

Table of Contents

Regulating Framework (TOPIC 1):.....	7
What is a Company?	7
The Historic Development of Australian Company Law:	8
Joint stock companies:.....	8
Constitutional Crisis for Australian Corporations Law:	9
Types of Companies:.....	10
What are companies used for?.....	10
Regulators:.....	10
Australian Securities and Investments Commission (ASIC):	10
The Australian Stock Exchange (ASX):.....	12
Takeovers Panel:	12
Other bodies:	13
Registration and its effects (TOPIC 1):	Error! Bookmark not defined.
Registration process:.....	Error! Bookmark not defined.
Process:	Error! Bookmark not defined.
Company names:	Error! Bookmark not defined.
Post registration requirements:.....	Error! Bookmark not defined.
Effects of registration:.....	Error! Bookmark not defined.
Limited liability:.....	Error! Bookmark not defined.
Other reasons for incorporation:.....	Error! Bookmark not defined.
Corporate veil:	Error! Bookmark not defined.
Where the veil is pierced at common law:	Error! Bookmark not defined.
Where the veil is pierced by statute:.....	Error! Bookmark not defined.
Where the veil of a corporate group is pierced:.....	Error! Bookmark not defined.
Shelf companies:.....	Error! Bookmark not defined.
Types of Companies (TOPIC 2):.....	Error! Bookmark not defined.
Types of business structures and associations:	Error! Bookmark not defined.
Partnerships:	Error! Bookmark not defined.
Joint Ventures:	Error! Bookmark not defined.
Trusts:.....	Error! Bookmark not defined.
Company	Error! Bookmark not defined.
Types of companies:	Error! Bookmark not defined.
First Classification:	Error! Bookmark not defined.
Second classification:	Error! Bookmark not defined.
Other classifications:.....	Error! Bookmark not defined.
ASX Listed Companies:.....	Error! Bookmark not defined.

Holding and subsidiary companies – Related bodies corporate:.....	Error! Bookmark not defined.
Foreign companies:.....	Error! Bookmark not defined.
Trustee companies:.....	Error! Bookmark not defined.
Constitution and replaceable rules (TOPIC 2):.....	Error! Bookmark not defined.
Rules governing internal management:.....	Error! Bookmark not defined.
Replaceable rules:	Error! Bookmark not defined.
One person proprietary companies:.....	Error! Bookmark not defined.
Companies limited by guarantee:	Error! Bookmark not defined.
No liability companies:.....	Error! Bookmark not defined.
Repeal of Tables A and B:.....	Error! Bookmark not defined.
The company's constitution:.....	Error! Bookmark not defined.
Statutory requirements:	Error! Bookmark not defined.
Contents of constitution:	Error! Bookmark not defined.
Interpretation of constitution:.....	Error! Bookmark not defined.
Objects clause:	Error! Bookmark not defined.
Legal capacity and powers of a company:	Error! Bookmark not defined.
S 124:.....	Error! Bookmark not defined.
Abolition of doctrine of ultra vires and constructive notice:.....	Error! Bookmark not defined.
Effect of constitution and replaceable rules:.....	Error! Bookmark not defined.
Contract between company and members:	Error! Bookmark not defined.
Contract between members:	Error! Bookmark not defined.
Contract between the company and its directors and secretary: ...	Error! Bookmark not defined.
Alteration of the constitution and replaceable rules:	Error! Bookmark not defined.
Special contracts:	Error! Bookmark not defined.
Statutory requirements:	Error! Bookmark not defined.
Limits on right to alter constitution:	Error! Bookmark not defined.
The company's relations with outsiders (TOPIC 3):.....	Error! Bookmark not defined.
The directing mind and will of a company:.....	Error! Bookmark not defined.
Organic theory:	Error! Bookmark not defined.
Who is the directing mind and will?	Error! Bookmark not defined.
Criminal liability of companies:.....	Error! Bookmark not defined.
Liability of companies in tort:	Error! Bookmark not defined.
Contracts with the company:.....	Error! Bookmark not defined.
Execution of documents:	Error! Bookmark not defined.
Contracts made by agents:	Error! Bookmark not defined.
Authority of the company's agents:.....	Error! Bookmark not defined.
The statutory assumptions: s 129:.....	Error! Bookmark not defined.
Customary authority of officers:.....	Error! Bookmark not defined.

