

Annexure to ICAA and CPA Australia Submission Revisions to Schedule 1 Part 3

Part 3—Auditor appointment, independence and rotation requirements

Corporations Act 2001

57 Section 9

Insert:

All Ordinaries Index means:

- (a) the Standard and Poor’s All Ordinaries Index; or
- (b) another index prescribed by the regulations.

58 Section 9

Insert:

associated entity has the meaning given by section 50AAA.

59 Section 9

Insert:

audit means an audit or review required under Part 2M.3 of this Act and includes a review of a financial report for a half-year.

See page 35 of the submission for discussion of this amendment.

60 Section 9

Insert:

audit activity: see the definition of *engage in audit activity*.

61 Section 9

Insert:

audit company means a company that consents to be appointed, or is appointed, as auditor of a company or registered scheme.

62 Section 9

Insert:

audit-critical employee, in relation to a company, or the responsible entity for a registered scheme, that is the audited body for an audit, means a person who:

- (a) is an employee of the company or of the responsible entity for the registered scheme; and
- (b) is able, because of the position in which the person is employed, to affect the efficacy of the conduct of the audit in a position to or does exercise significant influence over the contents of the financial report (taken as a whole) or the conduct of the audit.

See page 50 of the submission for discussion of this amendment.

63 Section 9

Insert:

audited body, in relation to an audit of a company or registered scheme, means the company or registered scheme in relation to which the audit is, or is to be, conducted.

64 Section 9

Insert:

audit firm means a firm that consents to be appointed, or is appointed, as auditor of a company or registered scheme.

65 Section 9

Insert:

auditor independence requirements of this Act means the requirements of Divisions 3 ~~and 4 and 5~~ of Part 2M.4 and, to the extent that it applies to the relevant financial year, Division 5 of Part 2M.4.

See page 38 of the submission for discussion of this amendment.

66 Section 9

Insert:

authorised audit company means a company registered under Part 9.2A.

67 Section 9

Insert:

engage in audit activity: an individual auditor, audit firm or audit company **engages in audit activity** in relation to an audited body for an audit if the individual auditor, audit firm or audit company:

- (a) consents to be appointed as auditor of the audited body for a financial year; or
- (b) acts as the auditor of the audited body for a financial year; or
- (c) prepares a report in relation to the audited body that is required by this Act to be prepared by:
 - (i) a registered company auditor; or
 - (ii) an auditor of the audited body in relation to a financial year or half-year.

68 Section 9

Insert:

immediate family member for a person means:

- (a) the person's spouse or de facto spouse; or
- (b) a ~~parent, or step parent, of the person~~ dependent of the person; or,

~~(e) — a child, adopted child or step child of the person or of the person's spouse or de facto spouse; or~~

~~(d) — a brother or sister, or step brother or step sister, of the person.~~

See page 48 of the submission for discussion of this amendment.

69 Section 9

Insert:

individual auditor means an individual who consents to be appointed, or is appointed, as auditor of a company or registered scheme.

70 Section 9

Insert:

investment in a company, disclosing entity or other body means:

- (a) a share in the company, disclosing entity or body; or
- (b) a debenture of the company, disclosing entity or body; or
- (c) a legal or equitable interest in:
 - (i) a share in the company, disclosing entity or body; or
 - (ii) a debenture of the company, disclosing entity or body; or
- (d) an option to acquire (whether by way of issue or transfer) an investment in the company, disclosing entity or body covered by paragraph (a), (b) or (c); or
- (e) an option to dispose of an investment in the company, disclosing entity or body covered by paragraph (a), (b) or (c); or
- (f) an interest a person holds under an arrangement that is a derivative if:
 - (i) the consideration to be provided under the arrangement; or
 - (ii) the value of the arrangement;

is to a significant degree, ultimately determined, derived from or varies by reference to an investment in the company, disclosing entity or body covered by paragraph (a), (b), (c), (d) or (e).

See page 57 of the submission for discussion of the amendment to paragraph (f).

71 Section 9

Insert:

investment in a registered scheme means:

- (a) an interest in the scheme; or
- (b) a legal or equitable interest in an interest in the scheme; or
- (c) an option to acquire (whether by way of issue or transfer) an investment in the scheme covered by paragraph (a) or (b); or
- (d) an option to dispose of an investment in the scheme covered by paragraph (a) or (b); or
- (e) an interest a person holds under an arrangement that is a derivative if:

- (i) the consideration to be provided under the arrangement; or
 - (ii) the value of the arrangement;
- is to a significant degree, ultimately determined, derived from or varies by reference to an investment in the scheme covered by paragraph (a), (b), (c) or (d); or
- (f) an investment in the responsible entity of the scheme.

See page 57 of the submission for discussion of the amendment to paragraph (e).

72 Section 9

Insert:

lead auditor has the meaning given by section 324AF.

73 Section 9

Insert:

non-audit services provider for an auditor conducting an audit of an audited body means a person who:

- (a) is not a professional member of the audit team conducting the audit of the audited body; and
- (b) is either:
 - (i) if the auditor is an individual auditor—a managerial employee of the individual auditor (or of an entity acting for, or on behalf of, the individual auditor); or
 - (ii) if the auditor is an audit firm—a member of the audit firm or a managerial employee of the audit firm (or of an entity acting for, or on behalf of, the audit firm); or
 - (iii) if the auditor is an audit company—a director of the audit company or a managerial employee of the audit company (or of an entity acting for, or on behalf of, the audit company); and
- (c) provides, or has provided, services (other than services related to the conduct of an audit) to the audited body.

See page 56 of the submission for discussion of this amendments.

74 Section 9

Insert:

play a significant role: a person **plays a significant role** in the audit of a company or a registered scheme for a financial year if:

- (a) the person is appointed as an individual auditor of the company or scheme for that financial year and:
 - (i) acts as an auditor for the company or scheme for that financial year; or
 - (ii) prepares an audit report for the company or the scheme in relation to a financial report of the company or scheme for

that financial year or for a half-year falling within that financial year; or

- (b) a firm or company is appointed as an auditor of the company or scheme for that financial year and the person:
- (i) is a registered company auditor; and
 - (ii) acts, on behalf of the firm or company;
(A) as a lead auditor, or review auditor, in relation to an audit of the company or scheme for that financial year or for a half-year falling within that financial year; or
(B) if the company or scheme is included in the All Ordinaries Index at the beginning of the financial year during financial year - as a review auditor in relation to an audit of the company or scheme for that financial year or for a half-year falling within that financial year.

See page 74 of the submission for discussion of this amendment.

75 Section 9

Insert:

professional employee of an individual auditor, audit firm or audit company means an employee of the auditor, firm or company who participates in the conduct of the audits on behalf of the auditor, firm or company and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:

- (a) accounting standards; or
- (b) auditing standards; or
- (c) the provisions of this Act dealing with financial reporting and the conduct of audits.

76 Section 9

Insert:

professional member of an audit team has the meaning given by section 324AE.

77 Section 9

Insert:

review auditor has the meaning given by section 324AF.

78 Section 9

Insert:

senior manager:

- (a) in relation to a corporation—means a person (other than a director or secretary of the corporation) who:

- (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
- (ii) has the capacity to affect significantly the corporation's financial standing; and
- (b) in relation to a partnership—means a person (other than a partner) who:
 - (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the partnership; or
 - (ii) has the capacity to affect significantly the partnership's financial standing; and
- (c) in relation to a trust—means a person (other than a trustee) who:
 - (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or affairs of the trust; or
 - (ii) has the capacity to affect significantly the financial standing of the trust; and
- (d) in relation to a joint venture—means a person (other than a director or secretary of a corporation participating in the joint venture) who:
 - (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the joint venture; or
 - (ii) has the capacity to affect significantly the financial standing of the joint venture.

79 After section 50

Insert:

50AAA Associated entities

- (1) One entity (the *associate*) is an associated entity of ~~another entity~~ an audited body (the *principal*) if subsection (2), (3), (4), (5), (6) or (7) is satisfied.

See page 62 of the submission for discussion of this amendment.

- (2) This subsection is satisfied if the associate and the principal are related bodies corporate.
- (3) This subsection is satisfied if the principal controls the associate.
- (4) This subsection is satisfied if:
 - (a) the associate controls the principal; and
 - (b) the operations, resources or affairs of the principal are material to the associate.
- (5) This subsection is satisfied if:
 - (a) the associate has a qualifying investment in the principal; and
 - (b) the associate has significant influence over the principal; and

- (c) the interest is material to the associate.
- (6) This subsection is satisfied if:
 - (a) the principal has a qualifying investment in the associate; and
 - (b) the principal has significant influence over the associate; and
 - (c) the interest is material to the principal.
- (7) This subsection is satisfied if:
 - (a) an entity (the *third entity*) controls both the principal and the associate; and
 - (b) the operations, resources or affairs of the principal and the associate are both material to the third entity.
- (8) For the purposes of this section, one entity (the *first entity*) has a qualifying investment in another entity (the *second entity*) if the first entity:
 - (a) has an asset that is an investment in the second entity; or
 - (b) has an asset that is the beneficial interest in an investment in the second entity and has control over that asset.

