





# **Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007**

**No. 154, 2007**

**An Act to amend the law relating to banking,  
insurance, superannuation and other matters in the  
Treasury portfolio, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to banking,  
insurance, superannuation and other matters in the  
Treasury portfolio, and for related purposes**

*[Assented to 24 September 2007]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Financial Sector Legislation  
Amendment (Simplifying Regulation and Review) Act 2007*.

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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, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<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 September 2007
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	24 September 2007
3. Schedule 1, Part 2	1 January 2008.	1 January 2008
4. Schedule 1, Part 3	On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	24 September 2008
5. Schedule 1, Part 4	1 July 2011.	1 July 2011
6. Schedule 1, Part 5	The day on which this Act receives the Royal Assent.	24 September 2007
7. Schedules 2, 3 and 4	The day on which this Act receives the Royal Assent.	24 September 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Streamlining prudential regulation**

### **Part 1—Amendments commencing on Royal Assent**

#### *A New Tax System (Australian Business Number) Act 1999*

##### **1 Section 5 (heading)**

Repeal the heading, substitute:

##### **5 Application to government entities, non-profit sub-entities, superannuation funds and certain RSE licensees**

##### **2 Section 5**

Before “This”, insert “(1)”.

##### **3 At the end of section 5**

Add:

- (2) This Act applies to an \*RSE licensee, or an applicant for an \*RSE licence, that is a group of individual trustees as if the group were an \*entity \*carrying on an \*enterprise in \*Australia.

##### **4 Section 16 (heading)**

Repeal the heading, substitute:

##### **16 Application of sections 14 and 15 to partnerships, unincorporated associations and bodies and certain RSE licensees**

##### **5 After subsection 16(2)**

Insert:

*Application to RSE licensee that is a group of individual trustees*

- (2A) If, but for this subsection, section 14 or 15 would impose an obligation on an \*RSE licensee that is a group of individual trustees, the obligation is imposed on each individual, but may be discharged by any of the individuals.

**6 Subsection 16(3) (heading)**

Repeal the heading, substitute:

*Defences for partners, members of committee of management and certain RSE licensees*

**7 Subsection 16(3)**

Omit “or (2)”, substitute “, (2) or (2A)”.

**8 Section 41**

Insert:

*RSE licence* means an RSE licence within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

**9 Section 41**

Insert:

*RSE licensee* means an RSE licensee within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

***Banking Act 1959***

**10 Paragraphs 7(1)(c), 8(1)(d), 9(6)(c) and 10(3)(c)**

Omit “order in force under section 11 determining”, substitute “determination in force under section 11”.

**11 Subsections 11(1) and (2)**

Repeal the subsections, substitute:

- (1) APRA may, in writing, determine that any or all of the following provisions of this Act do not apply to a person while the determination is in force:
- (a) a provision of Division 1, 1AA or 1A of Part II (other than section 11A, 11B or 11C);
  - (b) section 66;
  - (c) section 66A;
  - (d) section 67;
  - (e) section 69.

- (2) The determination:
  - (a) may be expressed to apply to a particular person or to a class of persons; and
  - (b) may specify the period during which the determination is in force; and
  - (c) may be made subject to specified conditions.
- (2A) If APRA makes a determination that applies to a particular person, APRA must also give the person written notice of the determination.

## **12 Paragraph 11(3)(b)**

Omit “an order” (wherever occurring), substitute “a determination”.

## **13 Subsection 11(4)**

Repeal the subsection, substitute:

- (4) APRA may, in writing, vary or revoke a determination under this section.
- (5) The following instruments made under this section are not legislative instruments:
  - (a) a determination that applies to a particular person;
  - (b) an instrument varying or revoking a determination that applies to a particular person.
- (6) Otherwise, an instrument made under this section is a legislative instrument.

## **14 Paragraph 11AA(5)(c)**

Omit “order in force under section 11 determining”, substitute “determination in force under section 11”.

## **15 Subsection 11AF(2)**

Repeal the subsection, substitute:

- (2) A standard may provide for APRA to exercise powers and discretions under the standard, including (but not limited to) discretions to approve, impose, adjust or exclude specific prudential requirements in relation to one or more specified ADIs or authorised NOHCs.

**16 After subsection 11AF(3)**

Insert:

- (3A) A standard referred to in paragraph (1)(d), or an instrument varying or revoking such a standard, has effect:
- (a) from the day on which the standard, variation or revocation is made; or
  - (b) if the standard, variation or revocation specifies a later day— from that later day.

**17 Subsections 11AF(4), (5), (6) and (6A)**

Repeal the subsections.

**18 Subsection 11AF(7)**

Omit “(4), (4A), (5), (5A) or (6)”, substitute “(4A) or (5A)”.

**19 After subsection 11AF(7)**

Insert:

- (7A) The following instruments made under this section are not legislative instruments:
- (a) a standard referred to in paragraph (1)(d);
  - (b) an instrument varying or revoking a standard referred to in paragraph (1)(d).
- (7B) Otherwise, an instrument made under this section is a legislative instrument.

**20 Paragraph 11CG(1)(b)**

Omit “23; and”, substitute “23.”.

**21 Paragraph 11CG(1)(c)**

Repeal the paragraph.

**22 Paragraph 11CG(2)(b)**

Omit “direction; and”, substitute “direction.”.

**23 Paragraph 11CG(2)(c)**

Repeal the paragraph.

**24 Paragraph 11E(2)(b)**

Omit “(1); and”, substitute “(1).”.

**25 Paragraph 11E(2)(c)**

Repeal the paragraph.

**26 Paragraph 13(3)(b)**

Omit “situation; and”, substitute “situation.”.

**27 Paragraph 13(3)(c)**

Repeal the paragraph.

**28 Paragraph 13A(4)(b)**

Omit “value; and”, substitute “value.”.

**29 Paragraph 13A(4)(c)**

Repeal the paragraph.

**30 Subsection 13B(1A)**

Repeal the subsection (but not the penalty or notes), substitute:

(1A) An ADI commits an offence if:

- (a) the ADI does not give the investigator access to its books, accounts and documents; or
- (b) the ADI fails to comply with a requirement made under subsection (1) for the provision of information or facilities.

**31 Paragraph 14A(2A)(c)**

Omit “requirement; and”, substitute “requirement.”.

**32 Paragraph 14A(2A)(d)**

Repeal the paragraph.

**33 Paragraph 16B(1A)(b)**

Omit “requirement; and”, substitute “requirement.”.

**34 Paragraph 16B(1A)(c)**

Repeal the paragraph.

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### **35 Subsections 16B(5) to (7)**

Repeal the subsections.

### **36 Section 18**

Repeal the section, substitute:

#### **18 Referring matters to professional associations for auditors**

- (1) If APRA is of the opinion that an auditor of a relevant body corporate (see subsection (2)):
- (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties or functions as an auditor under:
    - (i) this Act, the regulations or the prudential standards; or
    - (ii) any other law of the Commonwealth, a State or a Territory; or
  - (b) is otherwise not a fit and proper person to be the auditor of a relevant body corporate;

APRA may refer the details of the matter to either or both of the following:

- (c) the Companies Auditors and Liquidators Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;
  - (d) those members of the professional association of the auditor whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the auditor.
- (2) For the purposes of this section, each of the following is a **relevant body corporate**:
- (a) an ADI;
  - (b) an authorised NOHC;
  - (c) a subsidiary of an ADI or authorised NOHC;
  - (d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign corporation)—a subsidiary of that foreign corporation that is incorporated in, or carries on business in, Australia.

- (3) If APRA refers details of a matter under this section, APRA must also give written notice of the referral (including the nature of the matter) to the auditor.

### **37 After Division 2B of Part II**

Insert:

## **Division 2C—Enforceable undertakings**

### **18A Enforceable undertakings**

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a power or function under this Act.
- (2) The person may, with APRA's consent, vary or withdraw the undertaking.
- (3) If APRA considers that a person who has given an undertaking has breached any of the terms of the undertaking, APRA may apply to the Federal Court of Australia for an order under subsection (4).
- (4) If the Federal Court is satisfied that a person who has given an undertaking has breached any of the terms of the undertaking, the Court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

### **38 Subparagraph 33(4)(b)(ii)**

Omit "specified; and", substitute "specified."

### **39 Paragraph 33(4)(c)**

Repeal the paragraph.

**40 Paragraph 36(1A)(b)**

Omit “policy; and”, substitute “policy.”.

**41 Paragraph 36(1A)(c)**

Repeal the paragraph.

**42 Paragraph 36(2A)(b)**

Omit “directions; and”, substitute “directions.”.

**43 Paragraphs 36(2A)(c), 41(2)(b), 42(1A)(b), 42(3)(b),  
45(1A)(b), 45(4)(b) and 46(2)(b)**

Repeal the paragraphs.

**44 After Part VI**

Insert:

**Part VIA—Protections in relation to information**

**Division 1—Protection for whistleblowers**

**52A Disclosures qualifying for whistleblower protection**

- (1) This section applies to a disclosure of information made by a person (the *discloser*) who is, in relation to a body corporate that is an ADI, an authorised NOHC or a subsidiary of an ADI or authorised NOHC, any of the following:
  - (a) an officer of the body corporate;
  - (b) an employee of the body corporate;
  - (c) a person who has a contract for the supply of services or goods to the body corporate;
  - (d) an employee of a person who has a contract for the supply of services or goods to the body corporate.
- (2) The disclosure of the information by the discloser qualifies for protection under this Division if:
  - (a) the disclosure is made to any of the following:
    - (i) APRA;
    - (ii) the auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate;

- (iii) a director or senior manager of the body corporate or a related body corporate;
  - (iv) a person authorised by the body corporate to receive disclosures of the kind made; and
  - (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
  - (c) both:
    - (i) the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the body corporate; and
    - (ii) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties in relation to the body corporate or a related body corporate; and
  - (d) the discloser makes the disclosure in good faith.
- (3) For the purposes of this section, a body corporate is a ***related body corporate*** of another body corporate if:
- (a) in the case of an ADI—the other body corporate is the authorised NOHC of the ADI or a subsidiary of the ADI or authorised NOHC; or
  - (b) in the case of an authorised NOHC of an ADI—the other body corporate is the ADI or a subsidiary of the ADI or authorised NOHC; or
  - (c) in the case of a subsidiary of an ADI or authorised NOHC—the other body corporate is the ADI, the authorised NOHC or another subsidiary of the ADI or authorised NOHC.
- (4) In this section, ***officer*** has the same meaning as it has in the *Corporations Act 2001*.

## 52B Whistleblower protection for disclosures that qualify

- (1) If a person makes a disclosure that qualifies for protection under this Division:
    - (a) the person is not subject to any civil or criminal liability for making the disclosure; and
    - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
-

- (2) Without limiting subsection (1):
- (a) the person has qualified privilege in respect of the disclosure; and
  - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
- (a) a person (the *employee*) is employed in a particular position under a contract of employment with another person (the *employer*); and
  - (b) the employee makes a disclosure that qualifies for protection under this Division; and
  - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;
- the court may order that the employee be reinstated in that position or a position at a comparable level.
- (4) If an individual makes a disclosure of information that qualifies for protection under this Division, the information is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

## **52C Victimization of whistleblowers prohibited**

### *Actually causing detriment to another person*

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the person's conduct causes any detriment to another person; and
  - (c) the person intends that his or her conduct cause detriment to the other person; and
  - (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threatening to cause detriment to another person*

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) made a disclosure that qualifies for protection under this Division; or
    - (ii) may make a disclosure that would qualify for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threats*

- (3) For the purposes of subsection (2), a threat may be:
- (a) express or implied; or
  - (b) conditional or unconditional.
- (4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

*Definition*

- (5) In this section:
- engage in conduct** means:
- (a) do an act; or
  - (b) omit to do an act.

**52D Right to compensation**

If:

- (a) a person:
    - (i) commits an offence under subsection 52C(1) or (2); or
-

- (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 52C(1) or (2); and
- (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;  
the person is liable to compensate the other person for the damage.

