



Financial Services Reform (Consequential Provisions) Act 2002

No. 29, 2002

An Act to amend the *Retirement Savings Accounts Act 1997* and the *Corporations Act 2001*, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend the *Retirement Savings Accounts Act 1997* and the *Corporations Act 2001*, and for related purposes

[Assented to 5 April 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Services Reform (Consequential Provisions) Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	5 April 2002
2. Schedule 1	Immediately after the commencement of the <i>Family Law Legislation Amendment (Superannuation) Act 2001</i>	28 Dec 2002
3. Schedule 2, item 1	Immediately after the commencement of item 329 of Schedule 1 to the <i>Financial Services Reform Act 2001</i>	11 March 2002
4. Schedule 2, items 2 to 7	Immediately after the commencement of item 1 of Schedule 1 to the <i>Financial Services Reform Act 2001</i>	11 March 2002
5. Schedule 2, item 8	Immediately after the commencement of item 436 of Schedule 1 to the <i>Financial Services Reform Act 2001</i>	11 March 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Retirement Savings Accounts Act 1997

1 Subsection 41(5)

Omit “subsections (1) and (3)”, substitute “this section”.

2 At the end of section 41

Add:

- (6) This section does not apply to a charge or assignment that is permitted, whether expressly or by necessary implication, by the regulations.

Schedule 2—Corporations Act 2001

1 Before section 97

Insert:

95A Solvency and insolvency

- (1) A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.
- (2) A person who is not solvent is insolvent.

2 Subsection 992A(3)

Omit all the words before paragraph (a), substitute:

A person must not make an offer to issue or sell a financial product in the course of, or because of:

- (aa) an unsolicited telephone call to another person; or
- (ab) an unsolicited contact with another person in another way that is prescribed by the regulations for the purposes of this paragraph;

unless the other person has been:

3 After subsection 992A(3)

Insert:

- (3A) Neither subsection (1) nor (3) applies to an offer of financial products if the offer is not to a retail client.

Note: A defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

4 Section 1042A (paragraph (c) of the definition of *Division 3 financial products*)

Repeal the paragraph, substitute:

- (c) interests in a managed investment scheme; or
- (ca) debentures, stocks or bonds issued or proposed to be issued by a government; or

5 Section 1043H

Omit “entered into, one or more transactions or agreements in relation to financial products issued by that other person”, substitute “entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person”.

6 Subsections 1043I(1) and (2)

Omit “entered into, one or more transactions or agreements in relation to financial products issued by the other person”, substitute “entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person”.

7 Subsection 1043J(1)

Omit “entered into, one or more transactions or agreements in relation to financial products issued by the other person”, substitute “entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the third person or by a fourth person”.

8 Section 1317DA (definition of *financial services civil penalty provision*)

Omit “(jb)”, substitute “(ja)”.

*[Minister’s second reading speech made in—
Senate on 14 February 2002
House of Representatives on 21 March 2002]*

(19/02)