Limitations to the statutory assumptions: s 128(4):.....	Error! Bookmark not defined.
The effect of fraud or forgery:	Error! Bookmark not defined.
Promoters and pre-registration contacts (TOPIC 3):	Error! Bookmark not defined.
Promoters:	Error! Bookmark not defined.
Who is a promoter?	Error! Bookmark not defined.
Duties of promoters:.....	Error! Bookmark not defined.
Remedies for breach of duties:.....	Error! Bookmark not defined.
Pre-registration contracts:.....	Error! Bookmark not defined.
Common law position:	Error! Bookmark not defined.
Impact of s 131:.....	Error! Bookmark not defined.
Fundraising (TOPIC 3):.....	Error! Bookmark not defined.
Overview of fundraising provisions:	Error! Bookmark not defined.
Types of disclosure documents:.....	Error! Bookmark not defined.
Why is disclosure needed?	Error! Bookmark not defined.
When is disclosure to investors needed?	Error! Bookmark not defined.
General rule:	Error! Bookmark not defined.
Offers that do not need disclosure:	Error! Bookmark not defined.
Lodgement of disclosure documents:.....	Error! Bookmark not defined.
Contents of disclosure documents:	Error! Bookmark not defined.
Prospectuses:.....	Error! Bookmark not defined.
Short-form prospectuses:	Error! Bookmark not defined.
Profile statements:.....	Error! Bookmark not defined.
Offer information statements:.....	Error! Bookmark not defined.
Restrictions on issue of securities:.....	Error! Bookmark not defined.
Minimum subscription:.....	Error! Bookmark not defined.
Stock exchange listing:.....	Error! Bookmark not defined.
Expiration of disclosure document:	Error! Bookmark not defined.
Secondary trading:.....	Error! Bookmark not defined.
Sales by controller:.....	Error! Bookmark not defined.
Sales amounting to indirect issue:	Error! Bookmark not defined.
Securities hawking:	Error! Bookmark not defined.
Advertising restrictions:.....	Error! Bookmark not defined.
ASIC's power to exempt and modify:	Error! Bookmark not defined.
Misstatements and omissions:	Error! Bookmark not defined.
Stop orders:.....	Error! Bookmark not defined.
Supplementary and replacement documents:	Error! Bookmark not defined.
Liability for misstatements or omissions:	Error! Bookmark not defined.
Share Capital (TOPIC 4):.....	Error! Bookmark not defined.

Shares:.....	Error! Bookmark not defined.
What is a share?.....	Error! Bookmark not defined.
Classes of shares:	Error! Bookmark not defined.
Variation of class rights:.....	Error! Bookmark not defined.
Share Capital:	Error! Bookmark not defined.
What is share capital?.....	Error! Bookmark not defined.
Share capital vs loan capital:.....	Error! Bookmark not defined.
Raising share capital:	Error! Bookmark not defined.
Maintenance of share capital:	Error! Bookmark not defined.
Membership (TOPIC 4):.....	Error! Bookmark not defined.
Becoming a member:.....	Error! Bookmark not defined.
Rights and duties of being a member:.....	Error! Bookmark not defined.
What is evidence of shareholding?.....	Error! Bookmark not defined.
Register of members:.....	Error! Bookmark not defined.
Disclosure of interests:	Error! Bookmark not defined.
Share certificates:	Error! Bookmark not defined.
Forged certificates:	Error! Bookmark not defined.
Liability of members:	Error! Bookmark not defined.
Liability to pay on call for partly paid shares:	Error! Bookmark not defined.
Liability to contribute on winding up:.....	Error! Bookmark not defined.
Cessation of membership:	Error! Bookmark not defined.
Forfeiture of shares:.....	Error! Bookmark not defined.
Surrender of shares:.....	Error! Bookmark not defined.
The company's power of lien:.....	Error! Bookmark not defined.
Dividends (TOPIC 4):	Error! Bookmark not defined.
What are dividends?	Error! Bookmark not defined.
Procedure for payment:.....	Error! Bookmark not defined.
Effect of declaration:.....	Error! Bookmark not defined.
Declaration of Interim dividend:.....	Error! Bookmark not defined.
When can dividends be paid:.....	Error! Bookmark not defined.
Old test: Profits test:	Error! Bookmark not defined.
New test: Balance sheet/net assets solvency test:.....	Error! Bookmark not defined.
Remedies for improper dividend payment:.....	Error! Bookmark not defined.
Unauthorised reduction of capital:.....	Error! Bookmark not defined.
Insolvent trading:	Error! Bookmark not defined.
Breach of fiduciary duty:.....	Error! Bookmark not defined.
Injunction:	Error! Bookmark not defined.
Personal Property Securities (TOPIC 5):.....	Error! Bookmark not defined.