**52E Confidentiality requirement for company, company officers and employees and auditors**

- (1) A person (the *offender*) commits an offence under this subsection if:
  - (a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Division; and
  - (b) the disclosure is made to:
    - (i) the auditor of, or a member of an audit team conducting an audit of, the body corporate or a related body corporate within the meaning of subsection 52A(3); or
    - (ii) a director or senior manager of the body corporate or a related body corporate within the meaning of subsection 52A(3); or
    - (iii) a person authorised by the body corporate to receive disclosures of that kind; and
  - (c) the offender is:
    - (i) the auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate; or
    - (ii) a director or senior manager of the body corporate or a related body corporate; or
    - (iii) a person authorised by the body corporate to receive disclosures of that kind; or
    - (iv) the body corporate or a related body corporate; or
    - (v) an officer or employee of the body corporate or a related body corporate; and
  - (d) the offender discloses any of the following information (the *confidential information*):
    - (i) the information referred to in paragraph (a);
    - (ii) the identity of the discloser;
    - (iii) information that is likely to lead to the identification of the discloser; and

- (e) the confidential information is information that the offender obtained directly or indirectly because of the disclosure referred to in paragraph (a); and
- (f) either:
  - (i) the offender is the person to whom the disclosure referred to in paragraph (a) is made; or
  - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (g) the disclosure referred to in paragraph (d) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(d) is authorised under this subsection if:
  - (a) it is made to APRA; or
  - (b) it is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (c) it is made to someone else with the consent of the discloser.
- (3) In this section, *officer* has the same meaning as it has in the *Corporations Act 2001*.

## **Division 2—Self-incrimination**

### **52F Self-incrimination**

- (1) A person is not excused from complying with a requirement under this Act or the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person is an individual, the information given by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:

- (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
- (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

**45 Subparagraph 61(3)(b)(ii)**

Omit “facilities; and”, substitute “facilities.”.

**46 Paragraph 61(3)(c)**

Repeal the paragraph.

**47 Subsection 61(4)**

Repeal the subsection.

**48 Paragraph 62(1A)(b)**

Omit “requirement; and”, substitute “requirement.”.

**49 Paragraph 62(1A)(c)**

Repeal the paragraph.

**50 Subsections 62(3) and (4)**

Repeal the subsections.

**51 Paragraphs 66(1)(e) and (3)(c), 66A(1)(c), 67(1)(d) and (3)(c) and 69(3AA)(b), (5A)(b) and (7A)(b)**

Omit “order in force under section 11 determining”, substitute “determination in force under section 11”.

***Corporations Act 2001***

**52 Before subsection 1274(3)**

Insert:

- (2D) For the purposes of subsections (2) and (5), each of the following is taken to be a document lodged with ASIC if a copy has been given to ASIC by APRA:
  - (a) benefit fund rules that have been approved by APRA under section 16L of the *Life Insurance Act 1995*;

- (b) an amendment of benefit fund rules that has been approved by APRA under section 16Q of the *Life Insurance Act 1995*;
- (c) consequential amendments of a company's constitution that have been approved by APRA under section 16U or 16V of the *Life Insurance Act 1995*.

## ***Insurance Act 1973***

### **53 Subsection 7(1)**

Repeal the subsection, substitute:

- (1) APRA may, in writing, determine that any or all of the following provisions of this Act do not apply to a person while the determination is in force:
  - (a) a provision of Part III (other than a provision of Division 3A of that Part);
  - (b) section 35;
  - (c) section 39;
  - (d) section 41;
  - (e) a provision of Division 3 or 4 of Part IV;
  - (f) section 49Q;
  - (g) section 117;
  - (h) section 118;
  - (i) section 120;
  - (j) section 121.

### **54 After subsection 7(2)**

Insert:

- (2A) If APRA makes a determination that applies to a particular person, APRA must also give the person written notice of the determination.

### **55 Subsections 7(3) and (4)**

Repeal the subsections, substitute:

- (3) APRA may, in writing, vary or revoke a determination under this section.

- (4) The following instruments made under this section are not legislative instruments:
  - (a) a determination that applies to a particular person;
  - (b) an instrument varying or revoking a determination that applies to a particular person.
- (5) Otherwise, an instrument made under this section is a legislative instrument.

**56 At the end of subsection 32(1)**

Add:

- ; or (e) one or more specified general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs.

**57 Paragraph 32(3D)(b)**

Omit “NOHCs;”, substitute “NOHCs.”.

**58 Paragraph 32(3D)(c)**

Repeal the paragraph.

**59 Subsections 32(4), (4A) and (5)**

Repeal the subsections, substitute:

- (4) APRA may, in writing, vary or revoke a standard. However, APRA must not, under this subsection, vary or revoke a standard in a way described in subsection (3A).
- (4A) A standard referred to in paragraph (1)(e), or an instrument varying or revoking such a standard, has effect:
  - (a) from the day on which the standard, variation or revocation is made; or
  - (b) if the standard, variation or revocation specifies a later day— from that later day.
- (5) The following instruments made under this section are not legislative instruments:
  - (a) a standard referred to in paragraph (1)(e);
  - (b) an instrument varying or revoking a standard referred to in paragraph (1)(e);
  - (c) a modification of a standard under subsection (3A);

(d) an instrument varying or revoking a modification under subsection (3A).

(5A) Otherwise, an instrument made under this section is a legislative instrument.

#### **60 Subsection 32(6)**

Omit “section 49A”, substitute “section 14 of the *Legislative Instruments Act 2003* and section 46AA”.

#### **61 Section 33**

Repeal the section.

#### **62 At the end of Part IIIA**

Add:

### **Division 4—Protections in relation to information**

#### **Subdivision A—Protection for whistleblowers**

##### **38A Disclosures qualifying for whistleblower protection**

- (1) This section applies to a disclosure of information made by a person (the *discloser*) who is, in relation to a body corporate that is a general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC, any of the following:
  - (a) an officer of the body corporate;
  - (b) an employee of the body corporate;
  - (c) a person who has a contract for the supply of services or goods to the body corporate;
  - (d) an employee of a person who has a contract for the supply of services or goods to the body corporate.
- (2) The disclosure of information by the discloser qualifies for protection under this Subdivision if:
  - (a) the disclosure is made to any of the following:
    - (i) APRA;
    - (ii) the auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate;

- (iii) the actuary of the body corporate or a related body corporate;
  - (iv) a director or senior manager of the body corporate or a related body corporate;
  - (v) a person authorised by the body corporate to receive disclosures of the kind made; and
- (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
- (c) both:
- (i) the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the body corporate or a related body corporate; and
  - (ii) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties in relation to the body corporate or a related body corporate; and
- (d) the discloser makes the disclosure in good faith.
- (3) For the purposes of this section, a body corporate is a ***related body corporate*** of another body corporate if:
- (a) in the case of a general insurer—the other body corporate is the authorised NOHC of the general insurer or a subsidiary of the general insurer or authorised NOHC; or
  - (b) in the case of an authorised NOHC of a general insurer—the other body corporate is the general insurer or a subsidiary of the general insurer or authorised NOHC; or
  - (c) in the case of a subsidiary of a general insurer or authorised NOHC—the other body corporate is the general insurer, the authorised NOHC or another subsidiary of the general insurer or authorised NOHC.
- (4) In this section, ***officer*** has the same meaning as it has in the *Corporations Act 2001*.

### **38B Whistleblower protection for disclosures that qualify**

- (1) If a person makes a disclosure that qualifies for protection under this Subdivision:
- (a) the person is not subject to any civil or criminal liability for making the disclosure; and

- (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
- (2) Without limiting subsection (1):
  - (a) the person has qualified privilege in respect of the disclosure; and
  - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
  - (a) a person (the *employee*) is employed in a particular position under a contract of employment with another person (the *employer*); and
  - (b) the employee makes a disclosure that qualifies for protection under this Subdivision; and
  - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;the court may order that the employee be reinstated in that position or a position at a comparable level.
- (4) If an individual makes a disclosure of information that qualifies for protection under this Subdivision, the information is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

### **38C Victimization of whistleblowers prohibited**

*Actually causing detriment to another person*

- (1) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the person's conduct causes any detriment to another person; and
  - (c) the person intends that his or her conduct cause detriment to the other person; and

- (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Subdivision.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threatening to cause detriment to another person*

- (2) A person (the **first person**) commits an offence if:
  - (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) made a disclosure that qualifies for protection under this Subdivision; or
    - (ii) may make a disclosure that would qualify for protection under this Subdivision.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threats*

- (3) For the purposes of subsection (2), a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.
- (4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

*Definition*

- (5) In this section:
  - engage in conduct** means:
    - (a) do an act; or
    - (b) omit to do an act.

### 38D Right to compensation

If:

- (a) a person:
    - (i) commits an offence under subsection 38C(1) or (2); or
    - (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 38C(1) or (2); and
  - (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;
- the person is liable to compensate the other person for the damage.

### 38E Confidentiality requirement for company, company officers and employees and auditors

- (1) A person (the *offender*) commits an offence under this subsection if:
  - (a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Subdivision; and
  - (b) the disclosure is made to:
    - (i) the auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate in within the meaning of subsection 38A(3); or
    - (ii) a director or senior manager of the body corporate or a related body corporate; or
    - (iii) a person authorised by the body corporate to receive disclosures of that kind; and
  - (c) the offender is:
    - (i) the auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate; or
    - (ii) a director or senior manager of the body corporate or a related body corporate; or
    - (iii) a person authorised by the body corporate to receive disclosures of that kind; or
    - (iv) the body corporate or a related body corporate; or
    - (v) an officer or employee of the body corporate or a related body corporate; and
  - (d) the offender discloses any of the following information (the *confidential information*):

- (i) the information referred to in paragraph (a);
  - (ii) the identity of the discloser;
  - (iii) information that is likely to lead to the identification of the discloser; and
- (e) the confidential information is information that the offender obtained directly or indirectly because of the disclosure referred to in paragraph (a); and
- (f) either:
- (i) the offender is the person to whom the disclosure referred to in paragraph (a) is made; or
  - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (g) the disclosure referred to in paragraph (d) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(d) is authorised under this subsection if:
- (a) it is made to APRA; or
  - (b) it is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (c) it is made to someone else with the consent of the discloser.
- (3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

## **Subdivision B—Self-incrimination**

### **38F Self-incrimination**

- (1) A person is not excused from complying with a requirement under this Act, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.

- (2) However, if the person is an individual, the information given by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:
- (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
  - (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

### **63 Subsection 39(1) (note)**

Repeal the note.

### **64 Sections 47 and 48**

Repeal the sections, substitute:

### **48 Referring matters to professional associations for auditors and actuaries**

- (1) If APRA is of the opinion that an auditor of a general insurer:
- (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties or functions as an auditor under:
    - (i) this Act, the regulations or the prudential standards; or
    - (ii) any other law of the Commonwealth, a State or a Territory; or
  - (b) is otherwise not a fit and proper person to be the auditor of a general insurer;
- APRA may refer the details of the matter to either or both of the following:
- (c) the Companies Auditors and Liquidators Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;
  - (d) those members of the professional association of the auditor whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the auditor.
- (2) If APRA is of the opinion that an actuary of a general insurer:
-

- (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties as an actuary under:
  - (i) this Act, the regulations or the prudential standards; or
  - (ii) any other law of the Commonwealth, a State or a Territory; or
- (b) is otherwise not a fit and proper person to be the actuary of a general insurer;

APRA may refer the details of the matter to those members of the professional association of the actuary whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the actuary.

- (3) If APRA refers details of a matter under this section, APRA must also give written notice of the referral (including the nature of the matter) to the auditor or actuary.
- (4) APRA's powers under subsection (1) and (2) may be exercised whether or not APRA has disqualified the person under section 44.

**65 Subsection 49A(2)**

Omit "unless there is a determination in force under subsection 7(1) that this subsection does not apply to the person".

**65A Section 49D**

Repeal the section.

**66 Subsection 70(5)**

Repeal the subsection.

***Life Insurance Act 1995***

**67 After section 7**

Insert:

**7A Determination that certain provisions do not apply**

- (1) APRA may, in writing, determine that any or all of the following provisions of this Act do not apply to a person while the determination is in force:
  - (a) a provision of Part 2, 2A, 2B or 3;

- (b) a provision of Division 1, 3, 4, 5 or 6 of Part 4;
  - (c) section 75;
  - (d) section 76;
  - (e) section 78;
  - (f) section 79;
  - (g) section 80;
  - (h) section 81.
- (2) The determination:
- (a) may be expressed to apply to a particular person or to a class of persons; and
  - (b) may specify the period during which the determination is in force; and
  - (c) may be made subject to specified conditions.
- (3) If APRA makes a determination that applies to a particular person, APRA must also give the person written notice of the determination.
- (4) APRA may, in writing, vary or revoke a determination under this section.
- (5) The following instruments made under this section are not legislative instruments:
- (a) a determination that applies to a particular person;
  - (b) an instrument varying or revoking a determination that applies to a particular person.
- (6) Otherwise, an instrument made under this section is a legislative instrument.

**7B Breach of condition of a determination under section 7A**

- (1) A person commits an offence if:
- (a) a determination under section 7A applies to a person; and
  - (b) the person does or fails to do an act; and
  - (c) doing or failing to do the act results in a breach of a condition to which the determination is subject.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).
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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**68 At the end of subsections 12A(2) and 12B(3)**

Add “or in the prudential standards”.

