

Securities and Financial Services Law

7TH ED



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SECURITIES and FINANCIAL SERVICES LAW

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Preface

When the 6th edition of this book was published in 2003, Australia had just been through a minor ‘revolution’ in the regulation of its securities and financial services markets. Following the recommendations of the Financial System Inquiry, ASIC had assumed responsibility for consumer protection regulation for the financial sector from the ACCC (in 1998), and the far-reaching legislative changes made by the Corporate Law Economic Reform Program in the areas of fundraising and takeovers (Corporate Law Economic Reform Program Act 1999) and financial services and markets (Financial Services Reform Act 2001) were still being bedded down. As we go to press on the 7th edition of this work, Australia’s financial services markets, like every other major financial services market, has been the subject of significant pressures of one kind or another.

In the five years since publication of the 6th edition, securities and financial services markets have continued to evolve at a rapid rate, and law and regulation in the area has developed and expanded. Important decisions have marked out the powers of the Takeovers Panel (*Glencore International AG v Takeovers Panel*); the law on conflicts of interest as it applies to intermediaries (*ASIC v Citigroup Global Markets Australia*); litigation funding for class actions (*Campbells Cash & Carry Pty Ltd v Fostif Pty Ltd*); and the rights of misled shareholders to recover for defective disclosure (*Sons of Gwalia Ltd v Margaretic*). New subordinate legislation and ASIC regulatory documents have implemented FSR and, after 2005, ‘refined’ it. ASIC has been given new powers, including in the area of continuous disclosure. The merger of the ASX and the SFE went ahead in 2006 (having previously been opposed by the ACCC), and the ASX’s role as both the operator and supervisor of its markets has continued to attract discussion. Indeed, on the 14 August 2008, ASIC released its annual assessment of the ASX and its regulatory role, and while suggesting that there were ‘matters for improvement’, the arrangements ASX had in place were satisfactory. In the meantime we note that two organisations are seeking recognition as potential market operators and their applications are pending at the time of writing. Furthermore, at the time of writing, the government’s Green Paper on Financial Services and Credit Reform and ASIC’s internal reorganisation are in train, and new rules for market intermediaries are being discussed.

The new edition reflects these developments and changes in the law, along with recent developments in the international academic literature on securities regulation. The book has been reorganised to deal with the material thematically, dividing into an introductory section and four separate parts dealing with, respectively, issuers, markets, intermediaries, and market conduct regulation. There

are three new chapters. A new Chapter 1 provides a framework for understanding the principles underlying, and structure of, securities and markets regulation in Australia. Chapter 7 deals in detail with continuous disclosure and Chapter 9 with the important emerging area of securities class actions, an area of development that has been heightened by the recognition of litigation funding in the *Fostif* case referred to earlier. There have been a proliferation of class actions in this area in recent months.

As with the previous edition of the book, the authors have taken on different areas of responsibility. Pamela Hanrahan is responsible for Chapters 1, 2, 3, 4, 5, 6 and 8; Ashley Black is responsible for Chapters 7, 9, 10, 13, 14, 15, 17 and 18; and Bob Baxt has been responsible for Chapters 11, 12 and 16 — Bob wishes to acknowledge the research support he received from Mae Comber and Sarah Moore during the preparation of his chapters. The authors acknowledge with gratitude the support and assistance of Angie Zandstra and the staff at LexisNexis Butterworths in the preparation of this new edition. The law as stated is correct as at July 2008.

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