Company charges (security interests):.....	Error! Bookmark not defined.
Retention of title clauses:	Error! Bookmark not defined.
Invalidation of security interests:	Error! Bookmark not defined.
Directors (TOPIC 5):.....	Error! Bookmark not defined.
Who are directors?	Error! Bookmark not defined.
Appointment:.....	Error! Bookmark not defined.
Functions and powers:.....	Error! Bookmark not defined.
The division of power between directors and members:.....	Error! Bookmark not defined.
Members' "reserved" decision making powers:.....	Error! Bookmark not defined.
Removal:	Error! Bookmark not defined.
Resignation:	Error! Bookmark not defined.
Removal by members:	Error! Bookmark not defined.
Disqualification:	Error! Bookmark not defined.
The role/function of a company secretary:	Error! Bookmark not defined.
Board meetings:.....	Error! Bookmark not defined.
Delegation of board powers:	Error! Bookmark not defined.
Duties of Directors (TOPIC 6):	Error! Bookmark not defined.
Duty of care, skill and diligence:	Error! Bookmark not defined.
Common law duty of care:.....	Error! Bookmark not defined.
Statutory duty: Corporations Act:.....	Error! Bookmark not defined.
Duty of loyalty and good faith:	Error! Bookmark not defined.
Acting bona fide in the company's interests: s 181(1)(a):	Error! Bookmark not defined.
Acting for proper purposes: s 181(1)(b):	Error! Bookmark not defined.
Duty to retain discretion:.....	Error! Bookmark not defined.
Duty to avoid conflicts of interest and disclosure:	Error! Bookmark not defined.
Remedies and penalties for breach of duty:.....	Error! Bookmark not defined.
Who enforces the duties:.....	Error! Bookmark not defined.
Enforcement of directors' duties by ASIC:	Error! Bookmark not defined.
The company's civil remedies:.....	Error! Bookmark not defined.
Exoneration and relief from liability:	Error! Bookmark not defined.
Shareholders' Meetings (TOPIC 7):.....	Error! Bookmark not defined.
Types of meetings:.....	Error! Bookmark not defined.
Annual General Meeting (AGM):	Error! Bookmark not defined.
Extraordinary general meetings (EGM):	Error! Bookmark not defined.
Meetings of classes of members:	Error! Bookmark not defined.
Paper meetings:	Error! Bookmark not defined.
Convening meetings:	Error! Bookmark not defined.
Meeting requirements:	Error! Bookmark not defined.