**69 Subsection 15(3)**

After “Prudential Rules”, insert “or the prudential standards”.

**70 Subsection 16A(6) (note)**

Omit “to which section 125A or 125B applies has been modified, an exemption order”, substitute “referred to in subsection 7A(1) has been modified, a determination”.

**71 Paragraph 16B(2)(a)**

After “Prudential Rules”, insert “or in the prudential standards”.

**71A Subsection 16C(4)**

After “Prudential Rules”, insert “or in the prudential standards”.

**72 At the end of subsection 16H(4)**

Add “or the prudential standards”.

**73 Paragraph 16H(4A)(b)**

After “Prudential Rules”, insert “or the prudential standards”.

**74 Section 16J**

Omit “Rules”, substitute “Rules or the prudential standards”.

**75 At the end of subsection 16L(2)**

Add “or the prudential standards”.

**76 Paragraph 16L(4)(b)**

After “Prudential Rules”, insert “or the prudential standards”.

**77 Section 16M**

Repeal the section.

**78 Paragraph 16N(a)**

Omit “a copy of the rules is lodged with ASIC”, substitute “APRA approved the rules”.

**79 At the end of subsection 16Q(2)**

Add “or the prudential standards”.

**80 Paragraph 16Q(4)(b)**

After “Prudential Rules”, insert “or the prudential standards”.

**81 Paragraph 16R(6)(b)**

After “Prudential Rules”, insert “or the prudential standards”.

**82 Section 16S**

Repeal the section.

**83 Paragraph 16T(c)**

Omit “a copy of the amendment is lodged with ASIC”, substitute “APRA approved or determined the amendment”.

**84 At the end of subsection 16U(2)**

Add “or the prudential standards”.

**85 Paragraph 16U(4)(b)**

After “Prudential Rules”, insert “or the prudential standards”.

**86 At the end of subsection 16V(3)**

Add “or the prudential standards”.

**87 Paragraph 16V(7)(b)**

After “Prudential Rules”, insert “or the prudential standards”.

**88 Section 16W**

Repeal the section.

**89 Paragraph 16X(c)**

Omit “a copy of the amendments is lodged with ASIC”, substitute “APRA approved or determined the amendments”.

**90 Section 20**

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Repeal the section, substitute:

## **20 Application for registration**

- (1) A company may apply in writing to APRA for registration under this Act.
- (2) The application must:
  - (a) be in the form (if any) approved by APRA; and
  - (b) be accompanied by any information requested by APRA; and
  - (c) nominate for the purposes of this Act:
    - (i) the person who is to be the principal executive officer of the life company; and
    - (ii) the period that is to be the financial year of the life company.
- (3) For the purposes of determining an application, APRA may by written notice require an applicant to provide information specified in the notice, before the end of the period specified in the notice.
- (4) If the applicant does not provide the specified information before the end of the specified period or any longer period agreed to in writing by APRA, the application is taken to be withdrawn.
- (5) A notice under subsection (3) must include a statement about the effect of subsection (4).

## **91 Subsections 21(1) and (2)**

Repeal the subsections, substitute:

- (1) APRA must, in writing, register a company that applies for registration under section 20, unless:
  - (a) APRA is satisfied that a ground for refusal specified in subsection (3) exists; and
  - (b) the Treasurer approves of the refusal.

## **92 Subsections 21(5), (6) and (7)**

Repeal the subsections.

## **93 Sections 25 and 28**

Repeal the sections.

**94 At the end of subsection 34(4)**

Add “or the prudential standards”.

**95 Subsection 39(2)**

Omit “and section 259”.

**96 Subsection 40(3)**

Omit “The Commissioner”, substitute “APRA”.

**97 Subsection 44(6)**

After “Prudential Rules”, insert “or by reporting standards made under the *Financial Sector (Collection of Data) Act 2001*”.

**98 Paragraphs 44(7)(a) and (b)**

After “Prudential Rules”, insert “or by reporting standards made under the *Financial Sector (Collection of Data) Act 2001*”.

**99 Subsections 52(1) and (3)**

After “Prudential Rules”, insert “or the prudential standards”.

**100 Subsection 53(1)**

After “Prudential Rules”, insert “or the prudential standards”.

**101 Subsection 53(2)**

After “Prudential Rules”, insert “or the prudential standards”.

**102 At the end of subsection 55(2)**

Add “or the prudential standards”.

**103 At the end of subsection 55(3)**

Add “or the prudential standards”.

**104 Subsection 61(1) (definition of *starting amount*)**

After “Prudential Rules”, insert “or prudential standards”.

**105 Paragraph 62(3)(c)**

After “Prudential Rules”, insert “or prudential standards”.

**106 Subsection 62(5)**

After “Prudential Rules”, insert “or the prudential standards”.

**107 Subsection 77(2)**

Omit “under subsection 20(4)”, substitute “for the purposes of section 20”.

**108 After section 88**

Insert:

**88A Auditor may give information to APRA**

- (1) A person who is or was an auditor of a life company may give information, or produce books, accounts or documents, about the life company to APRA if the person considers that doing so will assist APRA in performing its functions under this Act or under the *Financial Sector (Collection of Data) Act 2001*.
- (2) A person who, in good faith and without negligence, gives information to APRA in accordance with this section is not subject to any action, claim or demand by, or any liability to, any other person in respect of the information.

**109 After section 98**

Insert:

**98A Appointed actuary may give information to APRA**

- (1) A person who is or was the appointed actuary of a life company may give information, or produce books, accounts or documents, about the life company to APRA if the person considers that doing so will assist APRA in performing its functions under this Act or under the *Financial Sector (Collection of Data) Act 2001*.
- (2) A person who, in good faith and without negligence, gives information to APRA in accordance with this section is not subject to any action, claim or demand by, or any liability to, any other person in respect of the information.

**110 Divisions 7 and 8 of Part 6**

Repeal the Divisions, substitute:

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## Division 8—Miscellaneous

### 125 Referring matters to professional associations for auditors and actuaries

- (1) If APRA is of the opinion that an auditor of a life company:
  - (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties as an auditor under:
    - (i) this Act; or
    - (ii) any other law of the Commonwealth, a State or a Territory; or
  - (b) is otherwise not a fit and proper person to be the auditor of a life company;

APRA may refer the details of the matter to either or both of the following:

- (c) the Companies Auditors and Liquidators Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;
  - (d) those members of the professional association of the auditor whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the auditor.
- (2) If APRA is of the opinion that an appointed actuary of a life company:
    - (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties as an actuary under:
      - (i) this Act; or
      - (ii) any other law of the Commonwealth, a State or a Territory; or
    - (b) is otherwise not a fit and proper person to be the actuary of a life company;

APRA may refer the details of the matter to those members of the professional association of the actuary whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the actuary.

- (3) If APRA refers details of a matter under this section, APRA must also give written notice of the referral (including the nature of the matter) to the auditor or actuary.

**111 At the end of Division 2 of Part 7**

Add:

**133A Enforceable undertakings**

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a power or function under this Act.
- (2) The person may, with APRA's consent, vary or withdraw the undertaking.
- (3) If APRA considers that a person who has given an undertaking has breached any of the terms of the undertaking, APRA may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that a person who has given an undertaking has breached any of the terms of the undertaking, the Court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

**112 Division 3 of Part 7 (heading)**

Repeal the heading, substitute:

**Division 3—Investigation by APRA**

**113 After paragraph 136(c)**

Insert:

- (ca) that a term of an undertaking referred to in section 133A that relates to the life company has been breached by a person who is subject to the undertaking;

**114 Section 148**

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Repeal the section.

## **115 At the end of Part 7**

Add:

### **Division 5—Protections in relation to information**

#### **Subdivision A—Protection for whistleblowers**

##### **156A Disclosures qualifying for whistleblower protection**

- (1) This section applies to a disclosure of information by a person (the *discloser*) who is, in relation to a life company, any of the following:
  - (a) an officer of the life company;
  - (b) an employee of the life company;
  - (c) a person who has a contract for the supply of services or goods to the life company;
  - (d) an employee of a person who has a contract for the supply of services or goods to the life company.
- (2) The disclosure of information by the discloser qualifies for protection under this Subdivision if:
  - (a) the disclosure is made to any of the following:
    - (i) APRA;
    - (ii) the life company's auditor or a member of an audit team conducting an audit of the life company;
    - (iii) the appointed actuary of the life company;
    - (iv) a director or senior manager of the life company;
    - (v) a person authorised by the life company to receive disclosures of the kind made; and
  - (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
  - (c) both:
    - (i) the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the life company; and

- (ii) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties in relation to the life company; and
  - (d) the discloser makes the disclosure in good faith.
- (3) In this section, *officer* has the same meaning as it has in the *Corporations Act 2001*.

**156B Whistleblower protection for disclosures that qualify**

- (1) If a person makes a disclosure that qualifies for protection under this Subdivision:
- (a) the person is not subject to any civil or criminal liability for making the disclosure; and
  - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
- (2) Without limiting subsection (1):
- (a) the person has qualified privilege in respect of the disclosure; and
  - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
- (a) a person (the *employee*) is employed in a particular position under a contract of employment with another person (the *employer*); and
  - (b) the employee makes a disclosure that qualifies for protection under this Subdivision; and
  - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;
- the court may order that the employee be reinstated in that position or a position at a comparable level.
- (4) If an individual makes a disclosure of information that qualifies for protection under this Subdivision, the information is not admissible in evidence against the individual in criminal proceedings or in

proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

### 156C Victimisation of whistleblowers prohibited

#### *Actually causing detriment to another person*

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the person's conduct causes any detriment to another person; and
  - (c) the person intends that his or her conduct cause detriment to the other person; and
  - (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Subdivision.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

#### *Threatening to cause detriment to another person*

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) made a disclosure that qualifies for protection under this Subdivision; or
    - (ii) may make a disclosure that would qualify for protection under this Subdivision.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

#### *Threats*

- (3) For the purposes of subsection (2), a threat may be:
-

- (a) express or implied; or
  - (b) conditional or unconditional.
- (4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

*Definition*

- (5) In this section:
- engage in conduct*** means:
- (a) do an act; or
  - (b) omit to do an act.

**156D Right to compensation**

If:

- (a) a person:
    - (i) commits an offence under subsection 156C(1) or (2); or
    - (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 156C(1) or (2); and
  - (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;
- the person is liable to compensate the other person for the damage.

**156E Confidentiality requirement for company, company officers and employees and auditors**

- (1) A person (the *offender*) commits an offence under this subsection if:
- (a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Subdivision; and
  - (b) the disclosure is made to:
    - (i) the life company's auditor or a member of an audit team conducting an audit of the life company; or
    - (ii) a director or senior manager of the life company; or
    - (iii) a person authorised by the life company to receive disclosures of that kind; and
  - (c) the offender is:

- (i) the life company's auditor or a member of an audit team conducting an audit of the life company; or
  - (ii) a director or senior manager of the life company; or
  - (iii) a person authorised by the life company to receive disclosures of that kind; or
  - (iv) the life company; or
  - (v) an officer or employee of the life company; and
- (d) the offender discloses any of the following information (the **confidential information**):
- (i) the information referred to in paragraph (a);
  - (ii) the identity of the discloser;
  - (iii) information that is likely to lead to the identification of the discloser; and
- (e) the confidential information is information that the offender obtained directly or indirectly because of the disclosure referred to in paragraph (a); and
- (f) either:
- (i) the offender is the person to whom the disclosure referred to in paragraph (a) is made; or
  - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (g) the disclosure referred to in paragraph (d) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(d) is authorised under this subsection if:
- (a) it is made to APRA; or
  - (b) it is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (c) it is made to someone else with the consent of the discloser.
- (3) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

## **Subdivision B—Self-incrimination**

### **156F Self-incrimination**

- (1) A person is not excused from complying with a requirement under this Act or under the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person is an individual, the information given by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:
  - (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
  - (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.

### **116 Subsection 230A(4)**

Repeal the subsection, substitute:

- (4) A standard may provide for APRA to exercise powers and discretions under the standard, including (but not limited to) discretions to approve, impose, adjust or exclude specific prudential requirements in relation to one or more specified life companies.

### **117 After subsection 230A(5)**

Insert:

- (5A) A standard referred to in paragraph (1)(c), or an instrument varying or revoking such a standard, has effect:
  - (a) from the day on which the standard, variation or revocation is made; or
  - (b) if the standard, variation or revocation specifies a later day—  
from that later day.

### **118 Subsections 230A(6), (8) (10) and (11)**

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Repeal the subsections.

**119 Subsection 230A(12)**

Omit “(6), (7), (8), (9) or (10)”, substitute “(7) or (9)”.