80 At the end of subsection 298(1)

Add:

; and (c) a copy of the auditor’s declaration under section 307C in relation to the audit for the financial year.

81 After paragraph 300(1)(c)

Insert:

- (ca) the name of each person who:
 - (i) is an officer of the company, registered scheme or disclosing entity at any time during the year; and
 - (ii) was a partner in an audit firm, or a director of an audit company, that is an auditor of the company, disclosing entity or registered scheme for the year; and
 - (iii) was such a partner or director at a time when the audit firm or the audit company undertook an audit of the company, disclosing entity or registered scheme; and

82 Subsection 300(1)

After “subsections (10), (11),”, insert “(11A), (11B),”.

83 After subsection 300(11)

Insert:

- (11A) If a registered company auditor plays a significant role in the audit of a listed company for the financial year in reliance on a declaration made under section 342A, the report for the company must also include details of the declaration.

Listed companies—non-audit services and auditor independence

- (11B) The report for a listed company must also include the following in relation to each auditor:

- (a) details of the amount paid to the auditor for non-audit services provided by the auditor during the year; and
- (b) a statement whether the directors are satisfied that the provision of non-audit services by the auditor during the year is compatible with the general standard of independence for auditors imposed by this Act;
- (c) a statement of the directors' reasons for being satisfied that the provision of those non-audit services by the auditor during the year did not compromise the auditor independence requirements of this Act.

These details and statements must be included in the directors' report under the heading "Non-audit services".

- (11C) For the purposes of paragraph (11B)(a), the details of amounts paid to an auditor for non-audit services provided by the auditor during the year are:
- (a) the name of the auditor; and
 - (b) the dollar amount that the listed company paid for each **type** of those non-audit services.

See page 37 of the submission for discussion of this amendment

- (11D) The statements under paragraphs (11B)(b) and (c) must be made in accordance with:
- (a) advice provided by the listed company's audit committee if:
 - (i) the company is included in the All Ordinaries Index at the beginning of its financial year; or
 - (ii) subparagraph (i) does not apply but the company has an audit committee; or
 - (b) a resolution of the directors of the listed company if paragraph (a) does not apply.
- (11E) For the purposes of subsection (11D), a statement is taken to be made in accordance with advice provided by the company's audit committee only if:
- (a) the statement is consistent with that advice and does not contain any material omission of material included in that advice; and
 - (b) the advice is endorsed by a resolution passed by the members of the audit committee; and
 - (c) the advice is written advice signed by a member of the audit committee on behalf of the audit committee and given to the directors.

84 At the end of section 306

Add:

- (2) The directors' report must include a copy of the auditor's declaration under section 307C in relation to the audit or review for the half-year.

We note that item 5 in Part 1 of Schedule 2 inserts a different s.306(2). That item 5 should be renumbered s.306(3).

Also, an amendment is required to convert existing s.306 into s.306(1).

85 Before section 308

Insert:

307C Auditor's independence declaration

- (1) If an individual auditor conducts:
 - (a) an audit of the financial report for a financial year; or
 - (b) an audit or review of the financial report for a half-year;the individual auditor must give the directors of the company, registered scheme or disclosing entity a written declaration that the auditor and each professional member of the audit team has ~~complied with:~~
 - (c) not contravened the auditor independence requirements of this Act; and
 - (d) not contravened any applicable codes of professional conduct ~~in relation to the audit or review,~~
in relation to the audit or review of the audited body for the relevant financial period (other than where the circumstances of any contravention are fully disclosed in the written declaration).
- (2) If an audit firm or audit company conducts:
 - (a) an audit of the financial report for a financial year; or
 - (b) an audit or review of the financial report for a half-year;the lead auditor for the audit must give the directors of the company, registered scheme or disclosing entity a written declaration that the audit firm or audit company, the lead auditor and each professional member of the audit team has ~~complied with:~~
 - (c) not contravened the auditor independence requirements of this Act (other than where the circumstances of any contravention are fully disclosed in the written declaration); and
 - (d) complied with any applicable codes of professional conduct, ~~in relation to the audit or review,~~
in relation to the audit or review of the audited body for the relevant financial period.
- (3) The declaration under subsection (1) or (2):
 - (a) must be given when the audit report is given to the directors of the company, registered scheme or disclosing entity; and
 - (b) must be signed by the person making the declaration.

See page 38 of the submission for discussion of this amendment.

86 Division 1 of Part 2M.4 (heading)

Repeal the heading, substitute:

Division 1—Entities that may be appointed as an auditor for a company or registered scheme

87 Section 324

Repeal the section, substitute:

324AA Individual auditors, audit firms and authorised audit companies

Subject to this Part, the following may be appointed as auditor for a company or a registered scheme for the purposes of this Act:

- (a) an individual;
- (b) a firm;
- (c) a company.

The company or registered scheme may have more than one auditor.

324AB Effect of appointing firm as auditor—general

- (1) The appointment of a firm as auditor of a company or registered scheme is taken to be an appointment of all persons who, at the date of the appointment, are:

- (a) members of the firm; and
- (b) registered company auditors.

Those persons do not need to be resident in Australia.

- (2) The appointment of the members of a firm as auditors of a company or registered scheme that is taken by subsection (1) to have been made because of the appointment of the firm as auditor of the company or scheme is not affected by the dissolution of the firm. This subsection has effect subject to section 324AC.

- (3) A report or notice that purports to be made or given by a firm appointed as auditor of a company or registered scheme is not taken to be duly made or given unless it is signed by a member of the firm who is a registered company auditor both:

- (a) in the firm name; and
- (b) in his or her own name.

- (4) A notice required or permitted to be given to an audit firm under the Corporations [L](#)egislation may be given to the firm by giving the notice to a member of the firm.

324AC Effect of appointing firm as auditor—reconstitution of firm

Reconstitution of firm

- (1) This section deals with the situation in which:
- (a) a firm is appointed as auditor of a company or registered scheme; and
 - (b) the firm is reconstituted because of either or both of the following:
 - (i) the death, retirement or withdrawal of a member or members; or
 - (ii) the admission of a new member or new members.

Retiring or withdrawing member

- (2) A person who:
- (a) is taken under subsection 324AB(1) to be an auditor of the company; and
 - (b) retires or withdraws from the firm as previously constituted as mentioned in subparagraph (1)(b)(i) of this section;
- is taken to resign as auditor of the company as from the day of his or her retirement or withdrawal.
- (3) Section 329 does not apply to the resignation that is taken to occur under subsection (2) unless:
- (a) the person who is taken to have resigned was the only member of the firm who was a registered company auditor; and
 - (b) there is no member of the firm who is a registered company auditor after that person retires or withdraws from the firm.

New member

- (4) A person who:
- (a) is a registered company auditor; and
 - (b) is admitted to the firm as mentioned in subparagraph (1)(b)(ii);
- is taken to have been appointed as an auditor of the company as from the day of his or her admission to the firm.

Appointments of continuing members not affected

- (5) The reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the company or registered scheme.
- (6) Nothing in this section affects the operation of subsection 324BB(1).

324AD Effect of appointing company as auditor

A report or notice that purports to be made or given by an audit company appointed as auditor of a company or registered scheme is not taken to be duly made or given unless it is signed by a director of the audit company (or the lead auditor or review auditor for the audit) both:

- (a) in the audit company's name; and
- (b) in his or her own name.

324AE Professional members of the audit team

If an individual, audit firm or audit company conducts an audit of a company or registered scheme, the *professional members of the audit team* are:

- (a) any registered company auditor who participates in the conduct of the audit; and
- (b) any other person who participates in the conduct of the audit and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:
 - (i) accounting standards; or
 - (ii) auditing standards; or
 - (iii) the provisions of this Act dealing with financial reporting and the conduct of audits; and

- (c) any other person who is in a position to directly influence the outcome of the audit because of the role they play in the design, planning, management, supervision or oversight of the audit.

324AF Lead and review auditors

Lead auditor

- (1) If an audit firm or audit company conducts an audit of a company or registered scheme, the **lead auditor** for the audit is the registered company auditor who is primarily responsible to the audit firm or the audit company for the conduct of the audit.

Review auditor

- (2) If an individual auditor, audit firm or audit company conducts an audit of a company or registered scheme, the **review auditor** for the audit is the registered company auditor (if any) who is primarily responsible to the individual auditor, the audit firm or the audit company for reviewing the conduct of the audit.

Division 2—Registration requirements

324BA Registration requirements for appointment of individual as auditor

Subject to section 324BD, an individual contravenes this section if:

- (a) the individual:
 - (i) consents to be appointed as auditor of a company or registered scheme; or
 - (ii) acts as auditor of a company or registered scheme; or
 - (iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and
- (b) the person is not a registered company auditor.

