





# **Australian Prudential Regulation Authority Amendment Act 2003**

**No. 42, 2003**

**An Act to amend the *Australian Prudential  
Regulation Authority Act 1998*, and for related  
purposes**

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



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## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Amendment of the Australian Prudential Regulation Authority Act 1998</b>		<b>3</b>
<b>Schedule 2—Amendment of other Acts</b>		<b>22</b>
	<i>Banking Act 1959</i>	22
	<i>Financial Corporations (Transfer of Assets and Liabilities) Act 1993</i>	22
	<i>Financial Sector (Shareholdings) Act 1998</i>	22
	<i>Financial Sector (Transfers of Business) Act 1999</i>	23
	<i>Insurance Acquisitions and Takeovers Act 1991</i>	23
	<i>Insurance Act 1973</i>	23
	<i>Reserve Bank Act 1959</i>	24
	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	25
<b>Schedule 3—Transitional provisions</b>		<b>26</b>





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***An Act to amend the *Australian Prudential  
Regulation Authority Act 1998*, and for related  
purposes***

*[Assented to 24 June 2003]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Australian Prudential Regulation  
Authority Amendment Act 2003*.

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	24 June 2003
2. Schedules 1 to 3	A single day to be fixed by Proclamation, subject to subsection (3)	1 July 2003 (s 2(1); <i>Gazette</i> 2003, S230)

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

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

## 3 Schedule(s)

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

## **Schedule 1—Amendment of the Australian Prudential Regulation Authority Act 1998**

### **1 Subsection 3(1)**

Insert:

*APRA member* means a member of APRA, including the Chair and Deputy Chair.

### **2 Subsection 3(1) (definition of *ASIC representative member*)**

Repeal the definition.

### **3 Subsection 3(1) (definition of *Board*)**

Repeal the definition.

### **4 Subsection 3(1) (definition of *Board member*)**

Repeal the definition.

### **5 Subsection 3(1) (definition of *CEO*)**

Repeal the definition.

### **6 Subsection 3(1) (definition of *Chair*)**

Omit “the Chair of the Board”, substitute “the APRA member appointed as Chair of APRA”.

### **7 Subsection 3(1)**

Insert:

*Deputy Chair* means the APRA member appointed as Deputy Chair of APRA.

### **8 Subsection 3(1)**

Insert:

*financial sector supervisory agency* means a person or body having the function, in Australia or in a foreign country, of supervising or regulating financial institutions.

**9 Subsection 3(1) (definition of *ordinary member*)**

Repeal the definition.

**10 Subsection 3(1)**

Insert:

*prudential regulation framework law* means any of the following Acts:

- (a) this Act;
- (b) the *Banking Act 1959*;
- (c) the *Financial Institutions Supervisory Levies Collection Act 1998*;
- (d) the *Financial Sector (Collection of Data) Act 2001*;
- (e) the *Financial Sector (Shareholdings) Act 1998*;
- (f) the *Financial Sector (Transfers of Business) Act 1999*;
- (g) the *Insurance Act 1973*;
- (h) the *Insurance Acquisitions and Takeovers Act 1991*;
- (i) the *Life Insurance Act 1995*;
- (j) the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*;
- (k) the *Retirement Savings Accounts Act 1997*;
- (l) the *Superannuation Industry (Supervision) Act 1993*;
- (m) the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*;
- (n) any Act imposing a levy to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies, or to which the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* applies;
- (o) another Act that is prescribed for the purposes of the section in which the expression appears.

**11 Subsection 3(1) (definition of *representative member*)**

Repeal the definition.

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**12 Subsection 3(1) (definition of *Reserve Bank representative member*)**

Repeal the definition.

**13 Section 7 (note)**

After “*Commonwealth Authorities and Companies Act 1997*”, insert “, other than sections 27F to 27K (disclosure of APRA members’ interests is instead dealt with in Division 1 of Part 4A of this Act),”.

**14 Subsection 8(1)**

Omit “policy”, substitute “administrative practices and procedures”.