Basic requirements:	Error! Bookmark not defined.
Member participation:	Error! Bookmark not defined.
Decisions at a meeting (member voting):	Error! Bookmark not defined.
Decisions without a meeting:	Error! Bookmark not defined.
Conducting meetings:	Error! Bookmark not defined.
Duty to inform:	Error! Bookmark not defined.
Consequence of procedural irregularities?	Error! Bookmark not defined.
Substantial injustice:	Error! Bookmark not defined.
Court order:	Error! Bookmark not defined.
Member's Remedies (TOPIC 7):	Error! Bookmark not defined.
Section 236 – Statutory derivative action:	Error! Bookmark not defined.
Section 232 – Oppressive conduct:	Error! Bookmark not defined.
Section 461 – Winding up:	Error! Bookmark not defined.
Section 1324 – Statutory injunctions:	Error! Bookmark not defined.
Section 247A – Statutory right to inspect company books:	Error! Bookmark not defined.
Common law remedies:	Error! Bookmark not defined.
1. Special fiduciary relationship (page 44);	Error! Bookmark not defined.
2. Fraud on the minority, by ratifying breaches by the majority (page 50); ...	Error! Bookmark not defined.
3. Unfair alteration of the constitution to expropriate shares; and	Error! Bookmark not defined.
4. Improper allotment of shares that dilute voting power:	Error! Bookmark not defined.
Other remedies for members:	Error! Bookmark not defined.
Member personal right of action:	Error! Bookmark not defined.
Exceptions to the rule in Foss v Harbottle:	Error! Bookmark not defined.
ASIC's Investigatory and Information Gathering Powers (TOPIC 8):	Error! Bookmark not defined.
ASIC's investigatory powers:	Error! Bookmark not defined.
Information gathering:	Error! Bookmark not defined.
Examination of persons:	Error! Bookmark not defined.
Inspection of books:	Error! Bookmark not defined.
Disclosure of information about financial products:	Error! Bookmark not defined.
Consequences of investigations:	Error! Bookmark not defined.
S 50 class actions:	Error! Bookmark not defined.
Hearings:	Error! Bookmark not defined.
Corporate Insolvency (TOPIC 8):	Error! Bookmark not defined.
Receivership:	Error! Bookmark not defined.
What is a receiver?	Error! Bookmark not defined.
When can a receiver be appointed?	Error! Bookmark not defined.
Receiver's powers:	Error! Bookmark not defined.

Receiver's duties:	Error! Bookmark not defined.
Termination:.....	Error! Bookmark not defined.
Voluntary Administration:	Error! Bookmark not defined.
What is voluntary administration?	Error! Bookmark not defined.
Who initiates voluntary administration?	Error! Bookmark not defined.
Duration of voluntary administration:.....	Error! Bookmark not defined.
What is the role of the administrator?	Error! Bookmark not defined.
The effect of voluntary administration:.....	Error! Bookmark not defined.
Administrator's duties:	Error! Bookmark not defined.
Liquidation/Winding up:	Error! Bookmark not defined.
What is liquidation?	Error! Bookmark not defined.
Voluntary liquidation:	Error! Bookmark not defined.
Compulsory liquidation:.....	Error! Bookmark not defined.
Appointment of a liquidator:	Error! Bookmark not defined.
Effect of winding up on the company and on creditors:	Error! Bookmark not defined.
Division of assets: how are the funds to be distributed?	Error! Bookmark not defined.
Recovery of pre-liquidation transactions: What funds are available for distribution by liquidation?	Error! Bookmark not defined.
Deregistration:	Error! Bookmark not defined.
Schemes of arrangement:.....	Error! Bookmark not defined.

Regulating Framework (TOPIC 1):

What is a Company?

- A company is an artificial or fictitious entity recognised by the law as a legal person with its own rights and liabilities.
- A company comes into existence as a body corporate at the beginning of the day on which it is registered: [s 119](#).
 - That is, the company has a separate legal personality once it is registered: **Salomon**.
- The shareholders, directors who control its management, officers and employees are distinct from the company and can therefore also be secured creditors (**Salomon**) or employees (**Lee's Air Farming**) with respect to the company.
- A company as a separate legal entity has the legal capacity of a natural person in that it can own property, contract and sue and be sued as well as that of a body corporate which allows it to issue shares and grant a charge: [s 124](#).
- Consequences of treating the company as a separate legal entity include:
 - Company's obligations and liabilities are its own, and not those of its participants
 - Shareholders have limited liability.
 - Company can sue and be sued in its own name.
 - Company has perpetual succession.
 - Company's property is not the property of its participants.
 - Company can contract with its participants.