324BB Registration requirements for appointment of firm as auditor

- (1) A firm contravenes this subsection if:
 - (a) the firm:
 - (i) consents to be appointed as auditor of a company or registered scheme; or
 - (ii) acts as auditor of a company or registered scheme; or
 - (iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and
 - (b) the firm:
 - (i) does not satisfy subsection (2); or
 - (ii) does not satisfy subsection (3).
- (2) The firm satisfies this subsection if at least 1 member of the firm is a registered company auditor who is ordinarily resident in Australia.
- (3) The firm satisfies this subsection if:

- (a) the business name under which the firm is carrying on business is registered under a law of a State or Territory relating to the registration of business names; or
 - (b) a return in the prescribed form has been lodged showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report.
- (4) If a firm contravenes subsection (1):
- (a) each member of the firm contravenes this subsection; and
 - (b) the firm itself does not commit an offence.
- (5) A member of an audit firm does not commit an offence at a particular time because of a contravention of subsection (4) if the member either:
- (a) does not know at that time of the circumstances that constitute the contravention of subsection (1) by the audit firm; or
 - (b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention of subsection (1) by the audit firm as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

324BC Registration requirements for appointment of company as auditor

- (1) A company contravenes this subsection if:
- (a) the company:
 - (i) consents to be appointed as auditor of a company or registered scheme; or
 - (ii) acts as auditor of a company or registered scheme; or
 - (iii) prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company or registered scheme; and
 - (b) the company is not an authorised audit company.

- (2) If a company contravenes subsection (1), each director of the company contravenes this subsection.

Note: The company itself will commit an offence based on the contravention of subsection (1).

- (3) A director of an audit company does not commit an offence at a particular time because of a contravention of subsection (2) if the director either:
- (a) does not know at that time of the circumstances that constitute the contravention of subsection (1) by the audit company; or
 - (b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention of subsection (1) by the audit company as soon as possible after the director becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

324BD Exception from registration requirement for proprietary company

- (1) An individual who is not a registered company auditor may be appointed as auditor of a proprietary company if:
 - (a) ASIC is satisfied that it is impracticable for a proprietary company to obtain the services of:
 - (i) an individual who could be appointed as auditor consistently with section 324BA; or
 - (ii) a firm that could be appointed as auditor consistently with section 324BB; or
 - (iii) a company that could be appointed consistently with section 324BC; because of the place where the company carries on business; and
 - (b) ASIC is satisfied that the individual is suitably qualified or experienced; and
 - (c) ASIC approves the individual for the purposes of this Act in relation to the audit of the company's financial reports. The appointment is subject to such terms and conditions as are specified in the approval under paragraph (c).
- (2) If an individual is appointed in accordance with subsection (1):
 - (a) the individual is taken to be a registered company auditor in relation to the auditing of any of the company's financial reports; and
 - (b) the provisions of this Act apply, with the necessary modifications, in relation to the individual accordingly. Paragraph (a) has effect subject to the terms and conditions of the approval under subsection (1).
- (3) If an individual approved by ASIC under subsection (1) is acting as auditor of a company, ASIC may at any time, by notice in writing given to the company:
 - (a) amend, revoke or vary the terms and conditions of its approval; or
 - (b) terminate the appointment of that individual as auditor of the company.
- (4) A notice under subsection (3) terminating the appointment of an individual as auditor of a company takes effect as if, on the date on which the notice is received by the company, the company had received from the individual notice of the individual's resignation as auditor taking effect from that date.

Division 3—Auditor independence

Subdivision A—General requirement

324CA General requirement for auditor independence

- (1) An individual auditor, audit firm or audit company contravenes this subsection if:
 - (a) the individual auditor, audit firm or audit company engages in audit activity in relation to an audited body at a particular time; and
 - (b) [a conflict of interest situation](#) [an auditor independence issue](#) exists in relation to the audited body at that time; and
 - (c) at that time:

- (i) in the case of an individual auditor—the individual auditor is aware that the ~~auditor independence issue~~conflict of interest situation exists; or
- (ii) in the case of an audit firm—any member of the firm is aware that the ~~auditor independence issue~~conflict of interest situation exists; or
- (iii) in the case of an audit company—the audit company is aware that the ~~auditor independence issue~~conflict of interest situation exists; and
- (d) the individual auditor, audit firm or audit company does not, as soon as possible after the relevant person referred to in paragraph (1)(c) becomes aware that the ~~auditor independence issue~~conflict of interest situation exists, take all reasonable steps to ensure that the ~~auditor independence issue~~conflict of interest situation ceases to exist.

Note: For ~~conflict of interest situation~~auditor independence issue, see section 324CB.

- (2) An individual auditor, an audit firm or an audit company contravenes this subsection if:
 - (a) the individual auditor, audit firm or audit company engages in audit activity in relation to an audited body at a particular time; and
 - (b) ~~a conflict of interest situation~~an auditor independence issue exists in relation to the audited body at ~~the~~that time; and
 - (c) at that time:
 - (i) in the case of an individual auditor—the individual auditor is not aware that the ~~auditor independence issue~~conflict of interest situation exists; or
 - (ii) in the case of an audit firm—none of the members of the firm is aware that the ~~auditor independence issue~~conflict of interest situation exists; or
 - (iii) in the case of an audit company—the audit company is not aware that the ~~auditor independence issue~~conflict of interest situation exists; and
 - (d) the relevant person, or one of the relevant people referred to in paragraph (c), would have been aware of the existence of the ~~auditor independence issue~~conflict of interest situation if the individual auditor, audit firm or audit company had in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the individual auditor, the audit firm or the audit company) that reasonably capable of making the individual auditor, audit firm or audit company would be made aware of the existence of such an auditor independence issue~~a conflict of interest situation~~.

Note: For ~~conflict of interest situation~~auditor independence issue, see section 324CB.

See page 41 of the submission for discussion of the replacement term “auditor independence issue”.

See page 45 of the submission for discussion of the modification to paragraph (d).

- (3) If an audit firm contravenes subsection (1) or (2):

- (a) each member of the firm contravenes this subsection; and
- (b) the audit firm itself does not commit an offence based on subsection (1) or (2).

Note: Section 324CJ provides a defence for inadvertent breaches.

- (4) If an audit company contravenes subsection (1) or (2), each director of the company contravenes this subsection.

Note 1: Section 324CJ provides a defence for inadvertent breaches.

Note 2: The company itself will commit an offence based on the contravention of subsection (1) or (2).

- (5) The obligations imposed by this section are in addition to, and do not derogate from, any obligation imposed by:

- (a) another provision of this Act; or
- (b) a code of professional conduct.

Note: Paragraph (a)—see, for example, the specific obligations imposed by Subdivision B.

324CB Conflict of interest situation Auditor independence issue

- (1) For the purposes of section 324CA, an conflict of interest situation auditor independence issue exists in relation to an audited body at a particular time, if circumstances exist at that time that:

- (a) significantly impair, or ~~might are likely to significantly~~ impair, the ability of the auditor, or a professional member of the audit team, to exercise objective and impartial judgment in relation to the conduct of an audit of the audited body; or
- (b) would give a person, with full knowledge of the facts and circumstances, reasonable grounds ~~for concern to conclude~~ that the ability of the auditor, or a professional member of the audit team, to exercise objective and impartial judgment in relation to the conduct of an audit of the audited body is, or ~~might is likely to~~ be, significantly impaired.

See page 41 of the submission for discussion of the replacement term “auditor independence issue”.

- (2) Without limiting subsection (1), have regard to circumstances arising from any relationship that exists, has existed, or is likely to exist, between:

- (a) the individual auditor; or
- (b) the audit firm or any current or former member of the firm; or
- (c) the audit company, any current or former director of the audit company or any person currently or formerly involved in the management of the audit company;

and any of the persons and bodies set out in the following table:

Relevant relationships		
Item	If the audited body is...	have regard to any relationship with...
1	a company	the company; or a current or former director of the company; or a person currently or formerly

Relevant relationships		
Item	If the audited body is...	have regard to any relationship with...
		involved in the management of the company.
2	a disclosing entity	the entity; or a current or former director of the entity; or a person currently or formerly involved in the management of the entity.
3	a registered	scheme the responsible entity for the registered scheme; or a current or former director of the responsible entity; or a person currently or formerly involved in the management of the scheme; or a person currently or formerly involved in the management of the responsible entity.

Subdivision B—Specific requirements

324CC Auditor independence—specific requirements for individual auditor

Specific independence requirements for individual auditor

- (1) An individual auditor contravenes this subsection if:
- (a) the individual auditor engages in audit activity **in respect of an audited body** at a particular time; and
 - (b) a relevant item of the table in subsection 324CF(1) applies at that time to a person or entity specified in the following table:

Individual auditor		
Item	For this person or entity...	the relevant items of the table in subsection 324CF(1) are...
1	the individual auditor	1 to 19
2	a service company or trust or other entity acting for, or on behalf of, the individual auditor	1 to 19
3	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 12 16 to 19
4	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 12 16 to 19
5	a person who is a non-audit services provider and who does not satisfy the maximum hours test in subsection (2)	10 to 12
6	an immediate family member of a person who is a non-audit services provider and who does not satisfy the maximum hours test in subsection (2)	10 to 12
7	an entity that the auditor (or a service company or trust or other entity acting for, or on behalf of, the	15

Individual auditor

Item	For this person or entity...	the relevant items of the table in subsection 324CF(1) are...
	individual auditor) controls	
8	a body corporate in which the auditor (or a service company or trust or other entity acting for, or on behalf of, the individual auditor) has a substantial holding	15
9	a person who: <ul style="list-style-type: none"> (a) ceases to be a former professional employee of the auditor <u>after the commencement date</u>; and (b) does not satisfy the independence test in subsection (3) 	1 and 2
10	an individual who: <ul style="list-style-type: none"> (a) is the former <u>ceases to be the</u> owner of the individual auditor's business <u>after the commencement date</u>; and (b) does not satisfy the independence test in subsection (3) 	1 and 2

This subsection is not contravened if :

(a) the individual auditor:

(i) does not know at the particular time of the circumstances that constitute the contravention; or

(ii) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the individual auditor becomes aware of those circumstances; and

(b) the individual auditor has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the individual auditor) that the individual auditor and its employees comply with the requirements of this Subdivision B.