**15 Subsection 8(2)**

Omit “In providing this regulation and developing this policy,”, substitute “In performing and exercising its functions and powers,”.

**16 Section 10**

Repeal the section, substitute:

**10 Advice to the Minister**

- (1) APRA must advise the Minister as soon as practicable if it considers that a body regulated by APRA is in financial difficulty.
- (2) APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting:
  - (a) matters that would improve the financial safety and efficiency, competition, contestability or competitive neutrality of the sectors in which the bodies regulated by APRA operate; or
  - (b) changes to, or in relation to, any prudential regulation framework law that APRA considers would overcome or assist in overcoming problems APRA has identified in the course of performing or exercising any of its functions and powers.
- (3) In addition, APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting any of the Minister’s functions and powers.

## 10A Cooperation with other agencies

- (1) The Parliament intends that APRA should, in performing and exercising its functions and powers, have regard to the desirability of APRA cooperating with other financial sector supervisory agencies, and with other agencies specified in regulations for the purposes of this subsection.
- (2) This section does not override any restrictions that would otherwise apply to APRA or confer any powers on APRA that it would not otherwise have.

Note: For example, APRA's ability to provide information to another agency remains subject to section 56.

## 17 Section 12

Repeal the section, substitute:

## 12 Directions by Minister respecting APRA policies and priorities

- (1) The Minister may give APRA a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers.
- (2) The Minister must not give a direction under subsection (1) unless he or she has:
  - (a) notified APRA in writing that he or she is considering giving the direction; and
  - (b) given the Chair an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (3) The Minister must not give a direction under subsection (1) about a particular case.
- (4) APRA must comply with a direction under subsection (1).
- (5) The Minister must cause a copy of a direction under subsection (1):
  - (a) to be published in the *Gazette* within 21 days after the direction is given; and
  - (b) to be laid before each House of the Parliament within 15 sitting days of that House after the publication;

but failure of the Minister to do so does not affect the direction's validity.

- (6) This section does not limit any other powers to give directions that the Minister has under any other law.

### **18 Subsection 13(2)**

Repeal the subsection.

### **19 Section 15**

Repeal the section, substitute:

### **15 Delegation by APRA**

- (1) APRA may, by writing under its seal, delegate any functions or powers conferred on APRA by this Act or any other law of the Commonwealth to an APRA member or to an APRA staff member.
- (2) APRA may, by writing under its seal, delegate any functions or powers conferred on APRA by this Act or any other law of the Commonwealth:
- (a) if the Chair of ASIC agrees to the delegation—to the Chair of ASIC, to another ASIC member or to an ASIC staff member; or
  - (b) if the Governor of the Reserve Bank agrees to the delegation—to the Governor or Deputy Governor of the Reserve Bank or to an officer of the Reserve Bank Service.
- (3) In performing or exercising functions or powers delegated under subsection (1) or (2), the delegate must comply with any directions given by APRA.

Note: For information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901*.

### **20 Part 3**

Repeal the Part, substitute:

## **Part 3—APRA membership and other corporate matters**

### **Division 1—Membership**

#### **16 Appointment of APRA members**

- (1) APRA is to consist of not fewer than 3 members nor more than 5 members.
- (2) The APRA members are to be appointed by the Governor-General by written instrument.
- (3) At least 3 of the APRA members must be appointed as full-time members, and each of the other APRA members (if any) may be appointed as a full-time or part-time member.
- (4) The performance of APRA's functions or the exercise of APRA's powers is not affected by reason only that:
  - (a) there are fewer than 3 APRA members; or
  - (b) there are fewer than 3 full-time APRA members.

#### **17 Restrictions on appointment**

- (1) A person may only be appointed as an APRA member if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge or experience relevant to APRA's functions and powers.
- (2) A person may not be appointed as an APRA member if the person is a director, officer or employee of a body regulated by APRA.
- (3) A person who is a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, may be appointed as an APRA member, but only if the Minister considers that the person will not be prevented from the proper performance of the functions of the office because of resulting conflicts of interest.