- The notion of limited liability is an important characteristic of companies which ensures that shareholders are not personally liable for their company's debts.
 - Company's debts are its own – not the shareholders and directors.
 - The liability of shareholders is limited to the amount that they have already paid or promised to pay for their shares this includes any unpaid amount on partly paid shares. If paid in full, there is no liability to pay for the company's debts.
 - For example: company issues 100 shares at \$3 per share to a shareholder. If the shareholder in fact only paid \$1 on each share – the extent of the shareholder's liability would be the unpaid \$2 per share (\$200). If the shareholder paid the full \$3 per share – the shares were 'fully paid' – the shareholder would have no liability.
- The notion of perpetual succession is that a company continues to exist irrespective of a change of shareholders and directors until the company is deregistered.
- The transferability of shares is a feature that distinguishes a company from a partnership.
 - Shareholders are able to transfer or sell their shares free of any restrictions and free transferability of shares is a requirement for listing on a stock exchange.
- Shareholders contribute capital by paying the issue price on their shares.
 - The primacy role of a shareholder as an organ of the company and the most important stake holder is to appoint and remove directors, by way of an ordinary (50%) or special resolution (75% - quorum) to bind the company. Other roles include amending the company constitution.
- Directors/Board of Directors are predominantly given the exclusive power to control the management of the company's business.
 - The business of a corporation is to be managed by or under the direction of a board of directors: [s 198A](#).
 - They are subject to strict fiduciary and statutory duties. For example: directors are required to exercise their powers in the best interests of the company and its shareholders.
 - This is impossible for large companies, which will instead have a CEO and senior managers who manage the company. The board of directors has a governing and supervising role which oversees the CEO and senior managers.

The Historic Development of Australian Company Law:

Joint stock companies:

- Business enterprises were created either by an act of parliament or royal charter or were formed by adapting the partnership form so that they possessed the main characteristics of corporations and so were suited to pooled investment.
 - Incorporation by charter enabled a separate legal entity described as a corporation to come into existence.
 - Such corporations were recognised by the law as distinct legal persons separate from their shareholders and the shareholders usually and their liability limited to the extent of the investment.
 - The business of the corporation was entrusted to a board of directors and its capital was divided into tradeable stock or shares, hence these companies became known as 'joint stock companies'.
- By the 18th century, many business enterprises were formed as unincorporated stock companies without direct legal recognition.
 - These were partnerships that operated under a constitution described as a 'deed of settlement' providing for the division of the enterprises capital into free transferable

stock and the appointment of managers or directors to control the business' activities in similar ways to chartered corporations.

- Following the collapse of the South Sea Company, the Bubble Act was passed in 1720 to prohibit the formation of unincorporated joint stock companies so that only corporations incorporated by charter could be legally formed.
 - This legislation was a response to excessive speculation which culminated in the bursting of the South Seas Company "bubble".
 - It also represented an attempt by chartered companies to remove competition from unincorporated joint stock companies for investment capital.
 - Although the Bubble Act remained on the statute books for more than a century, it was rarely used and did little to inhibit the formation of joint stock companies during the British industrial revolution, especially in canal and railway construction when demand for pooled investment increased considerably.
 - Bubble Act was found to be not very effective and eventually repealed in 1825.
- The Joint Stock Companies Act 1844 Act (UK) allowed companies to be incorporated by 'registration' through a simple form filling process. That is, not by way of an Act of Parliament or Royal Charter grant.
- Limited Liability 1855 Act introduced the notion of 'limited liability' which made investment in companies more attractive by decreasing the risk as shareholders were no longer liable for the debts and obligations of the company rather liability was limited to the amount they agreed to invest.
 - 'Ltd' at the end of a company's name warned of shareholders diminished liability.

Constitutional Crisis for Australian Corporations Law:

- The commonwealth passed the Corporations Act 1989 (Cth) in an attempt to assume sole control over companies and securities regulation.
 - The constitutional validity of the act was challenged in the High Court. The High Court in **New South Wales v Commonwealth (1989) 169 CLR 482** held that the commonwealth did not have the power under s 51(xx) of the Constitution to pass laws providing for the incorporation of trading and financial corporations and therefore the commonwealth did not have the power to take over corporate regulation in Australia.
- The Corporations Act scheme was developed to meet the need for uniform Australia-wide corporations legislation, administered by a single Commonwealth authority, the Australian Securities and Investments Commission (ASIC).
 - This legislative framework of commonwealth legislation applied as state law. This legislation had the characteristics of and was treated for all practical purposes as if it was Commonwealth law.
 - The constitutional validity of the scheme was successfully challenged leading to the overhaul of the regulatory scheme.
- In 2000, the states and northern territory agreed to refer to the commonwealth their constitutional powers to make and amend laws dealing with companies and securities.
 - **S 51(xxxvii)** of the constitution gives the commonwealth the power in relation to any matter referred to it by the states.
 - Consequently, the commonwealth passed the Corporations Act 2001 (Cth) and the ASIC Act which apply Australia wide.