Maximum hours test

(2) A non-audit services provider satisfies the maximum hours test in this subsection if:

(a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

- (b) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1), the prosecution must prove that the non-audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

- (3) A person satisfies the independence test in this subsection in relation to an individual auditor if the person:
 - (a) does not influence the operations or financial policies of the accounting and audit practice conducted by the auditor; and
 - (b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the auditor; and
 - (c) has no financial arrangements with the auditor to receive:
 - (i) any commissions or like payments directly attributable to work generated by the former employee or former owner for the accounting and audit practice conducted by the auditor;
or
 - (ii) any other payments or benefits, other than payments or benefits under:
 - (A) fixed pre-determined arrangements for providing benefits or payments to the former owner or former employee; or
 - (B) any right to indemnity or contribution,
in relation to the person's former employment by the auditor or the person's former ownership interest in the auditor's business.
does not have any rights against the auditor in relation to the accounting and audit practice conducted by the auditor in relation to the person's former employment by the auditor;
and
 - (d) ~~has no financial arrangements with the auditor in relation to the accounting and audit practice conducted by the auditor (other than an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent on the revenues, profits or earnings of the auditor).~~

In a prosecution for an offence based on subsection (1), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the individual auditor.

- (4) In this section 324CC, *commencement date* has the same meaning given to it in section 1449.

324CD Auditor independence—specific requirements for audit firm

Specific independence requirements for audit firm

- (1) An audit firm contravenes this subsection if:
- (a) the audit firm engages in audit activity [in respect of an audited body](#) at a particular time; and
 - (b) a relevant item of the table in subsection 324CF(1) applies at that time to a person or entity specified in the following table:

Audit firm		
Item	For this person or entity ...	the relevant items of the table in subsection 324CF(1) are...
1	the firm	4 7 10 to 19
2	a service company or trust or other entity acting for, or on behalf of, the firm	4 7 10 to 19
3	a member of the firm	1 to 7 9 to 15
4	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 12 16 to 19
5	an immediate family member of a professional member of the audit team conducting the audit of the audited body	
6	a person who: <ul style="list-style-type: none"> (a) is a non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (2) 	10 to 12
7	an immediate family member of a person who: <ul style="list-style-type: none"> (a) is a non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (2) 	10 to 12
8	an entity that the firm (or a service company or trust or other entity acting for, or on behalf of, the firm) controls	15
9	a body corporate in which the firm (or a service company or trust or other entity acting for, or on behalf of, the firm) has a substantial holding	15

Audit firm		
Item	For this person or entity ...	the relevant items of the table in subsection 324CF(1) are...
10	an entity that a member of the firm controls or a body corporate in which a member of the firm has a substantial holding	15
11	a person who: (a) ceased to be a former member of the firm <u>after the commencement date</u> ; and (b) does not satisfy the independence test in subsection (3)	1 and 2
12	a person who: (a) is a former <u>ceased to be a</u> professional employee of the firm <u>after the commencement date</u> ; and (b) does not satisfy the independence test in subsection (3)	1 and 2

This subsection is not contravened if:

(a) either:

(i) none of the members of the audit firm are aware at the particular time of the circumstances that constitute the contravention; or

(ii) if any member of the audit firm does know of those circumstances at that time, the audit firm takes all reasonable steps to correct the contravention as soon as possible after that member of the audit firm becomes aware of those circumstances; and

(b) the audit firm has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the audit firm) that the audit firm and its employees comply with the requirements of this Subdivision B.

Maximum hours test

- (2) A non-audit services provider satisfies the maximum hours test in this subsection if:
- (a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and
 - (b) the number of hours for which the person provided services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours.

In a prosecution for an offence based on subsection (1), the prosecution must prove that the non-audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

(3) A person satisfies the independence test in this subsection in relation to a firm if the person:

- (a) does not influence the operations or financial policies of the accounting and audit practice conducted by the firm; and
- (b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the firm; and
- (c) has no financial arrangements with the firm to receive:
 - (i) any commissions or like payments directly attributable to work generated by the former member or former employee for the accounting and audit practice conducted by the firm;
or
 - (ii) any other payments or benefits, other than payments or benefits under:
 - (A) fixed pre-determined arrangements for providing benefits or payments to the former member or former employee; or
 - (B) any right to indemnity or contribution,
in relation to the person's former partnership interest in, or employment by, the firm.

~~does not have any rights against the firm, or the members of the firm, in relation to the accounting and audit practice conducted by the firm in relation to the person's former partnership interest in the firm; and~~

- ~~(d) — has no financial arrangements with the firm in relation to the accounting and audit practice conducted by the firm (other than an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent on the revenues, profits or earnings of the firm).~~

In a prosecution for an offence based on subsection (1), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the firm.

Meaning of holding by firm in body corporate

(4) For the purposes of item 8-9 in the table in subsection (1), a firm is taken to have a holding in a body corporate if the holding is one of the firm's partnership assets.

Offences

- (5) If an audit firm contravenes subsection (1):
 - (a) each member of the firm contravenes this subsection; and
 - (b) the audit firm itself does not commit an offence based on subsection (1).

Note: Section 324CJ provides a defence for inadvertent breaches.

(6) In this section 324CD, *commencement date* has the same meaning given to it in section 1449.

324CE Auditor independence—specific requirements for audit company

Specific independence requirements for audit company

- (1) An audit company contravenes this subsection if:
- (a) the audit company engages in audit activity in respect of an audited body at a particular time; and
 - (b) a relevant item of the table in subsection 324CF(1) applies at that time to a person or entity specified in the following table:

Audit company		
Item	For this person or entity ...	the relevant items of the table in subsection 324CF(1) are...
1	the audit company	4 7 10 to 19
2	a service company or trust or other entity acting for, or on behalf of, the audit company	4 7 10 to 19
3	a director or senior manager of the audit company	1 to 15
4	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 12 16 to 19
5	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 8 to 12 16 to 19
6	a person who: <ul style="list-style-type: none"> (a) is <u>a</u> non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (2) 	10 to 12
7	an immediate family member of a person who: <ul style="list-style-type: none"> (a) is <u>a</u> non-audit services provider; and (b) does not satisfy the maximum hours test in subsection (2) 	10 to 12
8	an entity that the audit company (or a service company or trust or other entity acting for, or on behalf of, the audit company) controls	15
9	a body corporate in which the audit company (or a service company or trust or other entity acting for, or on behalf of, the audit company) controls	15

Audit company		
Item	For this person or entity ...	the relevant items of the table in subsection 324CF(1) are...
	company (or a service company or trust or other entity acting for, or on behalf of, the audit company) has a substantial holding	
10	an entity that an officer of the audit company controls or a body corporate in which an officer of the audit company has a substantial holding	16
11	a person who: <ul style="list-style-type: none"> (a) ceased to be an is a former officer of the audit company <u>after the commencement date</u>; and (b) does not satisfy the independence test in subsection (3) 	1 and 2
12	a person who: <ul style="list-style-type: none"> (a) is a former <u>ceased to be a</u> professional employee of the audit company <u>after the commencement date</u>; and (b) does not satisfy the independence test in subsection (3) 	1 and 2

A contravention of subsection (1) does not occur if :

- (a) the audit company:
- (i) does not know at the particular time of the circumstances that constitute the contravention; or
 - (ii) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the audit company becomes aware of those circumstances; and
- (b) the audit company has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and its employees comply with the requirements of this Subdivision B.

Maximum hours test

- (2) A non-audit services provider satisfies the maximum hours test in this subsection if:
- (a) the number of hours for which the person provides services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the period to which the audit relates does not exceed 10 hours; and

- (b) the number of hours for which the person provided services (other than services related to the conduct of an audit) to the audited body on behalf of the auditor during the 12 months immediately before the beginning of the period to which the audit relates does not exceed 10 hours. In a prosecution for an offence based on subsection (1), the prosecution must prove that the non-audit services provider did not satisfy the maximum hours test in this subsection.