## **18 Appointment of Chair and Deputy Chair**

- (1) The Governor-General is to appoint a full-time APRA member as Chair of APRA.
- (2) The Governor-General may appoint another full-time APRA member as Deputy Chair of APRA.
- (3) The Deputy Chair is to act as Chair during any period when:
  - (a) the office of Chair is vacant; or
  - (b) the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office.
- (4) When acting as Chair, the Deputy Chair has all the functions and powers of the Chair.
- (5) Anything done by or in relation to a person purporting to act under subsection (3) is not invalid on the ground that the occasion for the person to act had not arisen or had ceased.

## **19 Acting appointments**

- (1) The Minister may:
  - (a) appoint a person to act as a full-time APRA member during any period when there are fewer than 5 persons who are APRA members; or
  - (b) appoint a person to act as a part-time APRA member during any period when:
    - (i) there are fewer than 5 persons who are APRA members; and
    - (ii) there are at least 3 persons who are full-time APRA members; or
  - (c) appoint a person to act in the place of a full-time APRA member or part-time APRA member during any period when the APRA member:
    - (i) is acting as Deputy Chair in accordance with subsection (3); or
    - (ii) is absent from duty or from Australia or is, for any reason, unable to perform the functions of his or her office.

- (2) The Minister may appoint an APRA member to act as Chair:
- (a) during a vacancy in the office of Chair, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office.
- (3) The Minister may appoint an APRA member to act as Deputy Chair:
- (a) during a vacancy in the office of Deputy Chair, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office; or
  - (c) during any period, or during all periods, when the Deputy Chair is acting as Chair.
- (4) A person appointed under paragraph (1)(a), (1)(b), (2)(a) or (3)(a) must not continue to act under the appointment for more than 12 months.
- (5) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- Note: For further information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.
- (6) A person is not eligible to be appointed to act in an office under this section if section 17 would prevent the person from being appointed as an APRA member.

## **Division 2—Terms and conditions for APRA members**

### **20 Term of office as an APRA member**

An APRA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: This section has effect subject to section 24 (under which a person may resign his or her appointment as an APRA member) and section 25 (under which a person's appointment as an APRA member may be terminated).

### **21 Term of office as Chair or Deputy Chair**

A person appointed as Chair or Deputy Chair holds that office until:

- (a) in any case—the end of his or her current term as an APRA member; or
- (b) in any case—he or she otherwise stops being an APRA member; or
- (c) in the case of a person appointed as Deputy Chair—he or she is appointed as Chair;

whichever happens first.

Note: This section has effect subject to section 24 (under which a person may resign his or her appointment as Chair or Deputy Chair).

### **22 Remuneration and allowances**

- (1) An APRA member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that the Minister determines.
- (2) An APRA member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## 23 Leave of absence

- (1) A full-time APRA member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may:
  - (a) grant a full-time APRA member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines; and
  - (b) grant a part-time APRA member leave of absence on the terms and conditions that the Minister determines.

## 24 Resignation

A person may resign his or her appointment as an APRA member, as Chair, or as Deputy Chair, by giving a written resignation to the Governor-General.

## 25 Termination of appointment

- (1) The appointment of an APRA member is immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.
- (2) The Governor-General may terminate the appointment of an APRA member:
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) in the case of a full-time member—if the member is absent from duty, except on leave of absence:
    - (i) for 14 consecutive days; or
    - (ii) for 28 days in any period of 12 months; or