**120 After subsection 230A(12)**

Insert:

- (12A) The following instruments made under this section are not legislative instruments:
- (a) a standard referred to in paragraph (1)(c);
  - (b) an instrument varying or revoking a standard referred to in paragraph (1)(c).
- (12B) Otherwise, an instrument made under this section is a legislative instrument.

**121 Paragraph 230B(1)(a)**

Omit “paragraph 125A(4)(a) or 125B(4)(a)”, substitute “paragraph 7A(2)(c)”.

**122 Subsection 236(1) (before paragraph (a) of the definition of *reviewable decision*)**

Insert:

- (aaa) a decision under section 7A that applies to a particular person;

**123 Subsection 236(1) (paragraph (e) of the definition of *reviewable decision*)**

Omit “direction”, substitute “condition”.

**124 Subsection 236(1) (paragraph (f) of the definition of *reviewable decision*)**

Omit “direction”, substitute “condition”.

**125 Subsection 236(1) (paragraphs (k) and (l) of the definition of *reviewable decision*)**

After “Prudential Rules”, insert “or prudential standards”.

**126 Subsection 236(1) (at the end of the definition of reviewable decision)**

Add:

; (zp) a decision under section 230A to make, vary or revoke a standard referred to in paragraph 230A(1)(c).

**127 Sections 238 and 239**

Repeal the sections.

**128 Subsection 246(1)**

Omit “under subsection 20(4)”, substitute “for the purposes of section 20”.

**129 Subsection 252(1)**

Omit “in writing”, substitute “by legislative instrument”.

**130 Subsection 252(2)**

Repeal the subsection, substitute:

- (2) APRA must not make rules under this section on or after the day on which Part 1 of Schedule 1 to the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007* commences (the *cut-off day*).
- (3) A rule made under this section that is in force immediately before the cut-off day continues in force until revoked by APRA.
- (4) APRA may, on or after the cut-off day, vary or revoke a rule continued in force under subsection (3).

**131 Paragraph 253(1)(a)**

Omit “, other than matters required or permitted to be prescribed by Prudential Rules or actuarial standards”.

**132 Subsections 254(4) and (6)**

Repeal the subsections.

**133 Sections 256 to 263**

Repeal the sections.

**134 Schedule (definition of *Commissioner*)**

Repeal the definition.

**135 Schedule**

Insert:

*senior manager*, of a life company, means a person who has or exercises any of the senior management responsibilities (within the meaning of the prudential standards) for the life company.

***Superannuation Industry (Supervision) Act 1993***

**136 Section 4 (table item for Part 31)**

Repeal the item.

**137 Subsection 6(2)**

Omit “, 30 and 31”, substitute “and 30”.

**138 Subsection 10(1) (paragraph (z) of the definition of *reviewable decision*)**

After “exemption”, insert “that applies to a particular person or a particular group of individual trustees”.

**139 Subsection 10(1) (paragraph (za) of the definition of *reviewable decision*)**

Repeal the paragraph.

**140 Subsection 10(1) (paragraph (zb) of the definition of *reviewable decision*)**

After “declaration”, insert “that applies to a particular person or a particular group of individual trustees”.

**141 Subsection 10(1) (paragraph (zc) of the definition of *reviewable decision*)**

Repeal the paragraph.

**142 Subsection 10(1) (paragraph (zd) of the definition of *reviewable decision*)**

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Omit “to revoke an exemption or declaration”, substitute “to vary or revoke an exemption or declaration that applies to a particular person or a particular group of individual trustees”.

**143 After section 29JC**

Insert:

**29JCA False representation about status as RSE licensee**

- (1) A person commits an offence if:
- (a) the person makes a representation; and
  - (b) the representation is that the person is, or is a member of a group that is, an RSE licensee; and
  - (c) the representation is false.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**144 Section 29JE**

Repeal the section.

**145 Section 29QB**

Repeal the section.

**146 Subsection 71(2B)**

Omit “(ba),”.

**147 Subsection 130A(1)**

Omit “(1)”.

**148 Subsection 130A(2)**

Repeal the subsection.

**150 Section 327 (definition of *modifiable provision*)**

Repeal the definition, substitute:

*modifiable provision* means any of the following:

- (a) a provision of Part 2A, 2B or 3;

- (aa) section 35C (except so far as it applies in relation to self-managed superannuation funds);
- (b) section 36;
- (c) section 54;
- (d) subsection 63(7B), (7C) or (7D);
- (e) a provision of Part 9;
- (g) a provision of Part 19 or 24;
- (h) a provision of any regulations made for the purposes of a provision referred to in paragraphs (a) to (g).

### **151 Section 328**

Repeal the section, substitute:

### **328 Regulator's powers of exemption—modifiable provisions**

- (1) The Regulator may, in writing, exempt from compliance with any or all of the modifiable provisions:
  - (a) a particular person or a class of persons; or
  - (b) a particular group of individual trustees or a class of groups of individual trustees.
- (2) An exemption that applies to a particular person or group is not a legislative instrument.
- (3) Otherwise, an exemption is a legislative instrument.

### **152 Section 332**

Repeal the section, substitute:

### **332 Regulator's powers of modification—modifiable provisions**

- (1) The Regulator may, in writing, declare that a modifiable provision is to have effect, as if it were modified as specified in the declaration, in relation to:
  - (a) a particular person or class of persons; or
  - (b) a particular group of individual trustees or a class of groups of individual trustees.
- (2) A declaration that applies to a particular person or group is not a legislative instrument.

(3) Otherwise, a declaration is a legislative instrument.

### **153 Sections 335 and 336**

Repeal the sections, substitute:

#### **335 Variation and revocation of exemptions and modifications**

The Regulator may, in writing, vary or revoke an exemption or declaration under this Part.

#### **336 Notice of exemptions and modifications**

If the Regulator:

- (a) makes an exemption or modification under this Part that applies to a particular person or a particular group of individual trustees; or
  - (b) varies or revokes such an exemption or modification;
- the Regulator must also notify the person or group in writing of the making, variation or revocation.

### **154 After Part 29**

Insert:

## **Part 29A—Protections in relation to information**

### **Division 1—Protection for whistleblowers**

#### **336A Disclosures qualifying for whistleblower protection**

- (1) This section applies to a disclosure of information by a person (the *discloser*) who is, in relation to a superannuation entity, any of the following:
    - (a) a trustee of the superannuation entity;
    - (b) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity;
    - (c) an employee of an individual referred to in paragraph (a) or a body corporate referred to in paragraph (b);
    - (d) a person who has a contract for the supply of services or goods to an individual referred to in paragraph (a) or a body corporate referred to in paragraph (b);
-

- (e) an employee of a person referred to in paragraph (d).
- (2) The disclosure of the information by the discloser qualifies for protection under this Division if:
  - (a) the disclosure is made to any of the following:
    - (i) the Regulator;
    - (ii) the actuary or auditor of the superannuation entity;
    - (iii) an individual who is a trustee of the superannuation entity;
    - (iv) a director of a body corporate that is the trustee of the superannuation entity;
    - (v) a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of that kind; and
  - (b) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
  - (c) both:
    - (i) the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the superannuation entity or a trustee of the entity; and
    - (ii) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions in relation to the superannuation entity or trustee; and
  - (d) the discloser makes the disclosure in good faith.
- (3) In this section, *officer* has the same meaning as it has in the *Corporations Act 2001*.

### **336B Whistleblower protection for disclosures that qualify**

- (1) If a person makes a disclosure that qualifies for protection under this Division:
    - (a) the person is not subject to any civil or criminal liability for making the disclosure; and
    - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.
  - (2) Without limiting subsection (1):
-

- (a) the person has qualified privilege in respect of the disclosure;  
and
  - (b) a contract to which the person is a party must not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied that:
- (a) a person (the *employee*) is employed in a particular position under a contract of employment with another person (the *employer*); and
  - (b) the employee makes a disclosure that qualifies for protection under this Division; and
  - (c) the employer purports to terminate the contract of employment on the basis of the disclosure;
- the court may order that the employee be reinstated in that position or a position at a comparable level.
- (4) If an individual makes a disclosure of information that qualifies for protection under this Division, the information is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

### **336C Victimization of whistleblowers prohibited**

*Actually causing detriment to another person*

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the person's conduct causes any detriment to another person;  
and
  - (c) the person intends that his or her conduct cause detriment to the other person; and
  - (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threatening to cause detriment to another person*

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) made a disclosure that qualifies for protection under this Division; or
    - (ii) may make a disclosure that would qualify for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Threats*

- (3) For the purposes of subsection (2), a threat may be:
- (a) express or implied; or
  - (b) conditional or unconditional.
- (4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

*Definition*

- (5) In this section:
- engage in conduct** means:
- (a) do an act; or
  - (b) omit to do an act.

### **336D Right to compensation**

If:

- (a) a person:
    - (i) commits an offence under subsection 336C(1) or (2); or
-

- (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 336C(1) or (2); and
- (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;  
the person is liable to compensate the other person for the damage.

**336E Confidentiality requirement for company, company officers and employees and auditors**

- (1) A person (the *offender*) commits an offence under this subsection if:
  - (a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Division; and
  - (b) the disclosure is made to:
    - (i) the auditor of, or a member of an audit team conducting an audit of, the superannuation entity; or
    - (ii) an individual who is a trustee of the superannuation entity; or
    - (iii) a director of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; or
    - (iv) a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of that kind; and
  - (c) the offender is:
    - (i) the auditor of, or a member of an audit team conducting an audit of, the superannuation entity; or
    - (ii) an individual who is the trustee of the superannuation entity; or
    - (iii) a director of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; or
    - (iv) a person authorised by the trustee or trustees of the superannuation entity to receive disclosures of that kind; or
    - (v) an officer or employee of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; and

- (d) the offender discloses any of the following information (the *confidential information*):
  - (i) the information referred to in paragraph (a);
  - (ii) the identity of the discloser;
  - (iii) information that is likely to lead to the identification of the discloser; and
- (e) the confidential information is information that the offender obtained directly or indirectly because of the disclosure referred to in paragraph (a); and
- (f) either:
  - (i) the offender is the person to whom the disclosure referred to in paragraph (a) is made; or
  - (ii) the offender is a person to whom the confidential information is disclosed in contravention of this section and the offender knows that the disclosure of the confidential information to the offender was unlawful or made in breach of confidence; and
- (g) the disclosure referred to in paragraph (d) is not authorised under subsection (2).

Penalty: 25 penalty units.

- (2) The disclosure referred to in paragraph (1)(d) is authorised under this subsection if:
  - (a) it is made to APRA; or
  - (b) it is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (c) it is made to someone else with the consent of the discloser.
- (3) In this section, *officer* has the same meaning as it has in the *Corporations Act 2001*.

## Division 2—Self-incrimination

### 336F Self-incrimination

- (1) A person is not excused from complying with a requirement under this Act or the *Financial Sector (Collection of Data) Act 2001* to give information to APRA on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.

- (2) However, if the person is an individual, the information given by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:
- (a) before giving the information, the individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
  - (b) giving the information might in fact tend to incriminate the individual or make the individual liable to a penalty.
- (3) This section does not apply in relation to a requirement under section 129 or 130 or under Part 25.

Note 1: See section 130B in relation to requirements under section 129 or 130.

Note 2: See section 287 in relation to requirements under Part 25.

### **155 Part 31**

Repeal the Part.

## Part 2—Amendments commencing 1 January 2008

### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

#### **156 Section 5 (definition of *Life Insurance Actuarial Standard 4.02*)**

Repeal the definition.

#### **157 Section 5 (definition of *life policy*)**

Omit “Life Insurance Actuarial Standard 4.02”, substitute “prudential standards made under section 230A of the *Life Insurance Act 1995*”.

### *Banking Act 1959*

#### **158 Subsection 5(1)**

Insert:

*business day* means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

#### **159 Subsections 16B(2) to (4C)**

Repeal the subsections.

Note: The heading to section 16B is replaced by the heading “**Auditors to give information to APRA on request**”.

#### **160 After section 16B**

Insert:

#### **16BA Requirement for auditors to give information about ADIs**

*Persons to whom requirements apply*

- (1) This section applies to a person who is or has been an auditor of a body corporate that is:
  - (a) an ADI; or
  - (b) an authorised NOHC; or

- (c) a subsidiary of an ADI or an authorised NOHC; or
- (d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):
  - (i) another subsidiary (a ***relevant Australian-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is incorporated in Australia; or
  - (ii) another subsidiary (a ***relevant foreign-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is not incorporated in Australia and carries on business in Australia.