Independence test

- (3) A person satisfies the independence test in this subsection in relation to an audit company if the person:
 - (a) does not influence the operations or financial policies of the accounting and audit practice conducted by the audit company; and
 - (b) does not participate, or appear to participate, in the business or professional activities of the accounting and audit practice conducted by the audit company; and
 - (c) has no financial arrangements with the audit company to receive:
 - (i) any commissions or like payments directly attributable to work generated by the former officer or former employee for the accounting and audit practice conducted by the company; or
 - (ii) any other payments or benefits, other than payments or benefits under:
 - (A) fixed pre-determined arrangements for providing benefits or payments to the former officer or former employee; or
 - (B) any right to indemnity or contribution,in relation to the person's former position of officer of, or former employment by, the audit company.
 - does not have any rights against the audit company in relation to the accounting and audit practice conducted by the audit company in relation to the person's former position as an officer of the audit company; and
 - ~~(d) has no financial arrangements with the audit company in relation to the accounting and audit practice conducted by the audit company (other than an arrangement providing for regular payments of a fixed pre-determined dollar amount which is not dependent on the revenues, profits or earnings of the audit company).~~

In a prosecution for an offence based on subsection (1), the prosecution must prove that the person did not satisfy the independence test in this subsection in relation to the audit company.

Offences

- (4) If an audit company contravenes subsection (1), each director of the company contravenes this subsection.

Note 1: Section 324CJ provides a defence for inadvertent breaches.

Note 2: The audit company itself commits an offence based on its contravention of subsection (1).

- (5) In this section 324CE, *commencement date* has the same meaning given to it in section 1449.

324CF Relevant relationships

Table of relevant relationships

(1) The following table lists the relationships between:

- (a) a person or a firm; and
- (b) the audited body for an audit;

that are relevant for the purposes of sections 324CC, 324CD and 324CE:

Relevant relationships

Item	This item applies to a person (or, if applicable, to a firm) at a particular time if at that time the person (or firm)...
1	is an officer of the audited body. This item does not apply if the audited body is a small proprietary company for relevant financial year.
2	is an audit-critical employee of the audited body. This item does not apply if the audited body is a small proprietary company for the relevant financial year.
3	is a partner of: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body. This item does not apply if the audited body is a small proprietary company for the relevant financial year.
4	is an employer of: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body. This item does not apply if the audited body is a small proprietary company for the relevant financial year.
5	is an employee of: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body. This item does not apply if the audited body is a small proprietary company for the relevant financial year.
6	is a partner or employee of an employee of: (a) an officer of the company audited body; or (b) an audit-critical employee of the company audited body. This item does not apply if the audited body is a small proprietary company for the relevant financial year.
7	provides remuneration to: (a) an officer of the audited body; or (b) an audit-critical employee of the audited body for acting as a consultant to the person. This item does not apply if the audited body is a small proprietary company for the relevant financial year.

8	<p>was an officer of the audited body at any time during:</p> <p>(a) the period to which the audit relates; or</p> <p>(b) the 12 months immediately preceding the beginning of the period to which the audit relates; or</p> <p>(c) the period during which the audit is being conducted or the audit report is being prepared.</p> <p>This item does not apply if the audited body is a small proprietary company for the relevant financial year.</p>
9	<p>was an audit-critical employee of the audited body at any time during:</p> <p>(a) the period to which the audit relates; or</p> <p>(b) the 12 months immediately preceding the beginning of the period to which the audit relates; or</p> <p>(c) the period during which the audit is being conducted or the audit report is being prepared.</p> <p>This item does not apply if the audited body is a small proprietary company for the relevant financial year.</p>
10	has an asset that is an investment in the audited body.
11	has an asset that is a beneficial interest in an investment in the audited body and has control over that asset intentionally omitted
12	has an asset that is a beneficial interest in an investment in the audited body that is a material interest.
13	has an asset that is a material investment in an entity that has a controlling interest in the audited body.
14	has an asset that is a material beneficial interest in an investment in an entity that has a controlling interest in the audited body.
15	<p>owes an amount of more than \$5,000 (or such higher amount as may be prescribed for the purposes of this item) to:</p> <p>(a) the audited body; or</p> <p>(b) a related body corporate; or</p> <p>(c) an entity that the audited body controls,</p> <p>unless the debt is one which is disregarded under subsection (5), (9) or (10).</p> <p>This item does not apply to an amount if item 18 would apply to the amount but for subsection (6).</p>
16	<p>is owed an amount by:</p> <p>(a) the audited body; or</p> <p>(b) a related body corporate; or</p> <p>(c) an entity that the audited body controls,</p> <p>under a loan that is not disregarded under subsection (9) or (11)</p>
17	<p>is liable under a guarantee of a loan made to:</p> <p>(a) the audited body; or</p> <p>(b) a related body corporate; or</p> <p>(c) an entity that the audited body controls.</p>

18	owes an amount to:
	(a) the audited body; or
	(b) a related body corporate; or
	(c) an entity that the audited body controls, under a loan that is not disregarded under subsection (6), (9) or (10).
19	is entitled to the benefit of a guarantee given by:
	(a) the audited body; or
	(b) a related body corporate; or
	(c) an entity that the audited body controls, in relation to a loan unless the guarantee is disregarded under subsection (7).

Applying table if audited body is registered scheme

- (2) If the audited body is a registered scheme, apply the table in subsection (1) as if:
- (a) references to the audited body in items 1 to 9, and items 15 to 19, in the table were references to the responsible entity for the registered scheme; and
 - (b) references to an interest in the audited body in items 10 to 12 in the table were references to an interest in either:
 - (i) the registered scheme; or
 - (ii) the responsible entity for the registered scheme; and
 - (c) references to an investment in an entity that has a controlling interest in the audited body in items 13 and 14 of the table were references to an investment in an entity that has a controlling interest in the responsible entity for the registered scheme.

Applying table if audited body is listed entity (other than registered scheme)

- (3) If the audited body is a listed entity (other than a registered scheme), apply the table in subsection (1) **and subsections (5) to (7) and (9) to (11)** as if references in the table to the audited body included references to an associated entity of the audited body.

Note: See section 50AAA for the definition of *associated entity*.

Firm assets

- (4) For the purpose of applying items 10 to 14 in the table in subsection (1) to an audit firm, the firm is taken to have a particular asset if the asset is one of the firm's partnership assets.

Housing loan exception

- (5) For the purposes of item 15 of the table in subsection (1), disregard a debt owed by an individual to a body corporate or entity if:
- (a) the body corporate or entity is:
 - (i) an Australian ADI; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and

- (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
- (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

Ordinary commercial loan exception

- (6) For the purposes of item 18 of the table in subsection (1), disregard any loan that:
 - (a) is made or given in the ordinary course of the business of:
 - (i) the audited body; or
 - (ii) the related body corporate; or
 - (iii) the controlled entity; and
 - (b) is made or given on the terms and conditions that would normally apply to a loan made or given by the audited body, the related body corporate or the controlled entity.

Ordinary commercial guarantee exception

- (7) For the purposes of item 19 of the table in subsection (1), disregard any guarantee that:
 - (a) is made or given in the ordinary course of the business of:
 - (i) the audited body; or
 - (ii) the related body corporate; or
 - (iii) the controlled entity; and
 - (b) is made or given on the terms and conditions that would normally apply to a guarantee made or given by the audited body, the related body corporate or the controlled entity.

Relevant financial year

- (8) In this section:

relevant financial year, in relation to audit activities undertaken in relation to an audit of a financial report for a financial year or an audit or review of a financial report for a half-year in a financial year, means the financial year immediately before that financial year.

Ordinary commercial debt exception

- (9) For the purposes of items 15, 16 and 18 of the table in subsection (1), disregard any debt that:
 - (a) arises in the ordinary course of the business of:
 - (i) the audited body; or
 - (ii) the related body corporate; or
 - (iii) the controlled entity; and
 - (b) is incurred under the terms and conditions that would normally apply to the provision of goods or services to or by the audited body, the related body corporate or the controlled entity.

Other financial arrangement exception

(10) For the purposes of items 15 and 18 of the table in subsection (1), disregard any loan that:

- (a) arises in the ordinary course of the business of:
 - (i) the audited body; or
 - (ii) the related body corporate; or
 - (iii) the controlled entity; and
- (b) arises from one of the following:
 - (i) automobile loans and leases collateralised by the automobile;
 - (ii) loans fully collateralised by the cash surrender value of an insurance policy;
 - (iii) loans fully collateralised by cash deposits at the entity referred to in paragraph (a);
 - (iv) a credit card facility, provided the credit card balance owed to the entity referred to in paragraph (a) does not exceed \$10,000 on a current basis taking into account the payment due date and any available grace period; and
- (c) is made or given on the terms and conditions that would normally apply to the relevant arrangement with that entity;

Deposit exception

(11) For the purposes of item 16 of the table in subsection (1), disregard a debt owed by the audited body, the related body corporate or the controlled entity if:

- (a) the body corporate or entity is:
 - (i) an Australian ADI; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
- (b) the debt arose because of a cash deposit or similar transaction made by the person with the body corporate or entity in the ordinary course of the business of the body corporate or the controlled entity.

See page 59 of the submission for discussion of the insertion of ss.324CF(9) - (11).