- (d) in the case of a part-time member—if the member is absent, except on leave of absence, from 3 consecutive meetings of APRA; or
  - (e) in the case of a full-time member—if the member engages, except with the Minister’s approval, in paid employment outside the functions of his or her office; or
  - (f) in the case of a part-time member—if the member engages in paid employment that conflicts or could conflict with the proper performance of the functions of his or her office; or
  - (g) the member is or becomes a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, and the Minister considers that the person is, will be, or could be, prevented from the proper performance of the functions of his or her office because of resulting conflicts of interest; or
  - (h) if the member fails, without reasonable excuse, to comply with subsection 48A(1) or 48B(1); or
  - (i) if the member has an interest that has been, or should have been, disclosed under subsection 48A(1) or 48B(1) and that conflicts, or could conflict, to a significant extent, with the proper performance of the functions of his or her office.
- (3) In spite of anything contained in this section, if an APRA member:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- then he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, if an APRA member:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
  - (b) is under 60 years of age;
- then he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.
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## **26 Other terms and conditions**

An APRA member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **Division 3—APRA meetings**

### **27 Times and places of meetings**

- (1) APRA must hold the meetings that are necessary for the efficient performance and exercise of its functions and powers.
- (2) Meetings are to be held at the times and places that the Chair determines.
- (3) The Chair must convene a meeting if requested in writing by 2 or more APRA members.

### **28 Quorum**

At a meeting:

- (a) if APRA consists of 3 or 4 APRA members—2 APRA members; or
  - (b) in any other case—3 APRA members;
- constitute a quorum.

### **29 Who is to preside at meetings**

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting but the Deputy Chair is present, the Deputy Chair must preside.
- (3) If neither the Chair nor the Deputy Chair is present at a meeting, the APRA members present must elect one of their number to preside.

### **30 Voting at meetings**

- (1) A question arising at a meeting is to be determined by a majority of the votes of the APRA members present and voting.
- (2) The person presiding at a meeting has:
  - (a) a deliberative vote; and
  - (b) if necessary, also a casting vote.

### **31 Conduct of meetings**

- (1) APRA may regulate proceedings at its meetings as it considers appropriate.
- (2) However, proceedings at a meeting must not be inconsistent with this Division.

Note 1: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which APRA members may participate in meetings.

Note 2: Requirements relating to disclosure of interests are contained in Division 1 of Part 4A of this Act.

### **32 APRA resolutions without meetings**

A resolution is taken to have been passed at a meeting if:

- (a) APRA has determined:
  - (i) that resolutions may be passed in accordance with this section; and
  - (ii) the method of indicating agreement with a resolution passed in accordance with this section; and
- (b) without meeting, a majority of the APRA members indicate agreement with the resolution in accordance with the method determined by APRA; and
- (c) that majority would have constituted a quorum at a meeting; and
- (d) all APRA members were informed of the proposed resolution, or reasonable efforts were made to inform all APRA members of the proposed resolution.

**21 Part 4 (heading)**

Repeal the heading, substitute:

**Part 4—APRA staff members**

**22 Division 1 of Part 4**

Repeal the Division.

**23 Division 2 of Part 4 (heading)**

Repeal the heading.

**24 Subsection 45(2)**

Omit “the Board”, substitute “APRA”.

**25 Subsection 47(2)**

Omit “the Board”, substitute “APRA”.

**26 After Part 4**

Insert:

**Part 4A—Disclosure of interests of APRA members,  
APRA staff members and delegates**

**Division 1—Disclosure of interests of APRA members**

**48A Standing obligation to disclose interests**

- (1) An APRA member must disclose any interest that the member has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) Subsection (1) applies to interests:
  - (a) whether direct or indirect, and whether or not pecuniary; and
  - (b) whether acquired before or after the APRA member’s appointment.

- (3) The disclosure must be by notice in writing given to the Minister, and to each of the other APRA members, as soon as practicable after the APRA member becomes aware of the potential for conflict of interest.
- (4) Without limiting subsection (1), interests that must be disclosed under that subsection include:
  - (a) any agreement, understanding or expectation that the APRA member will:
    - (i) resume a previous business relationship (whether or not that relationship existed immediately before the member's appointment); or
    - (ii) enter into a new business relationship;  
when the member ceases to be a member; and
  - (b) any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph (a).
- (5) Paragraphs (4)(a) and (b) apply to agreements, understandings or arrangements entered into, or expectations arising, before or after the member's appointment.
- (6) The obligation to disclose an interest described in paragraph (4)(a) is subject to the following provisions:
  - (a) disclosure is required whether or not the field of business or legal nature of the relationship has been determined;
  - (b) if the interest is an expectation to enter into a new business relationship—the interest does not have to be disclosed unless the member can identify the other party, or one or more other parties, to the relationship.