Types of Companies:

- Companies are the most popular form of business organisation.
- There are nearly 2 million companies registered in Australia and they vary greatly in the size of business and the number of shareholders.
- The overwhelming majority of companies operate small business enterprises and are typically controlled by an individual person or a family.
- The Corporations Act draws a distinction between public and proprietary (private) companies.
 - A company must be one or the other.
 - There are significantly more proprietary companies than public companies.
 - The regulation of proprietary companies is designed to suit the needs of companies with small numbers of shareholders.
 - One-person proprietary companies are permitted: **Salomon**.
 - Proprietary companies are divided into two subcategories: small and large proprietary companies.
 - The distinction is based on the scale of the proprietary company's business.
 - Most proprietary companies are small proprietary companies and are subject to minimum financial disclosure requirements.
 - The legislation imposes more onerous obligations and greater public transparency on public companies because they are permitted to raise capital from the public and usually operate large-scale businesses with large numbers of shareholders. The fundraising rules are discussed in Chapter 7.
- The largest public companies choose to list their shares on the Australian Securities Exchange (ASX) which operates the main Australian stock market in which shares of listed companies can be bought and sold.
 - There are more than 2,000 companies whose shares and other securities are listed on the ASX.
- See chapter 3 for a further discussion.

What are companies used for?

- Companies are used as many things but usually as a vehicle to run a business.
- There are tax advantages of being a company.
 - There is only a flat 30% rate tax.
- There is also the advantage of limited liability to shareholders.

Regulators:

Australian Securities and Investments Commission (ASIC):

- Australian Securities and Investments Commission (ASIC) is the primary corporate regulator responsible for administering the Corporations Act.
- ASIC is a body corporate with between 3 and 8 government appointed commissioners headed by a chairperson: [ASIC Act ss 8-10](#).

Role and objectives:

- [S 1\(2\)](#) of the ASIC Act outlines the role/objectives of ASIC to:
 - (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy;

- (b) promote the confident and informed participation of investors and consumers in the financial system;
- (c) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements;
- (d) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it;
- (e) ensure that information is available as soon as practicable for access by the public; and
- (f) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

Functions:

- ASIC is the government authority that registers companies.
- ASIC provides publicly accessible information on all Australian companies through its national corporate database, ASCOT.
 - The ASCOT database contains public information about corporations, including their names, registered offices, particulars of directors and principal activities; fundraising offer documents licensed financial service providers (for example, stockbrokers and investment advisers), and registered auditors and liquidators.
 - Any person is able to search ASCOT to obtain publicly accessible information about companies.
 - Any written material that purports to have been prepared by ASIC from information contained in the ASCOT database is admissible as prima facie evidence, in the absence of evidence to the contrary, as proof of the information contained in it and is admissible in court proceedings as evidence without formal certification of its accuracy: [s 1274B](#).
- ASIC is the main authority responsible for regulating financial products, financial services and financial markets.
- ASIC has an important role in regulating company takeovers.
- ASIC has the responsibility of ensuring compliance with the provisions of the Corporations Act. To this end, [Pt 3 of the ASIC Act](#) provides ASIC with wide investigatory and information-gathering powers where it has reason to suspect that a contravention of a national scheme law may have been committed.
 - For example, [s 19](#) gives ASIC the power to require any person to give reasonable assistance and answer questions on oath where it conducts an investigation.
 - Under [ss 28 – 39](#) it can compel persons to produce books and records in a wide range of circumstances. ASIC's investigations and information-gathering powers are further discussed in Chapter 21.
- ASIC has the power to initiate civil proceedings against a person where as a result of an investigation or examination it forms the opinion that it is in the public interest to do so: ASIC Act, [s 50](#).
 - The proceedings may, for example, be brought in the name of a company against its directors for the recovery of damages for fraud, negligence, default, breach of duty, or other misconduct.
 - [S 50](#) also enables ASIC to initiate class actions for the recovery of damages on behalf of shareholders or other persons.