324CG Special rule for retiring partners of audit firms and retiring directors of authorised audit companies

- (1) A person contravenes this section if:
 - (a) the person ceases to be:
 - (i) a member of an audit firm; or
 - (ii) a director of an audit company;at a particular time after the commencement date (the *departure time*); and

- (b) at any time before the departure time, the audit firm or audit company has engaged in an audit of an audited body; and
- (c) before the end of the relevant waiting period, the person becomes, or continues to be, an officer of the audited body; and
- (d) the audited body is not a small proprietary company for the most recently ended financial year.

~~If the audited body is a listed entity (other than a registered scheme), apply paragraph (d) as if references in that paragraph to the audited body included references to a related body corporate of the audited body.~~

- (2) The relevant waiting period ends 2 years after the earlier of:
 - (a) the departure time; and
 - (b) the time that the audit firm or audit company ceases to be engaged in audit activity in relation to the audited body.

~~When the relevant waiting period ends depends on whether the person was a professional member of the audit team for the audit. If the person was, the relevant waiting period ends 4 years after the departure time. If the person was not, the relevant waiting period ends 2 years after the departure time.~~

- (3) In this section 324CG, *commencement date* has the same meaning given to it in section 1449.

See page 63 of the submission for discussion of these amendments.

If the deletion of the last paragraph in s.324CG(1) is not accepted, that paragraph should refer to paragraph (c), consistent with similar paragraphs in ss.324CH and 324CI.

324CH Special rule for retiring professional member of audit team

- (1) A person contravenes this section if:
 - (a) the person ceases to be a professional employee of an registered company/individual auditor, an audit firm or an audit company, at a particular time after the commencement date (the *departure time*); and
 - (b) at any time before the departure time, the registered company/individual auditor, audit firm or audit company has engaged in an audit of an audited body; and
 - (c) the person was a key senior professional member of the audit team for the audit; and
 - (d) before the end of the relevant waiting period, the person becomes, or continues to be, an officer of the audited body; and
 - (e) the audited body is not a small proprietary company for the most recently ended financial year.

~~If the audited body is a listed entity (other than a registered scheme), apply paragraph (d) as if references in that paragraph to the audited body included references to a related body corporate of the audited body.~~

- (2) The relevant waiting period ends 4-2 years after the departure time/earlier of:

- (a) ~~the time at which the employee ceases to be a key senior professional member of an audit team for any audit of the audited body; and~~
- (b) ~~the departure date.-~~
- (3) ~~In this section 324CH, *commencement date* has the same meaning given to it in section 1449.~~

See page 63 of the submission for discussion of these amendments.

“Registered company auditor” is not used elsewhere in Division 3 and should be replaced by “individual auditor” for consistency.

~~324CI—Multiple former audit firm partners or audit company directors~~

~~A person contravenes this section if:~~

- (a) ~~an audit firm, or audit company, is an auditor of an audited body for a financial year; and~~
- (b) ~~the person has at any time been a member of the audit firm or a director of the audit company; and~~
- (c) ~~the person becomes an officer of the audited body; and~~
- (d) ~~at the time when paragraph (c) is satisfied another person who is or who also has at any time been a member of the audit firm, or a director of the audit company, at a time when the audit firm, or audit company, undertook an audit of the audited body is also an officer of the audited body; and~~
- (e) ~~the audited body is not a small proprietary company for the most recently ended financial year.~~

~~If the audited body is a listed entity (other than a registered scheme), apply paragraphs (c) and (d) as if references in those paragraphs to the audited body included references to a related body corporate of the audited body.~~

See page 63 of the submission for discussion of these amendments.

Subdivision C—Common provisions

324CJ Inadvertent breaches

- (1) An individual auditor who is the auditor of a company or registered scheme does not commit an offence at a particular time because of a contravention of a provision of Subdivision B if:
 - (a) the auditor either:
 - (i) does not know at that time of the circumstances that constitute the contravention; or
 - (ii) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the auditor becomes aware of those circumstances; and
 - (b) the auditor has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the

person's audit practice) that the auditor and the auditor's employees comply with the requirements of Subdivision B.

Note: A defendant bears an evidential burden in relation to the matters in 22 subsection (1), see subsection 13.3(3) of the *Criminal Code*.

(2) A person who is a member of an audit firm that is the auditor of a company or registered scheme does not commit an offence at a particular time because of a contravention of a provision of Subdivision A or B if:

- (a) the person either:
 - (i) does not know at that time of the circumstances that constitute the contravention; or
 - (ii) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the person becomes aware of those circumstances; and
- (b) the person has reasonable grounds to believe that the audit firm has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the firm ~~or the authorised company~~) that the firm ~~or audit company~~ and its employees comply with the requirements of that Subdivision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

(3) An audit company that is the auditor of a company or registered scheme does not commit an offence at a particular time because of a contravention of a provision of Subdivision B if:

- (a) the audit company either:
 - (i) does not know at that time of the circumstances that constitute the contravention; or
 - (ii) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the audit company becomes aware of those circumstances; and
- (b) the audit company has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and its employees comply with the requirements of Subdivision B.

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

(4) A director of an audit company that is the auditor of a company or registered scheme does not commit an offence at a particular time because of a contravention of a provision of Subdivision A or B if:

- (a) the director either:
 - (i) does not know at that time of the circumstances that constitute the contravention; or
 - (ii) knows of those circumstances at that time but takes all reasonable steps to correct the contravention as soon as possible after the director becomes aware of those circumstances; and

- (b) the director has reasonable grounds to believe that the audit company concerned has in place a quality control system that provides reasonable assurance (taking into account the size and nature of the audit practice of the audit company) that the audit company and its employees comply with the requirements of that Subdivision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

324CK People who are regarded as officers of a company for the purposes of this Division

- (1) For the purposes of this Division, a person is taken to be an officer of a company if:
 - (a) the person is an officer of:
 - (i) a related body corporate; or
 - (ii) an entity that the company controls; or
 - (b) the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of:
 - (i) the company; or
 - (ii) a related body corporate; or
 - (iii) an entity that the company controlled at that time.

and, in the case of paragraph (a) and subparagraphs (b)(ii) and (b)(iii), the ownership interest of the relevant body corporate or entity is material to that body corporate.

See page 70 of the submission for discussion of these amendments.

- (2) Paragraph (1)(b) does not apply if ASIC directs that it does not apply in relation to the person in relation to the company. ASIC may give the direction only if ASIC thinks that it is appropriate to do in the circumstances of the case.
- (3) For the purposes of this Division, a person is not taken to be an officer of a company by reason only of being, or having been, the liquidator of:
 - (a) the company; or
 - (b) a related body corporate; or
 - (c) an entity that the company controls or has controlled.
- (4) For the purposes of this Division, a person is not taken to be an officer of a company merely because of one or more of the following:
 - (a) having been appointed as auditor of:
 - (i) the company; or
 - (ii) a related body corporate; or
 - (iii) an entity that the company controls or has controlled;
 - (b) having been appointed, for any purpose relating to taxation, as public officer of:
 - (i) a body corporate; or

- (ii) an unincorporated body; or
- (iii) a trust estate;
- (c) being or having been authorised to accept service of process or notices on behalf of:
 - (i) the company; or
 - (ii) a related body corporate; or
 - (iii) an entity that the company controls or has controlled.

Division 4—Deliberately disqualifying auditor

324CL Deliberately disqualifying auditor

Individual auditor

- (1) An individual contravenes this subsection if:
 - (a) the individual is appointed auditor of a company or registered scheme; and
 - (b) while the appointment continues, the individual brings about a state of affairs with the intention of causing a contravention of Division 2 or 3; and
 - (c) the individual cannot, while that state of affairs continues, act as auditor of the company or scheme without contravening Division 2 or 3.

Audit firm

- (2) A member of a firm contravenes this subsection if:
 - (a) the firm is appointed auditor of a company or a registered scheme; and
 - (b) while the appointment continues, the member brings about a state of affairs with the intention of causing a contravention of Division 2 or 3; and
 - (c) the firm cannot, while that state of affairs continues, act as auditor of the company or scheme without contravening Division 2 or 3.

Audit company

- (3) A person who is:
 - (a) a member of a company; or
 - (b) a director of a company; or
 - (c) a lead auditor in relation to an audit conducted by a company;
 contravenes this subsection if:
 - (d) the company is appointed auditor of a company or a registered scheme; and
 - (e) while the appointment continues, the person brings about a state of affairs with the intention of causing a contravention of Division 2 or 3; and
 - (f) the company cannot, while that state of affairs continues, act as auditor of the company or scheme without contravening Division 2 or 3.

Division 5—Auditor rotation for listed companies

324DA Limited term for eligibility to play significant role in audit of a listed company or listed registered scheme

- (1) If an individual plays a significant role in the audit of a listed company or listed registered scheme for 5 successive financial years (the *extended audit involvement period*), the individual is not eligible to play a significant role in the audit of the company or the scheme for a later financial year (the *subsequent financial year*) unless:
 - (a) the individual has not played a significant role in the audit of the company or the scheme for at least 2 successive financial years (the *intervening financial years*); and
 - (b) the intervening financial years:
 - (i) commence after the end of the extended audit involvement period; and
 - (ii) end before the beginning of the subsequent financial year.

