 in the full 12 months of 1998-99. Banning orders protect investors and raise the standards and reputation of the industry.

The record number of bannings appear to result from the vigilance of advisers themselves in telling us about problems they see in the industry. Consumers are also reporting problems to us, and appear more aware of their rights and more careful.

A number of the campaigns we have run over the last year seem to have successfully raised consumers' awareness as to what a responsible and honourable adviser's activities should be. These campaigns included the ASIC Queensland Regional Office's recent crackdown on high yield trading schemes.

In the last six months we received a larger than usual number of complaints about advisers. We acted and had good results. These complaints came from consumers, fund managers, licensees and other proper authority holders.

A number of the bannings also related to the continued investigations into the Wattle and Golconda investment schemes, which affected investors in Queensland and South Australia.

See below left for a table of some advisers we have banned so far. ■

Some of the advisers banned this year

What they did	Name	Banned
Misuse of funds	Hans Robert J. Felden (NSW)	life
Didn't perform duties honestly	Christopher Matson (Tas)	life
Convicted of fraud	Wayne McIver (NSW)	life
Widespread misconduct	Richard Long Chin Joon (Vic)	life
Traded fictitious accounts	Paul Franklin Morgan (WA)	life
Acted without authority	Philip Stephen O'Leary (Vic)	10 years
Undischarged bankrupt	Graham David Condon (NSW)	5 years
Mislead about licence	Kimberley Emma Underwood (Qld)	3 years
Didn't perform duties honourably (advised on Golconda and Wattle)	Gary Romilly Carmon (SA)	2 years
Didn't perform duties honourably (sourcing agent for Wattle)	James Callahan (Qld)	1 year

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QUICK REFERENCE GUIDE TO CLERP

FUNDRAISING

What are the changes?

Registration of prospectuses has been replaced by public exposure of fundraising offer documents before companies start processing acceptances. Minimum exposure will be 7 days, although ASIC may extend the period to 14 days.

Companies and directors remain legally responsible for what offer documents contain. We may issue stop orders or take other action against misleading or deceptive disclosures in documents.

New fundraising rules will facilitate the raising of investment capital by Australian companies.

OFFERlist

OFFERlist is a listing of all disclosure documents lodged with ASIC. Data on OFFERlist is sourced from ASCOT and any additional information which fundraisers may submit to ASIC.

OFFERlist contains details about:

- the fundraiser
- the disclosure document
- the expiry date of the exposure period
- how and where to access the document.

Where do you go for more information?

We have released eight new policies and related class orders:

- [PS 151] Fundraising: Discretionary powers
- [PS 152] Lodgment of disclosure documents
- [PS 153] Profile statements
- [PS 154] Certificate by a qualified accountant
- [PS 155] Debenture prospectuses
- [PS 156] Transitional relief for excluded corporations issuing debentures
- [PS 157] Financial reports for offer information statements
- [PS 158] Advertising and publicity for offers of securities

You can get a copy of the policy statements and class orders from our website at www.asic.gov.au.

You will find more information on the CLERP changes under the “Policy & Practitioners” section of the site including:

- a speech by Richard Cockburn, National Coordinator Fundraising Mergers & Acquisitions
- media and information releases.

You can access OFFERlist via our website at www.asic.gov.au.

TAKEOVERS

What are the changes?

The Corporations and Securities Panel, rather than the AAT or the courts, will be the primary forum for resolving takeover matters.

The takeover provisions extend to listed managed investment schemes and members.

The rules for on-market and off-market bids have been streamlined.

Bids can now be made for securities other than shares, ie convertible securities and options.

A compulsory acquisition will be allowed to occur outside a takeover bid.

The rules for compulsory acquisition have been modified.

Where do you go for more information?

We have released a new policy statement and related class orders:

- [PS 159] Takeovers: Discretionary powers.

You can get a copy from our website at www.asic.gov.au.