*Matters requiring immediate notice*

- (2) If the person has reasonable grounds for believing that:
  - (a) the body corporate is insolvent or there is a significant risk that the body corporate will become insolvent; or
  - (b) an existing or proposed state of affairs may materially prejudice the interests of:
    - (i) if the body corporate is an ADI or a subsidiary of an ADI—the depositors of the ADI; or
    - (ii) if the body corporate is an authorised NOHC or a subsidiary of an authorised NOHC—the depositors of any ADI that is a subsidiary of the authorised NOHC; or
    - (iii) if the body corporate is a relevant Australian-incorporated subsidiary or a relevant foreign-incorporated subsidiary of a foreign corporation—the depositors of any ADI that is a subsidiary of the foreign corporation;

the person must immediately notify APRA in writing of the matter.

*Offences in relation to matters requiring immediate notice*

- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 6 months.

- (4) A person commits an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 60 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Defence if matter already notified*

- (5) Subsections (3) and (4) do not apply to a person in relation to a matter referred to in subsection (2) if:
- (a) the person becomes aware of the matter because the person is informed of it by a director or senior manager of the body corporate; and
  - (b) the director or senior manager informs the person that the body corporate has notified APRA in writing of the matter; and
  - (c) the person has no reason to disbelieve the director or senior manager.

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

*Matters requiring notice as soon as practicable*

- (6) If the person has reasonable grounds for believing that:
- (a) the body corporate has failed or will fail to comply with:
    - (i) a provision of this Act, the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
    - (ii) if the body corporate is an ADI or authorised NOHC—a prudential standard; or
    - (iii) if the body corporate is an ADI or authorised NOHC—a direction under Division 1BA of Part II; or
    - (iv) if the body corporate is an ADI—a condition of the body corporate’s section 9 authority; or
    - (v) if the body corporate is an authorised NOHC—a condition of the body corporate’s NOHC authority; and
  - (b) the failure to comply is or will be significant (see subsection (7));
- the person must give APRA a written report about the failure as soon as practicable, and in any event no later than 10 business days.
- (7) For the purposes of paragraph (6)(b), a failure to comply is or will be **significant** if the failure is or will be significant having regard to any one or more of the following:
-

- (a) the number or frequency of similar failures;
- (b) the impact the failure has or will have on the body corporate's ability to conduct its business;
- (c) the extent to which the failure indicates that the body corporate's arrangements to ensure compliance with this Act, the prudential standards or the regulations might be inadequate;
- (d) the actual or potential financial loss arising or that will arise from the failure:
  - (i) if the body corporate is an ADI—to the depositors of the body corporate; or
  - (ii) to the body corporate;
- (e) any matters prescribed by the regulations for the purposes of this paragraph.

*Offences in relation to matters requiring notice as soon as practicable*

- (8) A person commits an offence if the person contravenes subsection (6).

Penalty: Imprisonment for 6 months.

- (9) A person commits an offence if the person contravenes subsection (6). This is an offence of strict liability.

Penalty: 60 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Defence if failure already notified*

- (10) Subsections (8) and (9) do not apply to a person in relation to a failure to comply referred to in subsection (6) if:
- (a) a director or senior manager of the body corporate informs the person that the body corporate has informed APRA in writing of the failure; and
  - (b) the person has no reason to disbelieve the director or senior manager.

Note: The defendant bears an evidential burden in relation to the matters in subsection (10). See subsection 13.3(3) of the *Criminal Code*.

*Offence in relation to subsections (5) and (10)*

- (11) A person commits an offence if:
- (a) the person is a director or senior manager of a body corporate referred to in subsection (1); and
  - (b) the person knows that there are reasonable grounds for believing a thing referred to in subsection (2) or (6); and
  - (c) the person informs the auditor of the body corporate that the body corporate has informed APRA in writing of the thing; and
  - (d) the body corporate has not done so.

Penalty: Imprisonment for 12 months.

**161 Paragraph 62A(1)(a)**

Repeal the paragraph, substitute:

- (a) it becomes aware that it, another member of the group, or the group as a whole, may not be in a sound financial position; and

Note: The following heading to subsection 62A(1) is inserted “*Matters requiring immediate notice*”.

**162 Paragraph 62A(1)(b)**

After “notify APRA”, insert “in writing”.

**163 After subsection 62A(1)**

Insert:

*Defence if matter already notified*

- (1A) Subsection (1) does not apply in relation to a matter if:
- (a) the member of the group becomes aware of the matter because it is informed of it by the auditor of the member; and
  - (b) the auditor informs the member that the auditor has notified APRA in writing of the matter; and
  - (c) the member has no reason to disbelieve the auditor.

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

*Matters requiring notice as soon as practicable*

- (1B) A member of a relevant group of bodies corporate commits an offence if:
- (a) it becomes aware that:
    - (i) it, another member of the group, or the group as a whole, has breached or will breach a prudential standard applying to it, the other member or the group as a whole; or
    - (ii) another member of the group has breached or will breach a provision of this Act or the regulations, or a direction under Division 1BA of Part II or a condition of any authority granted under this Act to the other member; and
  - (b) the breach is or will be significant (see subsection (1C)); and
  - (c) it fails to give APRA a written report about the breach as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach.

Penalty: 200 penalty units.

- (1C) For the purposes of paragraph (1B)(b), a breach is *significant* if the breach is or will be significant having regard to any one or more of the following factors:
- (a) the number or frequency of similar breaches;
  - (b) the impact the breach has or will have on the member's or other member's ability to conduct its business;
  - (c) the extent to which the breach indicates that the member's or other member's arrangements to ensure compliance with this Act, the regulations, the prudential standards or a direction or condition might be inadequate;
  - (d) the actual or potential financial loss arising or that will arise from the breach:
    - (i) to the depositors of the ADI or any ADI that is a member of the relevant group of bodies corporate; or
    - (ii) to the member or other member;
  - (e) any matters prescribed by the regulations for the purposes of this paragraph.

*Defence if auditor notifies breach*

- (1D) Subsection (1B) does not apply in relation to a breach if:
- (a) the auditor of the member of the group gives APRA a written report about the breach; and
  - (b) the report is given before, or within 10 business days after, the member becomes aware of the breach.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1D). See subsection 13.3(3) of the *Criminal Code*.

**164 Paragraphs 62A(2)(a) and (b)**

After “subsection (1)”, insert “or (1B)”.

**165 Subsection 62A(3)**

After “notification”, insert “or report”.

**166 Subsection 62A(3)**

After “paragraph (1)(a)”, insert “or (1B)(a)”.

***Corporations Act 2001***

**167 Subsection 912D(1)**

Omit “If”, substitute “A financial services licensee must comply with subsection (1B) if”.

**168 Paragraph 912D(1)(a)**

Omit “a financial services licensee”, substitute “the licensee”.

**169 Subparagraph 912D(1)(b)(v)**

Omit “paragraph;”, substitute “paragraph.”.

**170 Subsection 912D(1)**

Omit all the words after subparagraph 912D(1)(b)(v) (including the note).

**171 After subsection 912D(1A)**

Insert:

(1B) The financial services licensee must, as soon as practicable and in any case within 10 business days after becoming aware of the breach or likely breach mentioned in subsection (1), lodge a written report on the matter with ASIC.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (1C) A report that a licensee is required to lodge under subsection (1B) is taken to have been lodged with ASIC if:
- (a) the licensee is a body regulated by APRA; and
  - (b) the report is received by APRA in accordance with the terms of an agreement between APRA and ASIC under which APRA is to act as ASIC’s agent in relation to such reports.
- (1D) Subsection (1B) does not apply to a financial services licensee that is a body regulated by APRA in relation to a breach if:
- (a) the auditor or actuary of the licensee gives APRA a written report about the breach; and
  - (b) the report is given before, or within 10 business days after, the licensee becomes aware of the breach.

**172 Schedule 3 (table item 264A)**

Omit “Subsection 912D(1)”, substitute “Subsection 912D(1B)”.

***Income Tax Assessment Act 1936***

**172A Paragraph 121AO(2)(a)**

Omit “the Life Insurance Actuarial Standards Board established under the *Life Insurance Act 1995* issued a capital reserve adequacy standard applicable to the company”, substitute “a prudential standard made under section 230B of the *Life Insurance Act 1995* in relation to capital adequacy applied to the company”.

***Income Tax Assessment Act 1997***

**173 Subsection 995-1(1) (definition of *current termination value*)**

Omit “the \*Solvency Standard”, substitute “prudential standards made under section 230A of the *Life Insurance Act 1995*”.

**174 Subsection 995-1(1) (definition of *policy termination value*)**

Omit “the \*Solvency Standard”, substitute “prudential standards made under section 230A of the *Life Insurance Act 1995*”.

**175 Subsection 995-1(1) (definition of *Solvency Standard*)**

Repeal the definition.

**176 Subsection 995-1(1) (definition of *Valuation Standard*)**

Omit “actuarial standard”, substitute “prudential standard made under section 230A of the *Life Insurance Act 1995*”.

***Insurance Act 1973***

**177 Subsection 3(1)**

Insert:

*business day* means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

**178 Section 35A**

Repeal the section.

**179 At the end of Division 3 of Part IIIA**

Add:

**38AA Requirement to notify APRA of certain matters**

*Matters requiring immediate notice*

(1) If:

- (a) a general insurer has breached or will breach a provision of this Act or the prudential standards; and
- (b) the provision relates to financial obligations the general insurer has to its policy holders or to the general insurer’s minimum capital requirements;

the general insurer must immediately notify APRA in writing of the breach.

*Offence in relation to matters requiring immediate notice*

- (2) A general insurer commits an offence if the general insurer contravenes subsection (1).

Penalty: 200 penalty units.

*Defence if matter already notified*

- (3) Subsection (2) does not apply to a general insurer in relation to a breach referred to in subsection (1) if:
- (a) the general insurer becomes aware of the breach because it is informed of it by the auditor or actuary of the insurer; and
  - (b) the auditor or actuary informs the insurer that the auditor or actuary has notified APRA in writing of the matter; and
  - (c) the insurer has no reason to disbelieve the auditor or actuary.

Note 1: Auditors and actuaries must give APRA certain information under section 49A and may give APRA information under section 49B.

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

*Matters requiring notice as soon as practicable*

- (4) If a body corporate that is a general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC becomes aware:

(a) both:

- (i) that the body corporate has breached or will breach a provision of this Act or the prudential standards (other than a provision to which subsection (1) applies); and
- (ii) that the breach is or will be significant (see subsection (5)); or

(b) of a matter that materially and adversely affects the body corporate's financial position;

the body corporate must give APRA a written report about the breach or matter as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach or matter.

- (5) For the purposes of subparagraph (4)(a)(ii), a breach of a provision is or will be **significant** if the breach is or will be significant having regard to one or more of the following:

- (a) the number or frequency of similar breaches;
- (b) the impact the breach has or will have on the body corporate's ability to conduct its business;
- (c) the extent to which the breach indicates that the body corporate's arrangements to ensure compliance with this Act or with the prudential standards might be inadequate;
- (d) the actual or potential financial loss arising or that will arise from the breach:
  - (i) to policy holders of the body corporate; or
  - (ii) to the body corporate;
- (e) any matters prescribed by the regulations for the purposes of this paragraph.

*Offence in relation to matters requiring immediate notice*

- (6) A body corporate commits an offence if the body corporate contravenes subsection (5).

Penalty: 200 penalty units.

*Defence if auditor or actuary notifies breach*

- (7) Subsection (6) does not apply to a body corporate in relation to a breach referred to in subsection (4) if:
- (a) the auditor or actuary of the body corporate gives APRA a written report about the breach or matter; and
  - (b) the report is given before, or within 10 business days after, the body corporate becomes aware of the breach or matter.

Note 1: Auditors and actuaries must give APRA certain information under section 49A and may give APRA information under section 49B.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

*Ancillary offences*

- (8) If an individual:
- (a) commits an offence under subsection (2) or (6) because of Part 2.4 of the *Criminal Code*; or
  - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence under subsection (2) or (6);

the individual is punishable on conviction by a fine not exceeding 40 penalty units.

*Limits on information to be provided*

- (9) A notice or report given under subsection (1) or (4) must not include information, books, accounts or documents with respect to the affairs of an individual insured person, unless the information, books, accounts or documents are in respect of prudential matters relating to the body corporate.

**180 Subsection 39(3)**

Repeal the subsection, substitute:

- (3) A general insurer must not appoint a person as the auditor or actuary of the insurer unless:
- (a) the insurer is reasonably satisfied that the person meets the eligibility criteria for such an appointment set out in the prudential standards; and
  - (b) no determination is in force under section 44 disqualifying the person from holding such an appointment.

**181 Sections 40 and 42**

Repeal the sections.

**182 Section 43**

Before “A person”, insert “(1)”.