- In addition, under [s 1330](#) of the Corporations Act, ASIC has the power to intervene in any legal proceedings initiated by others relating to a matter arising under the corporations legislation.
- ASIC may also bring a criminal prosecution where, as a result of an investigation, it forms the opinion that a person has committed an offence against the corporations legislation and ought to be prosecuted: [ASIC Act, s 49](#).
 - ASIC's powers to begin criminal prosecutions overlap with similar powers granted to the Commonwealth Director of Public Prosecutions (DPP).
 - Because this overlap caused past tension between ASIC and the DPP, guidelines were established that require senior officers of ASIC and the DPP to meet regularly and review all investigations and prosecutions in which ASIC and the DPP have common interests.
 - The guidelines also require ASIC to consult with the DPP before taking civil enforcement action in any case where criminal proceedings may also be available.
 - Unresolved disputes between the two organisations must be referred to the Committee for Corporate Wrongdoing for determination.
- ASIC performs an important educative function by releasing regulatory guides, consultation papers, information sheets and media releases.
- Under [s 11\(2\)](#) of the ASIC Act, ASIC is given additional functions:
 - (a) to provide such staff and support facilities to the Takeovers Panel, the Disciplinary Board and the Review Board.
 - (b) to advise the Minister about any changes to the corporations legislation (other than the excluded provisions) that, in ASIC's opinion, are needed to overcome, or would assist in overcoming, any problems that ASIC has encountered in the course of performing or exercising any of its functions and powers.
- In summary, the role and function of ASIC is to:
 - Registers new companies.
 - Regulation of financial services and markets.
 - Powers of investigation to ensure compliance with of the Corporations Act 2001 (Cth) – ASIC Act 2001 provides wide powers to do so.
 - Bring legal proceedings.

The Australian Stock Exchange (ASX):

- The ASX operates Australia's main financial markets for equities including shares, derivatives and fixed interest securities.
- The primary role of the ASX is to ensure the integrity of their financial markets so that they operate in a fair, orderly and transparent manner.
- The major responsibilities of the ASX includes:
 - Having adequate arrangements in place for operating their markets;
 - Admitting entities to its official list;
 - Supervising listed entities; and
 - Monitoring and enforcing compliance with the markets operating rules including its listing rules.

Takeovers Panel:

- The Takeovers Panel is the primary forum for dealing with takeover disputes to ensure such disputes can be resolved quickly by a specialist body and to prevent the various parties

involved in a takeover from slowing up the process by initiating court litigation as either a defensive or strategic strategy.

- A person's right to commence court proceedings about a takeover bid is delayed until after the end of a takeover bid period.
- It is a peer review body with members appointed by the government on the basis of their knowledge and experience in business, the financial markets, law, economics and accounting.
- Under [s 657D](#) the Panel can make a wide range of remedial orders to protect the rights of any person affected.
- The Panel has the power to review certain decisions of ASIC to grant exemptions or modifications during the life of a takeover: [s 656A](#).

Other bodies:

Financial Reporting Council:

- The Financial Reporting Council (FRC) operates as a single oversight body for the key elements of the financial reporting system.
- The FRC aims to ensure that oversight is coherent and effective and in alignment with a common policy direction.
- Under [s 225\(1\)](#) of the ASIC Act, the FRC's functions include:
 - providing broad oversight of the processes for setting accounting and auditing standards in Australia;
 - monitoring the effectiveness of and advising on auditor independence requirements;
 - giving reports and advice to the Minister; and
 - establishing appropriate consultative mechanisms.

Corporations and Markets Advisory Committee (CAMAC):

- Corporations and Markets Advisory Committee (CAMAC) is the main corporate law reform advisory body of the Corporations Act scheme.
- Under [s 148](#) of the ASIC Act CAMAC's primary function is to advise and make recommendations to the government on any matter connected with the operation, administration and reform of the corporations legislation.
- CAMAC can also make recommendations regarding the financial products industry and the financial services industry as well as proposals for improving the efficiency of the financial markets.