You will find more information on the CLERP changes under the “Policy & Practitioners” section of the site including:

- a presentation by Simon McKeon, President of the Corporations and Securities Panel, at our recent *ASIC speaks...* seminar
- media and information releases.

For more information on the Corporations and Securities Panel and how to lodge applications, see the Panel’s website at www.takeovers.gov.au.

OTHER CHANGES

What are the changes?

The CLERP Act also makes changes to:

- the Australian Accounting Standards Board
- directors’ duties and corporate governance
- replaceable rules
- disqualified persons register
- related party transactions
- oppression
- proceedings on behalf of a company by members.

Where do you go for more information?

We are issuing updated versions of:

- the watchdog’s guide for company directors and secretaries
- related information sheets.

You can find these publications at www.asic.gov.au.

CLERP SPEAK

Old term	New term	Old law	New law
takeover scheme	off-market bid	Part 3A.2	Chapter 2E
takeover announcement	market bid	Part 6.3	Chapter 6
Part A statement	bidder’s statement	Part 6.6	Chapter 6B
Part B statement	target’s statement	Part 6.7	Part 6C.1
Part C statement	bidder’s statement	Part 6.8	Part 6C.2
Part D statement	target’s statement	Part 7.2	Chapter 6D

In a statement today...

Inquiries are continuing into Bendigo-based Acts Net Ltd and an unregistered management investment scheme we now believe raised more than US\$3 million (A\$4.5m).

Acts Net and the scheme have been wound up and liquidators from PricewaterhouseCoopers are making their own assessment of where the money is now.

We believe at least 50 people invested money into a bank debenture program or high yield investment program which promised returns of 100 per cent in six months and 2000 per cent over five years.

The scheme was bought to our attention last year after a Perth-based man who invested in the scheme had trouble getting information on the whereabouts of his money.

Internet based software retailers, International Trading Systems Australia Pty Ltd, and Cayman Island based company, International Trading Systems Ltd, have given undertakings to the Supreme Court of WA not to distribute two computer securities analysis packages.

We alleged the two software packages, "WinWaves 32" and "The Collective", gave users securities advice or recommendations in addition to providing purely factual information about securities. Under ASIC policy, anyone who sells this kind of software must be licensed by ASIC. None of the respondents were licensed by ASIC.

The High Court of Australia upheld our appeal on the extent of our modification powers under the Corporations Law. We had modified s701 of the Law in the takeover of Coldstream Australasia Limited by Southcorp Wines Limited. DB Management Pty Ltd, a holder of options to acquire Coldstream shares, sought review of this modification.

In March 1999, a majority of the Full Federal Court held that ASIC did not have power to modify the Law to enable the compulsory acquisition of shares issued on the exercise of options after the close of a takeover bid, and declared the s701 modification was void.

The High Court found that the discretionary power conferred on ASIC by s730 of the Law was wide enough to allow the modifications and variations to s701 which we had made.

We secured an enforceable undertaking from Forest Enterprises of Australia Pty Ltd in relation to a tree growing scheme involving about 116 investors and \$6.8 million.

The company has its registered office in Launceston and conducts its tree growing activities in northern Tasmania.

We were concerned that the scheme was operating illegally as it did not meet the requirements for a managed investment scheme under the Corporations Law.

The Supreme Court of Queensland appointed receivers to two horse race betting schemes following our application. The schemes, commonly known as "Trojan" and "Hong Kong Multis", were operated by Enterprise Solutions 2000 Pty Ltd, Hong Kong Multis Pty Ltd, Investment Solutions 2000 Pty Ltd and IS2000 Pty Ltd.

We alleged that respondents to the proceedings had failed to comply with undertakings provided to the Supreme Court on 17 December 1999, which stated that they would return funds relating to the operation of the schemes to the trust account of their solicitors by 7 January 2000.

On 10 December 1999 the Supreme Court had found that each of the schemes was a managed investment scheme under the Corporations Law. This decision is currently subject to an appeal.

REAL ESTATE REVIEW

We have finished our review of the financial advising activities of real estate agents.