**183 Paragraph 43(b)**

Repeal the paragraph.

**184 At the end of section 43**

Add:

- (2) A general insurer must end a person’s appointment as auditor or actuary of the general insurer, by giving the person written notice under paragraph (1)(e), if the general insurer is satisfied that the person:
- (a) has, in relation to the insurer, failed to perform adequately and properly the functions and duties of the appointment under this Act or the prudential standards; or

- (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards; or
- (c) does not meet the eligibility criteria for the appointment set out in the prudential standards.

### **185 Paragraphs 49A(2)(b) and (c)**

Repeal the paragraphs.

Note 1: The following heading to subsection 49A(1) is inserted “*Persons to whom requirements apply*”.

Note 2: The following heading to subsection 49A(2) is inserted “*Matters requiring immediate notice*”.

### **186 Subsection 49A(2)**

Omit “give APRA information (in writing) about the matter”, substitute “immediately notify APRA in writing of the matter”.

Note: The following heading to subsection 49A(3) is inserted “*Offences in relation to matters requiring immediate notice*”.

### **187 At the end of section 49A**

Add:

#### *Defence in relation to matters requiring immediate notice*

- (5) Subsections (3) and (4) do not apply to a person in relation to a matter referred to in subsection (2) if:
  - (a) the person becomes aware of the matter because the person is informed of it by a director or senior manager of the insurer, NOHC or subsidiary; and
  - (b) the director or senior manager informs the person that the insurer, NOHC or subsidiary has notified APRA in writing of the matter; and
  - (c) the person has no reason to disbelieve the director or senior manager.

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

#### *Matters requiring notice as soon as practicable*

- (6) If the person has reasonable grounds for believing:
  - (a) any of the following:

- (i) the insurer, NOHC or subsidiary has failed or will fail to comply with the prudential standards;
  - (ii) in the case of an insurer—the insurer has failed or will fail to comply with a condition of its authorisation under section 12;
  - (iii) in the case of an authorised NOHC—the NOHC has failed or will fail to comply with a condition of its authorisation under section 18;
  - (iv) the insurer, NOHC or subsidiary has failed or will fail to comply with a requirement or direction under this Act or a requirement under the *Financial Sector (Collection of Data) Act 2001*; and
- (b) that the failure is or will be significant (see subsection (7)); the person must give APRA a written report about the failure as soon as practicable, and in any case no later than 10 business days.
- (7) For the purposes of paragraph (6)(b), a failure to comply is or will be **significant** if the failure to comply is or will be significant having regard to any one or more of the following:
- (a) the number or frequency of similar failures;
  - (b) the impact the failure has or will have on the insurer's, NOHC's or subsidiary's ability to conduct its business;
  - (c) the extent to which the failure indicates that the insurer's, NOHC's or subsidiary's arrangements to ensure compliance with this Act or with the prudential standards might be inadequate;
  - (d) the actual or potential financial loss arising or that will arise from the failure:
    - (i) in the case of an insurer—to the policy holders of the insurer; or
    - (ii) to the insurer, NOHC or subsidiary;
  - (e) any matters prescribed by the regulations for the purposes of this paragraph.

*Offences in relation to matters requiring notice as soon as practicable*

- (8) A person commits an offence if the person contravenes subsection (6).

Penalty: Imprisonment for 6 months, or 100 penalty units, or both.

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- (9) A person commits an offence if the person contravenes subsection (6). This is an offence of strict liability.

Penalty: 60 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

*Defence if failure already notified*

- (10) Subsections (8) and (9) do not apply to a person in relation to a failure to comply referred to in subsection (6) if:
- (a) a director or senior manager of the insurer, NOHC or subsidiary informs the person that the insurer, NOHC or subsidiary has informed APRA in writing of the failure; and
  - (b) the person has no reason to disbelieve the director or senior manager.

Note: The defendant bears an evidential burden in relation to the matters in subsection (10). See subsection 13.3(3) of the *Criminal Code*.

*Offence in relation to subsections (5) and (10)*

- (11) A person commits an offence if:
- (a) the person is a director or senior manager of a general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC; and
  - (b) the person knows that there are reasonable grounds for believing a thing referred to in subsection (2) or (6); and
  - (c) the person informs the auditor or actuary of the insurer, NOHC or subsidiary that the insurer, NOHC or subsidiary has informed APRA in writing of the thing; and
  - (d) the insurer, NOHC or subsidiary has not done so.

Penalty: Imprisonment for 12 months.

## **188 At the end of Part IV**

Add:

## **Division 6—Removal of auditors and actuaries**

### **49R APRA may direct removal of auditor or actuary**

- (1) APRA may, if satisfied there is a ground under subsection (3), give a written direction to a body corporate that is a general insurer to end the appointment of a person as:
  - (a) the auditor of the general insurer; or
  - (b) the actuary of the general insurer.
- (2) APRA may, if satisfied there is a ground under subsection (3), give a written direction to a body corporate that is an authorised NOHC to end the appointment of a person as:
  - (a) the auditor of the authorised NOHC; or
  - (b) the actuary of the authorised NOHC.
- (3) The grounds for giving a direction to end a person's appointment are:
  - (a) if the person is the auditor or actuary of a general insurer—the person is disqualified from holding such an appointment under section 44; or
  - (b) the person does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.
- (4) Before directing a body corporate to end a person's appointment, APRA must:
  - (a) give written notice to:
    - (i) the body corporate; and
    - (ii) the person; and
  - (b) give the body corporate and the person a reasonable opportunity to make submissions on the matter.
- (5) The notice must include a statement that any submissions in response to the notice may be discussed by APRA with other persons as mentioned in paragraph (6)(b).
- (6) If a submission is made in response to the notice, APRA:
  - (a) must have regard to the submission; and
  - (b) may discuss any matter contained in the submission with any persons APRA considers appropriate for the purpose of assessing the truth of the matter.

- (7) A direction to end a person's appointment takes effect on the day specified in the direction, which must be at least 7 days after the direction is made.
- (8) If APRA directs a body corporate to end a person's appointment, APRA must give the body corporate and the person a copy of the direction.
- (9) The power of a body corporate to comply with a direction to end a person's appointment may be exercised on behalf of the body corporate:
  - (a) by the Chair of the board of directors of the body corporate signing a written notice; or
  - (b) by a majority of the directors of the body corporate (excluding any director who is the subject of the direction) jointly signing a written notice.
- (10) Subsection (9) does not by implication limit any other powers of a body corporate to end a person's appointment.
- (11) Part VI applies to a decision by APRA to give a direction under this section on the ground referred to in paragraph (3)(b).
- (12) A direction to end a person's appointment is not a legislative instrument.
- (13) A body corporate commits an offence if:
  - (a) the body corporate does or fails to do an act; and
  - (b) by doing or failing to do the act, the body corporate fails to comply with a direction under this section.

Penalty: 60 penalty units.

- (14) Strict liability applies to subsection (13).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## ***Life Insurance Act 1995***

### **189 Subsection 16A(5)**

Repeal the subsection, substitute:

- (5) In addition to the modifications set out in this Part and in regulations for the purposes of section 16ZC, this Act includes
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some other special provisions in relation to friendly societies. See in particular various provisions in Division 2 of Part 8 about winding up of friendly societies.

**190 Paragraphs 42(4)(a) and (b)**

Omit “actuarial standards”, substitute “the prudential standards”.

**191 Subsection 47(1)**

Omit “The regulations may declare”, substitute “The prudential standards may specify”.

**192 Subsection 47(2)**

Omit “If regulations are made under”, substitute “If prudential standards are made for the purposes of”.

**193 Paragraphs 47(2)(a) and (b)**

Omit “regulations”, substitute “prudential standards”.

**194 Subparagraphs 52(4)(b)(i) and (ii)**

Omit “the solvency standard applicable to it”, substitute “the prudential standards in relation to solvency”.

**195 Section 57**

After “If”, insert “annual”.

**196 Paragraph 62(3)(a)**

Omit “solvency standard”, substitute “prudential standards in relation to solvency”.

**197 Paragraph 62(3)(b)**

Omit “section 68”, substitute “section 230B in relation to solvency”.

**198 Paragraph 62(4)(a)**

Omit “capital adequacy standard”, substitute “prudential standards in relation to capital adequacy”.

**199 Paragraph 62(4)(b)**

Omit “section 73”, substitute “section 230B in relation to capital adequacy”.

**200 Subparagraph 63(1)(b)(i)**

Omit “solvency standard”, substitute “prudential standards in relation to solvency”.

**201 Subparagraph 63(1)(b)(ii)**

Omit “section 68”, substitute “section 230B in relation to solvency”.

**202 Paragraph 63(2)(a)**

Omit “capital adequacy standard”, substitute “prudential standards in relation to capital adequacy”.

**203 Paragraph 63(2)(b)**

Omit “section 73”, substitute “section 230B in relation to capital adequacy”.

**204 Part 5**

Repeal the Part.

**205 Subsection 80(3)**

Omit “, for the purposes of subsection 83(3), by the approved auditor for the company”, substitute “by the auditor of the life company for the purposes of the *Financial Sector (Collection of Data) Act 2001*”.

**206 Section 83**

Repeal the section, substitute:

**83 Life company to have auditor**

- (1) A life company must have an auditor appointed by the life company.
- (2) The auditor of a life company must perform for the life company the functions of an auditor set out in the prudential standards and in reporting standards made by APRA under the *Financial Sector (Collection of Data) Act 2001*.
- (3) The life company must make any arrangements necessary to enable the auditor to perform those functions.

**207 Sections 84, 85 and 86**

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Repeal the sections, substitute:

#### **84 Appointment of auditor**

A life company must not appoint a person as the auditor of the life company unless:

- (a) the life company is reasonably satisfied that the person meets the eligibility criteria set out in the prudential standards for appointment as the auditor of a life company; and
- (b) no declaration is in force in relation to the person under section 86.

#### **85 Ending an appointment as auditor**

(1) A life company must end the appointment of a person as auditor of the life company if:

- (a) the person does not meet the eligibility criteria set out in the prudential standards for appointment as the auditor of a life company; or
- (b) the life company is satisfied that the person has, in relation to the company, failed to perform adequately and properly the functions and duties of an auditor under this Act; or
- (c) a declaration takes effect in relation to the person under section 86.

(2) If:

- (a) a life company is required under subsection (1) to end the appointment of a person as auditor of the company; and
- (b) the power to appoint the auditor of the company is not vested in the directors of the company or is not vested in the directors of the company alone;

the directors may appoint a person who satisfies the requirements in paragraphs 84(a) and (b) to be the auditor of the company until an appointment is made in accordance with the constitution or other rules of the life company.

#### **86 Declaration that an auditor is ineligible**

(1) APRA may, in writing, declare that a person is ineligible to hold an appointment as an auditor of a life company if:

- (a) the person does not meet the eligibility criteria set out in the prudential standards for appointment as the auditor of a life company; or
  - (b) the person has failed to perform adequately and properly the functions and duties of an auditor under this Act.
- (2) The declaration takes effect on the day specified in the declaration (which must not be more than 28 days after the declaration is made).
- (3) APRA must give a copy to the person in relation to whom the declaration is made.
- (4) A declaration made under subsection (1) is not a legislative instrument.

**207A Paragraph 87(1)(c)**

Omit “prescribed by the regulations”, substitute “specified in the prudential standards”.

**208 Subsection 88(2)**

After “the auditor must”, insert “immediately”.

**209 After subsection 88(2)**

Insert:

- (2A) Subsection (2) does not apply to the auditor of a life company in relation to a contravention if:
- (a) a director or senior manager of the life company informs the auditor that the life company has informed APRA in writing of the contravention; and
  - (b) the auditor has no reason to disbelieve the director or senior manager.
- (2B) A person commits an offence if:
- (a) the person is a director or senior manager of a life company; and
  - (b) the person knows that:
    - (i) there are reasonable grounds for believing that the life company or a director of the life company may have contravened this Act or any other Act; and

- (ii) the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the company; and
- (c) the person informs the auditor of the life company that the life company has informed APRA in writing of the contravention; and
- (d) the life company has not done so.

Penalty: Imprisonment for 12 months.

## **210 Sections 90, 91 and 92**

Repeal the sections.

## **211 Subsections 93(3), (4), (5) and (6)**

Repeal the subsections, substitute:

- (3) A life company must not appoint a person as the actuary of the life company unless:
  - (a) the life company is reasonably satisfied that the person meets the eligibility criteria set out in the prudential standards for appointment as the actuary of a life company; and
  - (b) no declaration is in force in relation to the person under section 94A.