#### **48B Obligation to disclose interests before deciding a particular matter**

- (1) An APRA member who has an interest that could conflict with the proper performance of the functions of his or her office, as they give the member a role in deciding a particular matter, must not perform the role in deciding the matter unless:
  - (a) the member has disclosed that interest to each of the other APRA members; and

- (b) each of the other APRA members has consented to the member performing that role in deciding that matter despite the possible conflict of interest.
- (2) Subsection (1) applies to interests:
  - (a) whether direct or indirect, and whether or not pecuniary; and
  - (b) whether acquired before or after the APRA member's appointment.
- (3) An APRA member, other than the Chair, who gives a consent under paragraph (1)(b) must, as soon as practicable, advise the Chair that he or she has given the consent.
- (4) If an interest is disclosed under subsection (1), the Chair must, as soon as practicable, give the Minister a written notice:
  - (a) describing the interest and the matter; and
  - (b) advising the Minister whether the other APRA members have consented as mentioned in paragraph (1)(b).

**48C Sections 27F to 27K of the *Commonwealth Authorities and Companies Act 1997* do not apply**

Sections 27F to 27K of the *Commonwealth Authorities and Companies Act 1997* do not apply in relation to APRA members.

**Division 2—Disclosure of interests of APRA staff members and delegates**

**48D APRA to ensure adequate disclosure of interests requirements apply to APRA staff members and delegates**

APRA must take reasonable steps to ensure that there are, where appropriate, adequate disclosure of interests requirements applying to:

- (a) APRA staff members; and
- (b) people (other than APRA members and APRA staff members) performing or exercising functions or powers delegated to them by APRA under section 15.

**27 Subsection 50(1)**

Omit “Treasurer”, substitute “Minister”.

**28 Subsection 50(2)**

Omit “Treasurer”, substitute “Minister”.

**29 Subsection 50(3)**

Omit “Treasurer”, substitute “Minister”.

**30 Subsection 56(1) (definition of *Act covered by this section*)**

Repeal the definition.

**31 Subsection 56(1) (definition of *financial sector supervisory agency*)**

Repeal the definition.

**32 Subsection 56(1) (paragraph (a) of the definition of *officer*)**

Repeal the paragraph, substitute:

(a) an APRA member; or

**33 Subsection 56(1) (definition of *protected document*)**

Omit “this Act or an Act covered by this section”, substitute “a prudential regulation framework law”.

**34 Subsection 56(1) (definition of *protected information*)**

Omit “this Act or an Act covered by this section”, substitute “a prudential regulation framework law”.

**35 Paragraph 56(2)(c)**

After “(5),”, insert “(5AA),”.

**36 Subsection 56(3)**

Omit “this Act or an Act covered by this section”, substitute “a prudential regulation framework law”.

**37 Paragraph 56(5)(b)**

Omit “the Board”, substitute “APRA”.

**38 Subsection 56(5) (note 1)**

Repeal the note.

**39 Subsection 56(5) (note 2)**

Omit “Note 2”, substitute “Note”.

**40 After subsection 56(5)**

Insert:

(5AA) It is not an offence if the disclosure of protected information or the production of a protected document is made:

- (a) by an officer of an agency to which the information or document has been disclosed or produced under paragraph (5)(a); and
- (b) for the same purpose as the information or document was so disclosed or produced to that agency.

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

**41 Paragraph 56(6)(a)**

Omit “a Board member”, substitute “an APRA member”.

**42 Paragraph 56(7B)(a)**

Omit “an Act covered by this section”, substitute “a prudential regulation framework law”.

**43 Subparagraph 56(7B)(b)(i)**

Omit “an Act covered by this section”, substitute “a prudential regulation framework law”.