Our key finding was that while investors clearly see real estate as an investment, the regulatory regime for real estate agents was not designed with financial advising activities in mind.

Sometimes real estate agents give recommendations about the suitability of particular real estate investments for a particular investor's *individual* circumstances and needs. We believe that these agents should comply with requirements similar to those for investment advisers who give personal securities recommendations.

Sometimes real estate agents give *general* financial advice as an incidental part of selling real estate. We believe that investor protection concerns about this advice could be dealt with by regulatory requirements applying to "general securities advice", such as:

- warnings that the advice is general advice, and does not take into account the individual circumstances of the investor
- warnings that intending investors should assess the suitability of any investments in the property in light of their own needs and circumstances. They can do themselves or by consulting an appropriately licensed person.
- information about any conflict of interest, eg if the adviser is also acting for the vendor or the developer.

Real estate agents are primarily regulated under State and Territory law, although some activities fall under the Corporations Law. New requirements could be implemented through existing State based regulatory regimes or a co-ordinated national approach.

You can find the full report under "Real estate agents" in the Policy & Practitioners section of our website.

Noticeboard

ASIC speaks on enforceable undertakings

Hear first hand how enforceable undertakings can affect you. Speakers will discuss:

- What are enforceable undertakings?
- When are enforceable undertakings used?
- Can enforceable undertakings ever be confidential? Why not?
- What is the role of enforceable undertakings in our enforcement toolkit?
- Why do companies or people offer enforceable undertakings? Will they avoid criminal or civil penalties?
- What is negotiable and what is not?
- Tips for making the process happen smoothly.

Seminar dates are 6 April in Melbourne and 11 April in Sydney. See our website for more details.

Time shares

Management companies or trustees of pre July 1998 time-sharing schemes now have until 1 June 2000 to give a retirement notice. We have also extended the deadline for these

schemes to register or obtain the benefit of an exemption to 30 September 2000.

If you want an extension of the transitional period, you must apply for and obtain that extension before 1 July 2000.

Electronic applications

Policy Statement 150 sets out when we will give relief from the Corporations Law so that electronic applications for securities need not use the forms or processes required for applications on paper forms. Licensed dealers may also personalise and issue application forms, created by themselves or by issuers.

[PS 150] is available through our website or by phoning Infoline on 1300 300 630.

Mortgage investment schemes

We have released a final version of Policy Statement 144 explaining how we will regulate mortgage investment schemes. It sets out:

- our policy on mortgage schemes that are managed investment schemes
- which mortgage schemes are regulated schemes

- what relief we will give for all regulated schemes
- what extra relief we will give for small industry supervised schemes.

You can get a copy of [PS 140] from our website or by phoning Infoline on 1300 300 630.

New Qld Regional Commissioner

Greg Tanzer is our new Regional Commissioner in Queensland. His appointment follows a successful three-year term as ACT Regional Commissioner during which he negotiated a \$6.5 million settlement for employees of Cobar Mines, and extradited and prosecuted former Burns Philp director, Peter Clarke, for misappropriating around \$5 million.

Greg began his career with the ASC as Regional General Counsel in Queensland, having worked as the Departmental Adviser on Corporate Law to the Commonwealth Attorney-General, the Hon Michael Duffy. Later, as National Manager Legal, he was responsible for the professional leadership and development of the ASC's legal practice.

NT consumer watchdogs sign pact

We have signed a Memorandum of Understanding (MOU) with the Northern Territory Office of Consumer Affairs setting out how our two agencies will cooperate in regulating consumer protection and market conduct.

The MOU will ensure that Territorians receive a comprehensive level of protection in their dealings with the financial services industry.

Statistics

Here is a summary of our insolvency and incorporation statistics for the month ending 30 January 2000.

For further information, see our website. ■

	Insolvencies	New Incorporations
NSW	171	3,582
VIC	92	2,448
QLD	105	1,286
SA	37	368
WA	45	694
TAS	5	33
NT	5	42
ACT	15	131
Total	475	8,584

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