Note: *Play a significant role* in an audit is defined in Section 9

- (2) An individual is not eligible to play a significant role in the audit of a listed company or listed registered scheme for a financial year if, were the individual to do so, the individual would play a significant role in the audit of the company or scheme for more than 5 out of 7 successive financial years.
- (3) For the purposes of subsection (2), disregard an individual's playing of a significant role in the audit of a company or scheme for a financial year if:
 - (a) ASIC makes a declaration under paragraph 342A(1)(a) in relation to the individual; and
 - (b) because of the declaration, subsection (1) of this section does not operate to make the individual not eligible to play a significant role in the audit of the company or scheme for that financial year.

324DB Individual's rotation obligation

An individual contravenes this section if the individual:

- (a) plays a significant role in the audit of a listed company or listed registered scheme for a financial year; and
- (b) is not eligible to play that role.

324DC Audit firm's rotation obligation

- (1) An audit firm contravenes this subsection if:
 - (a) the firm consents to act as a listed company's or listed registered scheme's auditor for a financial year; and
 - (b) an individual acts, on behalf of the firm, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and
 - (c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and

- (d) a member of the firm (other than the individual) becomes aware that the individual is not eligible to play that role; and
 - (e) the firm fails to take the necessary steps, as soon as possible after the member of the firm becomes aware that the individual is not eligible to play that role, either:
 - (i) to resign as auditor of the company or scheme; or
 - (ii) to ensure that the individual ceases to act, on behalf of the firm, as a lead or review auditor in relation to the audit of the company or scheme for that financial year.
- (2) If an audit firm contravenes subsection (1):
- (a) each member of the firm contravenes this subsection; and
 - (b) the audit firm itself does not commit an offence based on subsection (1).
- (3) A member of an audit firm does not commit an offence at a particular time because of a contravention of subsection (32) if the member either:
- (a) does not know at that time of the circumstances that constitute the contravention of subsection (1) by the audit firm; or
 - (b) does know of those circumstances at that time but takes all reasonable steps to correct the contravention of subsection (1) by the audit firm as soon as possible after the member becomes aware of those circumstances.

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

324DD Audit company's rotation obligation

- (1) An audit company contravenes this subsection if:
- (a) the audit company consents to act as a listed company's or listed registered scheme's auditor for a financial year; and
 - (b) an individual acts, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company's or scheme's financial report for that financial year; and
 - (c) the individual is not eligible to play a significant role in the audit of the company or scheme for that financial year; and
 - (d) a director of the audit company (other than the individual) is aware that the individual is not eligible to play that role; and
 - (e) the audit company fails to take the necessary steps, as soon as possible after the director becomes aware that the individual is not eligible to play that role, either:
 - (i) to resign as auditor of the company or scheme; or
 - (ii) to ensure that the individual ceases to act, on behalf of the audit company, as a lead or review auditor in relation to the audit of the company or scheme for that financial year.
- (2) If an audit company contravenes subsection (1), each director of the company contravenes this subsection.

Note: The audit company itself commits an offence based on its contravention of subsection (1).

- (3) A director of an audit company does not commit an offence at a particular time because of a contravention of subsection (2) if the director either:
- (a) does not know at that time of the circumstances that constitute the contravention of subsection (1) by the audit ~~firm~~company; or
 - (b) knows of those circumstances at that time but takes all reasonable steps to correct the contravention of subsection (1) by the audit ~~firm~~company as soon as possible after the director becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

Section 324CJ(2) applies to audit companies, not audit firms.

Division 6—Appointment, removal and fees of auditors for companies

Subdivision A—Appointment of company auditors

88 Sections 327 and 328

Repeal the sections, substitute:

327A Public company auditor (initial appointment of auditor)

- (1) The directors of a public company must appoint an auditor of the company within 1 month after the day on which a company is registered as a company unless the company at a general meeting has appointed an auditor.
- (2) Subject to this Part, an auditor appointed under subsection (1) holds office until the company's first AGM.
- (3) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

327B Public company auditor (annual appointments at AGMs to fill vacancies)

- (1) A public company must:
 - (a) appoint an auditor of the company at its first AGM; and
 - (b) appoint an auditor of the company to fill any vacancy in the office of auditor at each subsequent AGM.
- (2) An auditor appointed under subsection (1) holds office until the auditor:
 - (a) dies; or
 - (b) is removed, or resigns, from office in accordance with section 329; or
 - (c) ceases to be capable of acting as auditor because of Division 2 or Division 3 of this Part.

327C Public company auditor (appointment to fill casual vacancy)

- (1) If:
 - (a) a vacancy occurs in the office of auditor of a public company; and
 - (b) the vacancy is not caused by the removal of an auditor from office; and
 - (c) there is no surviving or continuing auditor of the company;

the directors must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy unless the company at a general meeting has appointed an auditor to fill the vacancy.

- (2) An auditor appointed under subsection (1) holds office, subject to this Part, until the company's next AGM.
- (3) A director of a public company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

327D Appointment to replace auditor removed from office

- (1) This section deals with the situation in which an auditor of a company is removed from office at a general meeting in accordance with section 329.
- (2) The company may at that general meeting (without adjournment), by special resolution immediately appoint an individual, firm or company as auditor of the company if a copy of the notice of nomination has been sent to the individual, firm or company under subsection 328B(3).
- (3) If a special resolution under subsection (2):
 - (a) is not passed; or
 - (b) could not be passed merely because a copy of the notice of nomination has not been sent to an individual, firm or company under subsection 328B(3);

the general meeting may be adjourned and the company may, at the adjourned meeting, by ordinary resolution appoint an individual, firm or company as auditor of the company if:

- (c) a member of the company gives the company notice of the nomination of the individual, firm or company for appointment as auditor; and
- (d) the company receives the notice at least 14 ~~clear~~ days before the day to which the meeting is adjourned.

“Clear days” is not a concept defined in the Corporations Act. It is not necessary, given the operation of s.36 of the Acts Interpretation Act 1901 (Cth).

- (4) The day to which the meeting is adjourned must be:
 - (a) not earlier than 20 days after the day of the meeting; and
 - (b) not later than 30 days after the day of the meeting.
- (5) Subject to this Part, an auditor appointed under subsection (2) or (3) holds office until the company's next AGM.

327E ASIC may appoint public company auditor if auditor removed but not replaced

- (1) This section deals with the situation in which a public company fails to appoint an auditor under subsection 327D(2) or (3). The failure is referred to as the *auditor replacement failure*.
- (2) The company must give ASIC written notice of the auditor replacement failure within the period of 7 days commencing on the day of the auditor replacement failure (the *notification period*).

(3) If the company gives ASIC the notice required by subsection (2), ASIC must appoint an auditor of the company as soon as practicable after receiving the notice. This subsection has effect subject to section 327G.

(4) If the company does not give ASIC the notice required by subsection (2), ASIC may appoint an auditor of the company at any time:

- (a) after the end of the notification period; and
- (b) before ASIC receives notice of the auditor replacement failure from the company.

This subsection has effect subject to section 327G.

(5) If the company:

- (a) does not give ASIC the notice required by subsection (2); and
- (b) gives ASIC notice of the auditor replacement failure after the end of the notification period;

ASIC must appoint an auditor of the company as soon as practicable after receiving the notice. This subsection has effect subject to section 327G.

(6) Subject to this Part, an auditor appointed under this section holds office until the company's next AGM.

327F ASIC's general power to appoint public company auditor

(1) ASIC may appoint an auditor of a public company if:

- (a) the company does not appoint an auditor when required by this Act to do so; and
- (b) a member of the company applies to ASIC in writing for the appointment of an auditor under this section.

This subsection has effect subject to section 327G.

(2) An individual, firm or company appointed as auditor of a company under subsection (1) holds office, subject to this Part, until the next AGM of the company.

327G Restrictions on ASIC's powers to appoint public company auditor

(1) ASIC may appoint an individual, firm or company as auditor of a company under section 327E or 327F only if the individual, firm or company consents to being appointed.

(2) ASIC must not appoint an auditor of a company under section 327E or 327F if:

- (a) there is another auditor of the company (the *continuing auditor*); and
- (b) ASIC is satisfied that the continuing auditor is able to carry out the responsibilities of auditor alone; and
- (c) the continuing auditor agrees to continue as auditor.

(3) ASIC must not appoint an auditor of a company under section 327E or 327F if:

- (a) the company does not give ASIC the notice required by subsection 327E(2) before the end of the notification period; and
- (b) ASIC has already appointed an auditor of the company under section 327E after the end of the notification period.

327H Effect on appointment of public company auditor of company beginning to be controlled by a corporation

An auditor of a public company that begins to be controlled by a corporation:

- (a) must retire at the AGM of the company next held after the company begins to be controlled by the corporation unless the auditor vacates that office before then; and
- (b) is, subject to this Part, eligible for re-appointment.

This section has effect notwithstanding subsection 327B(2).

327I Remaining auditors may act during vacancy

While a vacancy in the office of auditor of a company continues, the surviving or continuing auditor or auditors (if any) may act as auditors of the company.