## **212 Section 94**

Repeal the section, substitute:

### **94 Ending an appointment as actuary**

- (1) A life company must end the appointment of a person as actuary of the life company if:
  - (a) the person does not meet the eligibility criteria set out in the prudential standards for appointment as the actuary of a life company; or
  - (b) the life company is satisfied that the person has, in relation to the company, failed to perform adequately and properly the duties and functions of an appointed actuary under this Act; or
  - (c) a declaration takes effect in relation to the person under section 94A.

(2) If:

- (a) a life company is required under subsection (1) to end the appointment of a person as actuary of the company; and
- (b) the power to appoint the actuary of the company is not vested in the directors of the company or is not vested in the directors of the company alone;

the directors may appoint a person who satisfies the requirements in paragraphs 93(3)(a) and (b) to be the actuary of the company until an appointment is made in accordance with the constitution or other rules of the life company.

#### **94A Declaration that an actuary is ineligible**

- (1) APRA may, in writing, declare that a person is not eligible to hold an appointment as actuary of a life company if:
  - (a) the person does not meet the eligibility criteria set out in the prudential standards for appointment as the actuary of a life company; or
  - (b) the person has failed to perform adequately and properly the functions and duties of an actuary under this Act.
- (2) The declaration takes effect on the day specified in the declaration (which must not be more than 28 days after the declaration is made).
- (3) APRA must give a copy to the person in relation to whom the declaration is made.
- (4) A declaration made under subsection (1) is not a legislative instrument.

#### **212A Paragraph 95(1)(d)**

Omit “prescribed by the regulations”, substitute “specified in the prudential standards”.

#### **213 Section 96**

Omit “actuarial”, substitute “prudential”.

Note: The heading to section 96 is altered by omitting “**actuarial**” and substituting “**prudential**”.

#### **214 Section 97**

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Repeal the section, substitute:

**97 Role of actuary**

- (1) The appointed actuary of a life company must perform for the company the functions of an actuary set out in the prudential standards and in reporting standards made by APRA under the *Financial Sector (Collection of Data) Act 2001*.
- (2) The life company must make any arrangements necessary to enable the appointed actuary to perform those functions. These arrangements may include (without limitation) the following:
  - (a) providing access to documents and information in the company's control;
  - (b) requiring officers or employees of the company to answer questions;
  - (c) allowing the actuary to attend meetings of directors of the company, annual general meetings or any other meetings of members of the company;
  - (d) allowing the actuary to speak at meetings of directors of the company on matters under consideration that relate to the functions and duties of the actuary.

**215 Subsection 98(2)**

After "the appointed actuary must", insert "immediately".

**216 After subsection 98(2)**

Insert:

- (2A) Subsection (2) does not apply to the appointed actuary of a life company in relation to a contravention if:
  - (a) a director or senior manager of the life company informs the actuary that the life company has informed APRA in writing of the contravention; and
  - (b) the actuary has no reason to disbelieve the director or senior manager.
- (2B) A person commits an offence if:
  - (a) the person is a director or senior manager of a life company; and
  - (b) the person knows that:

- (i) there are reasonable grounds for believing that the life company or a director of the life company may have contravened this Act or any other Act; and
- (ii) the contravention is of such a nature that it may affect significantly the interests of the owners of policies issued by the company; and
- (c) the person informs the appointed actuary of the life company that the life company has informed APRA in writing of the contravention; and
- (d) the life company has not done so.

Penalty: Imprisonment for 12 months.

**217 Subsection 98(4)**

Repeal the subsection.

**218 Divisions 4, 5 and 6 of Part 6**

Repeal the Divisions.

**219 Before section 125**

Insert:

**114 Method of valuing policy liabilities**

- (1) This section applies to a valuation of policy liabilities made for the purposes of any provision of this Act, other than a provision of Division 2 of Part 8.
- (2) A valuation of the policy liabilities referable to a statutory fund must be made in accordance with the prudential standards.

**124 Policy owner's right to copy of annual financial statements and annual return**

- (1) The owner of a policy issued by a life company is entitled, on his or her request, to be provided by the company with one copy of the latest annual financial statements and annual return given by the company to APRA under the *Financial Sector (Collection of Data) Act 2001*.
  - (2) Copies provided under subsection (1) are to be provided free of charge.
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## **220 After section 132**

Insert:

### **132A Requirement to notify APRA of certain matters**

#### *Matters requiring immediate notice*

- (1) If:
- (a) a life company becomes aware that the life company has breached or will breach a provision of this Act; and
  - (b) the provision relates to financial obligations the life company has to the owners of policies issued by it or to the life company's minimum capital requirements;
- the life company must immediately notify APRA in writing of the breach.

#### *Offence in relation to matters requiring immediate notice*

- (2) A life company commits an offence if the life company contravenes subsection (1).

Penalty: 200 penalty units.

#### *Defence if matter already notified*

- (3) Subsection (2) does not apply to a life company in relation to a breach referred to in subsection (1) if:
- (a) the life company becomes aware of the breach because it is informed of it by the auditor or appointed actuary of the life company; and
  - (b) the auditor or appointed actuary informs the life company that the auditor or actuary has notified APRA in writing of the breach; and
  - (c) the life company has no reason to disbelieve the auditor or appointed actuary.

Note 1: Auditors and appointed actuaries must give APRA certain information under sections 88 and 98, and may give APRA information under sections 88A and 98A.

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

*Matters requiring notice as soon as practicable*

- (4) If a life company becomes aware:
- (a) both:
    - (i) that the life company has breached or will breach a provision of this Act (other than a provision to which subsection (1) applies); and
    - (ii) that the breach is or will be significant (see subsection (5)); or
  - (b) of a matter that materially and adversely affects the life company's financial position;
- the life company must give APRA a written report about the breach or matter as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach or matter.
- (5) For the purposes of subparagraph (4)(a)(ii), a breach of a provision is or will be **significant** if the breach is or will be significant having regard to any one or more of the following:
- (a) the number or frequency of similar breaches;
  - (b) the impact the breach has or will have on the life company's ability to conduct its life insurance business;
  - (c) the extent to which the breach indicates that the life company's arrangements to ensure compliance with this Act or with the prudential standards might be inadequate;
  - (d) the actual or potential financial loss arising or that will arise from the breach:
    - (i) to the owners of policies issued by the life company; or
    - (ii) to the life company;
  - (e) any matters prescribed by the regulations for the purposes of this paragraph.

*Offence in relation to matters requiring notice as soon as practicable*

- (6) A life company commits an offence if the life company contravenes subsection (4).

Penalty: 200 penalty units.

*Defence if auditor or actuary notifies breach*

- (7) Subsection (6) does not apply to a life company in relation to a breach or matter referred to in subsection (4) if:
- (a) the auditor or appointed actuary of the life company gives APRA a written report about the breach or matter; and
  - (b) the report is given before, or within 10 business days after, the life company becomes aware of the breach or matter.

Note 1: Auditors and appointed actuaries must give APRA certain information under sections 88 and 98, and may give APRA information under sections 88A and 98A.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

*Ancillary offences*

- (8) If an individual:
- (a) commits an offence under subsection (2) or (6) because of Part 2.4 of the *Criminal Code*; or
  - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence under subsection (2) or (6);
- the individual is punishable on conviction by a fine not exceeding 40 penalty units.

*Limits on information to be provided*

- (9) A notice or report given under subsection (1) or (4) must not include information, books, accounts or documents with respect to the affairs of an individual insured person, unless the information, books, accounts or documents are in respect of prudential matters relating to the life company.

**221 Subparagraph 159(a)(ii)**

Omit “solvency standard”, substitute “prudential standards in relation to solvency”.

**222 Subparagraph 159(a)(iii)**

Omit “section 68”, substitute “section 230B in relation to solvency”.

**223 Subsection 207(4)**

Omit “actuarial standards”, substitute “the prudential standards”.

**224 Subsection 209(3)**

Omit “actuarial standards”, substitute “the prudential standards”.

**225 Paragraph 209(5)(d)**

Omit “actuarial standards”, substitute “the prudential standards”.

**226 Subsection 236(1) (definition of *person affected by a reviewable decision*)**

Repeal the definition.

**227 Subsection 236(1) (paragraphs (o), (p), (q), (r), (s), (sa), (sb), (sc) and (t) of the definition of *reviewable decision*)**

Repeal the paragraphs.

**228 Subsection 236(1) (paragraphs (v), (w), (x), (y) and (z) of the definition of *reviewable decision*)**

Repeal the paragraphs, substitute:

- (v) a decision under section 86 to make a declaration that a person is ineligible to hold an appointment as an auditor of a life company;
- (w) a decision under section 94A to make a declaration that a person is ineligible to hold an appointment as actuary of a life company;

**229 Subsection 236(1) (paragraphs (za), (zc), (zg) and (zga) of the definition of *reviewable decision*)**

Repeal the paragraphs.

**230 Paragraphs 236(1A)(e), (f), (g), (h), (i), (j), (ja), (jb) and (jc)**

Repeal the paragraphs.

**231 Schedule (definition of *actuarial standards*)**

Repeal the definition.

**232 Schedule (definition of *annual actuarial investigation*)**

Repeal the definition.

**233 Schedule (definition of *approved auditor*)**

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Repeal the definition.

**234 Schedule (definition of *Board*)**

Repeal the definition.

**235 Schedule**

Insert:

*business day* means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

**236 Schedule (definition of *financial condition report*)**

Repeal the definition.

**237 Schedule (paragraph (a) of the definition of *this Act*)**

Omit “actuarial standards,”.

***Superannuation Industry (Supervision) Act 1993***

**239 Subsection 10(1) (after paragraph (t) of the definition of *reviewable decision*)**

Insert:

(ta) a decision of APRA to give a direction under section 131AA, other than a direction on the ground mentioned in paragraph 133AA(2)(a); or

**240 Subsection 29JA(1)**

Repeal the subsection, substitute:

- (1) If an RSE licensee becomes aware that:
- (a) the RSE licensee has breached or will breach a condition imposed on its RSE licence; and
  - (b) the breach is or will be significant (see subsection (1A));
- the RSE licensee must give APRA a written report about the breach as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach.
- (1A) For the purposes of subsection (1), a breach is or will be *significant* if the breach is or will be significant having regard to any one or more of the following factors:

- (a) the number or frequency of similar previous breaches;
- (b) the impact the breach has or will have on the RSE licensee's ability to fulfil its obligations as trustee of the superannuation entity;
- (c) the extent to which the breach indicates that the RSE licensee's arrangements to ensure compliance with the RSE licensee law might be inadequate;
- (d) the actual or potential financial loss arising or that will arise from the breach to the beneficiaries of the entity or to the RSE licensee;
- (e) any other matters prescribed by regulations made for the purposes of this paragraph.

**241 Subsection 106(1)**

Omit "gives written notice to the Regulator setting out particulars of the event, no later than the third business day after the first-mentioned trustee becomes aware of the event", substitute "immediately notifies the Regulator in writing of the event".

**242 Subsection 129(3)**

Omit "as soon as practicable", substitute "immediately".

**243 Subsection 130(2)**

Omit "as soon as practicable", substitute "immediately".

**244 After section 131**

Insert:

**131AA APRA may direct removal of auditor or actuary**

- (1) APRA may, if satisfied there is a ground under subsection (2), give a written direction to the trustee or trustees of a superannuation entity to end the appointment of a person as:
  - (a) the approved auditor of the superannuation entity; or
  - (b) the actuary of the superannuation entity.
- (2) The grounds for giving a direction to end a person's appointment are:
  - (a) if the person is the approved auditor of the superannuation entity—the person is disqualified under section 131; or

- (b) the person is not a fit and proper person to hold the appointment; or
  - (c) the person has failed to perform adequately and properly the duties or functions of the appointment under this Act, the regulations or the *Financial Sector (Collection of Data) Act 2001*.
- (3) Before directing a trustee or trustees to end a person's appointment, APRA must:
- (a) give written notice to:
    - (i) the trustee or trustees; and
    - (ii) the person; and
  - (b) give the trustee or trustees and the person a reasonable opportunity to make submissions on the matter.
- (4) The notice must include a statement that any submissions in response to the notice may be discussed by APRA with other persons as mentioned in paragraph (5)(b).
- (5) If a submission is made in response to the notice, APRA:
- (a) must have regard to the submission; and
  - (b) may discuss any matter contained in the submission with any persons APRA considers appropriate for the purpose of assessing the truth of the matter.
- (6) A direction to end a person's appointment takes effect on the day specified in the direction, which must be at least 7 days after the direction is made.
- (7) If APRA directs a trustee or trustees to end a person's appointment, APRA must give the trustee or trustees and the person a copy of the direction.
- (8) A direction to end a person's appointment is not a legislative instrument.
- (9) A trustee commits an offence if:
- (a) the trustee does or fails to do an act; and
  - (b) by doing or failing to do the act, the trustee fails to comply with a direction under this section.