**44 At the end of subsection 56(7B) (before the note)**

Add:

- ; or (c) a description of action under a prudential regulation framework law that APRA has taken or is proposing to take in relation to:
  - (i) a body regulated by APRA; or
  - (ii) an individual who holds or has held a position with or in relation to such a body.

**45 Subsection 56(8)**

Omit “this Act or an Act covered by this section”, substitute “a prudential regulation framework law”.

**46 Paragraph 56(12)(a)**

After “(5),”, insert “(5AA),”.

**47 Subsection 58(1)**

Omit “APRA, a Board member, an APRA staff member, or an agent of APRA, a Board member or an APRA staff member”, substitute “APRA, an APRA member, an APRA staff member, or an agent of APRA, an APRA member or an APRA staff member”.

**48 Subsection 58(1)**

Omit “APRA, the Board, a Board member or an APRA staff member”, substitute “APRA, an APRA member or an APRA staff member”.

## Schedule 2—Amendment of other Acts

### *Banking Act 1959*

#### **1 Subsection 5(1) (definition of *APRA board member*)**

Repeal the definition.

#### **2 Subsection 5(1)**

Insert:

*APRA member* has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

#### **3 Paragraph 63(5)(a)**

Omit “an APRA board member”, substitute “an APRA member”.

### *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*

#### **4 Paragraph 12(a)**

Omit “, or a member of APRA’s board of management”, substitute “(the Australian Prudential Regulation Authority)”.

#### **5 After paragraph 12(a)**

Insert:

(aa) an APRA member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*; or

### *Financial Sector (Shareholdings) Act 1998*

#### **6 Paragraph 44(1)(a)**

Omit “the Chief Executive Officer of”.

#### **7 Paragraph 44(1)(b)**

Repeal the paragraph, substitute:

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(b) an APRA member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*); or

### ***Financial Sector (Transfers of Business) Act 1999***

#### **8 Subsection 4(1) (definition of *APRA board member*)**

Repeal the definition.

#### **9 Subsection 4(1)**

Insert:

*APRA member* has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

#### **10 Subsection 4(2)**

Omit “an APRA board member,”, substitute “an APRA member,”.

### ***Insurance Acquisitions and Takeovers Act 1991***

#### **11 After paragraph 69(a)**

Insert:

(aa) an APRA member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*, or

### ***Insurance Act 1973***

#### **12 Subsection 3(1)**

Insert:

*APRA member* has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

#### **13 Subsection 3(1)**

Insert:

*APRA staff member* has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

**14 Subsection 3(1A)**

Omit “a person who is an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*,” substitute “an APRA member or an APRA staff member”.

**15 Subparagraph 59(1)(b)(i)**

Repeal the subparagraph, substitute:

- (i) an APRA member or an APRA staff member; or

**16 Paragraph 85(1)(b)**

Omit “an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*”, substitute “an APRA member or an APRA staff member”.

***Reserve Bank Act 1959***

**17 Subsection 5(1) (definition of *APRA Board member*)**

Repeal the definition.

**18 Subsection 5(1)**

Insert:

*APRA member* has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

**19 Subsection 25B(2)**

Repeal the subsection (including the note), substitute:

- (2) The member who is the representative of APRA referred to in paragraph 25A(c) is to be appointed by APRA. The person appointed must be an APRA member or an APRA staff member.

**20 Paragraph 25K(b)**

Omit “APRA’s Chief Executive Officer”, substitute “APRA”.

**21 Paragraph 25L(2)(a)**

Omit “APRA’s Chief Executive Officer”, substitute “APRA”.

**22 Paragraph 25L(2)(b)**

Omit “an APRA Board member”, substitute “an APRA member”.

***Superannuation (Unclaimed Money and Lost Members) Act  
1999***

**23 Section 8 (definition of *financial sector supervisory agency*)**

Omit “section 56”, substitute “section 3”.