328A Auditor's consent to appointment

- (1) A company, the directors of a company or the responsible entity of a registered scheme must not appoint an individual, firm or company as auditor of the company unless that individual, firm or company:
 - (a) has consented, before the appointment, to act as auditor; and
 - (b) has not withdrawn that consent before the appointment is made.

For the purposes of this section, a consent, or the withdrawal of a consent, must be given by written notice to the company, the directors or the responsible entity of the scheme.

- (2) A notice under subsection (1) given by a firm must be signed by a member of the firm who is a registered company auditor both:
 - (a) in the firm name; and
 - (b) in his or her own name.
- (3) A notice under subsection (1) given by a company must be signed by a director or senior manager of the company both:
 - (a) in the company's name; and
 - (b) in his or her own name.
- (4) If a company, the directors of a company or the responsible entity of a registered scheme appoints an individual, firm or company as auditor of a company in contravention of subsection (1):
 - (a) the purported appointment does not have any effect; and
 - (b) the company or responsible entity, and any officer of the company or responsible entity who is in default, are each guilty of an offence.

328B Nomination of auditor

- (1) Subject to this section, a company may appoint an individual, firm or company as auditor of the company at its AGM only if a member of the company gives the company written notice of the nomination of the individual, firm or company for appointment as auditor:
 - (a) before the meeting was convened; or
 - (b) not less than 21 days before the meeting.

This subsection does not apply if an auditor is removed from office at the AGM.

- (2) If a company purports to appoint an individual, firm or company as auditor of the company in contravention of subsection (1):
 - (a) the purported appointment is of no effect; and
 - (b) the company and any officer of the company who is in default are each guilty of an offence.
- (3) If a member gives a company notice of the nomination of an individual, firm or company for appointment as auditor of the company, the company must send a copy of the notice to:
 - (a) each individual, firm or company nominated; and
 - (b) each auditor of the company; and
 - (c) each person entitled to receive notice of general meetings of the company.

This is so whether the appointment is to be made at a meeting or an adjourned meeting referred to in section 327D or at an AGM.

- (4) The copy of the notice of nomination must be sent:
 - (a) not less than 7 days before the meeting; or
 - (b) at the time notice of the meeting is given.

Subdivision B—Removal and resignation of company auditors

89 After section 330

Insert:

Subdivision C—Company auditors' fees and expenses

90 Division 2 of Part 2M.4 (heading)

Repeal the heading, substitute:

Division 7—Appointment, removal and fees of auditors for registered schemes

Subdivision A—Appointment of registered scheme auditors

91 Sections 331AA and 331AB

Repeal the sections, substitute:

331AAA Registered scheme auditor (initial appointment of auditor)

- (1) The responsible entity of a registered scheme must appoint an auditor of the registered scheme within 1 month after the day on which the scheme is registered.
- (2) An auditor appointed under subsection (1) holds office until the auditor:
 - (a) dies; or
 - (b) is removed, or resigns, from office in accordance with section 331AC; or
 - (c) ceases to be capable of acting as an auditor because of Division 2 or 3 of this Part.

- (3) A director of the responsible entity of a registered scheme must take all reasonable steps to secure compliance with subsection (1).

331AAB Registered scheme auditor (appointment to fill vacancy)

- (1) If:
- (a) a vacancy occurs in the office of auditor of a registered scheme; and
 - (b) there is no surviving or continuing auditor of the scheme;
- the responsible entity must, within 1 month after the vacancy occurs, appoint an auditor to fill the vacancy.
- (2) A director of the responsible entity of a registered scheme must take all reasonable steps to secure compliance with subsection (1).

331AAC ASIC's power to appoint registered scheme auditor

- (1) ASIC may appoint an auditor of a registered scheme if:
- (a) the responsible entity of the scheme does not appoint an auditor when required by this Act to do so; and
 - (b) a member of the scheme applies to ASIC in writing for the appointment of an auditor under this section.
- (2) ASIC may only appoint an individual, firm or company as auditor under subsection (1) if the individual, firm or company consents to being appointed.

331AAD Remaining auditors may act during vacancy

While a vacancy in the office of auditor of a registered scheme continues, the surviving or continuing auditor or auditors (if any) may act as auditors of the company.

Subdivision B—Removal and resignation of registered scheme auditors

92 After section 331AD

Insert:

Subdivision C—Fees and expenses of auditors

93 Subsection 340(1)

After “and 2M.4”, insert “(other than Division 4)”.

94 Subsection 341(1)

After “and 2M.4”, insert “(other than Division 4)”.

95 After section 342

Insert:

342A ASIC's power to modify the operation of section 324DA

- (1) On an application made in accordance with this section, ASIC may:
- (a) declare that subsection 324DA(1) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies, as if the references in that subsection to 5 successive financial years were references to:
 - (i) 6 successive financial years; or
 - (ii) 7 successive financial years; or

- (b) declare that subsection 324DA(2) applies to a registered company auditor, in relation to the audit of an audited body or a class of audited bodies during a particular period of 7 successive financial years, as if the reference in that subsection to 5 out of 7 successive financial years were a reference to 6 out of 7 successive financial years.
- (2) The following persons may apply for the declaration:
 - (a) the registered company auditor;
 - (b) a firm or company on whose behalf the registered company auditor acts or would act in relation to the audit or audits. If the application is made by a firm or company, the declaration has effect only in relation to activities undertaken by the registered company auditor on behalf of that firm or company.
- (3) The application must be:
 - (a) in writing; and
 - (b) signed by the applicant; and
 - (c) lodged with ASIC.
- (4) If the application is made by a registered company auditor who engages, or is to engage, in audit activities on behalf of a firm or company, the application must include the firm's or company's written consent to the application.
- (5) If the application is made by a firm or company in relation to a registered company auditor, the application must include the registered company auditor's written consent to the application.
- (6) To make a declaration under subsection (1), ASIC must be satisfied that, without the modification, Division 4 of Part 2M.4 would impose an unreasonable burden on:
 - (a) a registered company auditor; or
 - (b) a firm or company that is applying for the declaration; or
 - (c) the audited body or bodies in relation to which the application was made.
- (7) In deciding for the purposes of subsection (6) whether, without the modification, Division 4 of Part 2M.4 would impose an unreasonable burden on a person referred to in that subsection, ASIC is to have regard to:
 - (a) the nature of the audited body or bodies, including whether the activity in which the audited body or bodies engage is such that specialist knowledge about that activity is necessary to carry out the audit properly; and
 - (b) the availability of other registered company auditors capable of providing satisfactory audit services for the audited body or bodies; and
 - (c) any other matters which ASIC considers relevant.
- (8) ASIC must give the applicant written notice of the making, revocation or suspension of the declaration.

342B Auditor to notify company or registered scheme of section 342A declaration

- (1) If a registered company auditor plays a significant role in the audit of a company or registered scheme in reliance on a declaration by ASIC under section 342A, the auditor must give the company or the responsible entity for the registered scheme written notice of the declaration.
- (2) The notice must specify:
 - (a) the name of the registered company auditor; and
 - (b) the additional financial years for which the registered company auditor is, because of the declaration under section 342A, eligible to play a significant role in the audit of the company or registered scheme.
- (3) The notice must be given:
 - (a) as soon as practicable after the declaration is made if the auditor has been appointed before the declaration is made; or
 - (b) before the auditor is appointed if the declaration is made before the auditor is appointed.

96 Subsection 892H(3)

After “A registered company auditor”, insert “, or authorised audit company,”.

97 Paragraph 892H(3)(a)

After “registered company auditor”, insert “, or authorised audit company,”.

98 Subparagraph 892H(3)(b)(i)

After “registered company auditor”, insert “, or authorised audit company,”.

99 Before subparagraph 1292(1)(a)(i)

Insert:

- (ia) contravened section 324DA; or

Schedule 12—Transitional provisions

Note: Only those items relevant to Part 3 of Schedule 1 have been extracted below.

1 At the end of Chapter 10

Part 10.5—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2003

1449 Definitions

In this Part:

amending Act means the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2003*.

commencement day means the day on which the amending Act commences.

old Act means this Act as in force immediately before the commencement day.

1450 Application of auditing standards, auditor's independence declaration and audit paper retention rules

Sections 307A, 307B, 307C and 989CA apply to:

- (a) an audit of the financial report for a financial year; or
- (b) an audit or review of the financial report for a half-year in a financial year; if the financial year begins on or after the commencement day.

See page 38 of the submission for discussion of this amendment.

1456 Application of auditor independence amendments

Division 3 of Part 2M.4 Sections 324CA to 324CF ~~applies~~ apply to:

- (a) an audit of the financial report for a financial year; or
- (b) an audit or review of the financial report for a half-year in a financial year; if the financial year begins on or after the commencement day.

See page 62 of the submission for discussion of this amendment.

1457 Application of auditor rotation amendments

Division 5 of Part 2M.4 applies to:

- (a) an audit of the financial report for a financial year; or
- (b) an audit or review of the financial report for a half-year in a financial year; if the financial year begins more than 2 years after the commencement day.