## Schedule 3—Transitional provisions

### 1 Definitions

In this Schedule:

*amended Act* means the *Australian Prudential Regulation Authority Act 1998* as in force after the commencement of the amendments.

*commencement of the amendments* means the commencement of the amendments made by Schedule 1.

*old Act* means the *Australian Prudential Regulation Authority Act 1998* as in force immediately before the commencement of the amendments.

### 2 APRA's corporate existence is continued

- (1) The body corporate that was, immediately before the commencement of the amendments, the Australian Prudential Regulation Authority (*APRA*) continues in existence after that commencement by force of this item under the corporate structure provided for by the amended Act.

Note: Rights, liabilities and obligations as between APRA and other people, and things done by or on behalf of APRA, or in relation to APRA, are therefore not affected by the restructure of APRA.

- (2) However, this does not imply that any person who, immediately before the commencement of the amendments, was a member of APRA's Board, or was APRA's Chief Executive Officer, continues to hold office after that commencement.

Note: These people cease to hold office on the commencement of the amendments because of the repeal of the provisions under which they were appointed.

### 3 Continued protection from liability

Section 58 of the old Act continues to apply in relation to conduct, before the commencement of the amendments, of APRA's Board, a member of APRA's Board or an agent of a member of APRA's Board.

Note: The reference to a member of APRA's Board covers APRA's Chief Executive Officer.

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#### **4 Continued effect of certain delegations**

- (1) A delegation in force, immediately before the commencement of the amendments, under subsection 15(1) or (2) of the old Act continues to have effect after that commencement as if it were a delegation under APRA's seal under that subsection of the amended Act. If the delegation was to one or more members of APRA's Board, it continues to have effect as if it were a delegation to any APRA member.
- (2) A direction in force, immediately before the commencement of the amendments, under subsection 15(3) of the old Act continues to have effect after that commencement, in relation to a delegation to which subitem (1) applies, as if it were a direction given by APRA under that subsection of the amended Act.
- (3) A delegation to one or more members of APRA's Board in force, immediately before the commencement of the amendments, under a provision amended by Schedule 2 continues to have effect after that commencement as if it were a delegation under the amended provision to any APRA member.

Note: Delegations in favour of APRA, or APRA staff members, are not affected by the Schedule 2 amendments.

#### **5 Continued effect of determinations of terms and conditions for staff and consultants**

A determination of terms and conditions in force, immediately before the commencement of the amendments, under subsection 45(2) or 47(2) of the old Act continues to have effect after that commencement as if it were a determination by APRA under that subsection of the amended Act.

#### **6 Continued effect of approvals under paragraph 56(5)(b)**

An approval in force, immediately before the commencement of the amendments, under paragraph 56(5)(b) of the old Act continues to have effect after that commencement as if it were an approval by APRA under that paragraph of the amended Act.

#### **7 Continued or extended effect of certain regulations**

- (1) Regulations in force, immediately before the commencement of the amendments, under paragraph (k) of the definition of *Act covered by*

*this section* in subsection 56(1) of the old Act continue to have effect after that commencement as if they were made under paragraph (o) of the definition of *prudential regulation framework law* in subsection 3(1) of the amended Act, but only as that paragraph applies for the purposes of section 56 of the amended Act.

- (2) Regulations in force, immediately before the commencement of the amendments, under paragraph 56(5)(a) of the old Act have effect after that commencement (in addition to the effect they continue to have for that paragraph of the amended Act) as if they were also made under subsection 10A(1) of the amended Act.

## 8 Delegations by ASIC to APRA staff members

- (1) Subsection 102(2A) of the *Australian Securities and Investments Commission Act 2001* has effect after the commencement of the amendments as if the reference in that subsection to the Chief Executive Officer of APRA were instead a reference to APRA.
- (2) For the purposes of that subsection as it continues to have effect, an agreement to a delegation, in force under that subsection immediately before the commencement of the amendments, continues to have effect after that commencement as if it were given by APRA.

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[Minister's second reading speech made in—  
House of Representatives on 5 June 2003  
Senate on 18 June 2003]