Penalty: 60 penalty units.

(10) Strict liability applies to subsection (9).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 3—Amendments commencing 12 months after Royal Assent**

### ***A New Tax System (Australian Business Number) Act 1999***

#### **245 After paragraph 26(3)(j)**

Insert:

- (ja) if the entity is an \*RSE licensee:
  - (i) the class of licence held by the licensee; and
  - (ii) the address for the licensee recorded by the Australian Prudential Regulation Authority for the purposes of the *Superannuation Industry (Supervision) Act 1993*; and
  - (iii) the licensee’s postal address; and
  - (iv) the licensee’s telephone number;
- (jb) if the entity is a registrable superannuation entity within the meaning of the *Superannuation Industry (Supervision) Act 1993*:
  - (i) the address for the entity recorded by the Australian Prudential Regulation Authority for the purposes of the *Superannuation Industry (Supervision) Act 1993*; and
  - (ii) the entity’s postal address; and
  - (iii) the entity’s telephone number; and
  - (iv) the entity’s contact person; and
  - (v) the RSE licensee of the entity;

### ***Superannuation Industry (Supervision) Act 1993***

#### **246 Subsection 10(1)**

Insert:

*ABN* has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

#### **247 Section 29DB**

Repeal the section, substitute:

## **29DB Notice of class of licence**

If APRA decides to grant an RSE licence to a body corporate or group of individual trustees, APRA must give the body corporate or group an RSE licence that specifies the class of licence granted.

## **248 Subsection 29DC(1)**

Omit “the number of its RSE licence”, substitute “its ABN”.

Note: The heading to section 29DC is altered by omitting “**licence numbers**” and substituting “**ABNs**”.

## **249 Subsection 29DC(2)**

Omit “the number”, substitute “its ABN”.

## **250 After paragraph 29E(1)(b)**

Insert:

- (ba) the RSE licensee must:
  - (i) have an ABN; or
  - (ii) have made an application for an ABN that has not been refused under the *A New Tax System (Australian Business Number) Act 1999*;

## **251 After paragraph 29E(1)(e)**

Insert:

- (ea) the RSE licensee must ensure that each registrable superannuation entity of which it is an RSE licensee has an ABN;

## **252 After paragraph 29L(2)(b)**

Insert:

- (ba) state the RSE licensee’s and the entity’s ABNs; and

## **253 Section 29MA**

Repeal the section, substitute:

## **29MA Notice of registration**

If APRA registers a registrable superannuation entity, APRA must notify the RSE licensee of the entity in writing of the registration.

**254 Subsection 29MB(1)**

Omit “registration number”, substitute “ABN”.

Note: The heading to section 29MB is altered by omitting “**registration numbers**” and substituting “**ABNs**”.

**255 Subsection 29MB(2)**

Omit “number”, substitute “ABN”.

## **Part 4—Amendments commencing 1 July 2011**

### *Life Insurance Act 1995*

**256 Subsection 12A(2)**

Omit “in Prudential Rules or”.

**257 Subsection 12B(3)**

Omit “in Prudential Rules or”.

**258 Subsection 15(3)**

Omit “Prudential Rules or”.

**259 Paragraph 16B(2)(a)**

Omit “Prudential Rules or in”.

**260 Subsection 16C(4)**

Omit “Prudential Rules or in”.

**261 Section 16H (notional subsection 34(4))**

Omit “Prudential Rules or”.

**262 Section 16H (notional paragraph 34(4A)(b))**

Omit “Prudential Rules or”.

**263 Section 16J**

Omit “Prudential Rules or”.

**264 Subsection 16L(2)**

Omit “Prudential Rules or”.

**265 Paragraph 16L(4)(b)**

Omit “Prudential Rules or”.

**266 Subsection 16Q(2)**

Omit “Prudential Rules or”.

**267 Paragraph 16Q(4)(b)**

Omit “Prudential Rules or”.

**268 Paragraph 16R(6)(b)**

Omit “Prudential Rules or”.

**269 Subsection 16U(2)**

Omit “Prudential Rules or”.

**270 Paragraph 16U(4)(b)**

Omit “Prudential Rules or”.

**271 Subsection 16V(3)**

Omit “Prudential Rules or”.

**272 Paragraph 16V(7)(b)**

Omit “Prudential Rules or”.

**273 Subsection 34(4)**

Omit “Prudential Rules or”.

**274 Subsection 44(6)**

Omit “by Prudential Rules or”.

**275 Paragraphs 44(7)(a) and (b)**

Omit “by Prudential Rules or”.

**276 Subsection 52(1)**

Omit “Prudential Rules or the”, substitute “The”.

**277 Subsection 52(3)**

Omit “Prudential Rules or”.

**278 Subsection 53(1)**

Omit “Prudential Rules or the”, substitute “The”.

**279 Subsection 53(2)**

Omit “Prudential Rules or”.

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**280 Section 54**

Repeal the section.

**281 Subsection 55(2)**

Omit “Prudential Rules or”.

**282 Subsection 55(3)**

Omit “Prudential Rules or”.

**283 Subsection 61(1) (definition of *starting amount*)**

Omit “Prudential Rules or”.

**284 Paragraph 62(3)(c)**

Omit “Prudential Rules or”.

**285 Subsection 62(5)**

Omit “Prudential Rules or the”, substitute “The”.

**286 Subsection 236(1) (paragraphs (k) and (l) of the definition of *reviewable decision*)**

Omit “Prudential Rules or”.

**287 Section 252**

Repeal the section.

**288 Schedule (definition of *Prudential Rules*)**

Repeal the definition.

**289 Schedule (paragraph (a) of the definition of *this Act*)**

Omit “, prudential standards and Prudential Rules”, substitute “and prudential standards”.

## **Part 5—Application, transitional and saving provisions**

### **290 Application of amendment of section 20 of the *Life Insurance Act 1995***

Despite the amendment of section 20 of the *Life Insurance Act 1995* by this Act, an application made but not determined before the commencement of the amendment is, after the amendment, to be taken to have been made under section 20 as amended.

### **291 Saving provision for section 11 orders (Banking Act)**

- (1) This item applies to an order that was in force under section 11 of the *Banking Act 1959* immediately before that section was amended by this Act.
- (2) To the extent that it relates to a provision of the *Banking Act 1959* referred to in section 11 as amended by this Act, the order:
  - (a) continues in force after the commencement of the amendments, as if it were a determination made under section 11 as amended; and
  - (b) may be varied or revoked by APRA under section 11 as amended.
- (3) An order or part of an order to which subitem (2) does not apply ceases to have effect at the time the amendments of section 11 made by this Act commence.

### **292 Saving provision for section 7 determinations (Insurance Act)**

- (1) This item applies to a determination that was in force under section 7 of the *Insurance Act 1973* immediately before that section was amended by this Act.
- (2) To the extent that it relates to a provision of the *Insurance Act 1973* referred to in section 7 as amended by this Act, the determination:
  - (a) continues in force after the commencement of the amendments, as if it were a determination made under section 7 as amended; and

- (b) may be varied or revoked by APRA under section 7 as amended.
- (3) A determination or part of a determination to which subitem (2) does not apply ceases to have effect on the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent, unless earlier revoked by APRA.

**293 Saving provision for sections 125A and 125B determinations (Life Act)**

- (1) This item applies to a determination that was in force under section 125A or 125B of the *Life Insurance Act 1995* immediately before those sections were repealed by this Act.
- (2) To the extent that it relates to a provision of the *Life Insurance Act 1995* referred to in section 7A of the *Life Insurance Act 1995* as inserted by this Act, the determination:
  - (a) continues in force after the commencement of the amendments, as if it were a determination made under section 7A; and
  - (b) may be varied or revoked by APRA under section 7A.
- (3) A determination or part of a determination to which subitem (2) does not apply ceases to have effect at the time sections 125A and 125B are repealed.

**294 Saving provision for section 328 exemptions (Superannuation Industry Supervision Act)**

- (1) This item applies to an exemption that was in force under section 328 of the *Superannuation Industry (Supervision) Act 1993* immediately before that section was amended by this Act.
- (2) The exemption:
  - (a) continues in force after the commencement of the amendment, as if it were an exemption made under section 328 as amended; and
  - (b) may be varied or revoked by the Regulator under section 328 as amended.
- (3) An exemption to which subitem (2) does not apply ceases to have effect at the time the amendment of section 328 made by this Act commences.

**295 Saving provision for section 332 declarations  
(Superannuation Industry Supervision Act)**

- (1) This item applies to a declaration that was in force under section 332 of the *Superannuation Industry (Supervision) Act 1993* immediately before that section was amended by this Act.
- (2) The declaration:
  - (a) continues in force after the commencement of the amendments, as if it were a declaration made under section 332 as amended; and
  - (b) may be varied or revoked by APRA under section 332 as amended.
- (3) A declaration or part of a declaration to which subitem (2) does not apply ceases to have effect at the time the amendment of section 332 made by this Act commences.

**296 Regulations may prescribe matters**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) in relation to the amendments or repeals made by this Schedule.

## Schedule 2—Financial assistance

### *Financial Institutions Supervisory Levies Collection Act 1998*

**1 Section 16 (definition of *Account*)**

Repeal the definition.

**2 Section 24**

Repeal the section, substitute:

**24 Application of levy, late payment penalty and repayments of  
financial assistance**

If levy is imposed as a result of a determination by the Minister to make a grant of financial assistance, the following amounts must be paid to the Commonwealth:

- (a) amounts of the levy, and late payment penalty in respect of the levy, received by the Minister;
- (b) repayments of the financial assistance.

### *Superannuation Industry (Supervision) Act 1993*

**3 Section 228 (definition of *defined benefit fund*)**

Repeal the definition.

**4 Section 228 (definition of *defined benefit member*)**

Repeal the definition.

**5 Section 228 (definition of *defined benefit pension*)**

Repeal the definition.

**6 Section 228 (definition of *eligible loss*)**

Repeal the definition, substitute:

*eligible loss* means a loss suffered by a fund as a result of fraudulent conduct, or theft, but does not include an amount that

the fund did not receive because of the failure of a person to pay contributions to the fund.

**7 Section 228 (definition of *fund*)**

Repeal the definition.

**8 After paragraph 229(1)(a)**

Insert:

- (aa) at the time it suffers the loss, the fund is:
- (i) a regulated superannuation fund (other than a self-managed superannuation fund); or
  - (ii) an approved deposit fund; and

**9 At the end of section 229**

Add:

- (3) To avoid doubt, an application may be made under this section by a trustee of a self-managed superannuation fund as long as the fund met the requirements in subsection (1) at the time the fund suffered the loss to which the application relates.

**10 Section 230**

Before “The”, insert “(1)”.

**11 At the end of section 230**

Add:

- (2) The Minister may, by signed instrument, delegate the Minister’s power under subsection (1) to an SES employee, or acting SES employee, in the Department.
- (3) In exercising a power delegated under subsection (2), a delegate must comply with any directions of the Minister.

**12 At the end of section 230A**

Add:

- (4) The Minister may, by signed instrument, delegate the Minister’s function under subsection (1) to an SES employee, or acting SES employee, in the Department.

- (5) In exercising a function delegated under subsection (4), a delegate must comply with any directions of the Minister.

**13 Paragraph 231(1)(a)**

Omit “for the purposes of the fund”, substitute “for the purposes of restoring the loss”.

**14 At the end of section 231**

Add:

- (3) To avoid doubt, the Minister may grant financial assistance to a self-managed superannuation fund under this section as long as the fund met the requirements in subsection 229(1) at the time the fund suffered the loss to which the assistance relates.
- (4) The Consolidated Revenue Fund is appropriated for the purposes of making payments of financial assistance granted under this section.
- (5) Amounts appropriated under this section are not to be credited to the Australian Prudential Regulation Authority Special Account.

**15 Section 233**

Before “The”, insert “(1)”.

**16 Subparagraph 233(b)(i)**

Omit “beneficiaries in the fund”, substitute “persons who were beneficiaries in the fund at the time the fund suffered the eligible loss”.

**17 Subparagraph 233(b)(ii)**

Omit “the beneficiaries”, substitute “those persons”.

**18 At the end of section 233**

Add:

- (2) Despite any law of the Commonwealth, a State or a Territory, whether written or unwritten, or any provision of a trust deed or other rules according to which a fund is administered:
- (a) a trustee of a fund must comply with a condition mentioned in paragraph (1)(b); and

- (b) the trustee does not contravene the law, trust deed or rules by complying with such a condition.

**19 Division 3 of Part 23 (heading)**

Repeal the heading, substitute:

**Division 3—Repayment of financial assistance**

**20 Sections 234, 235, 236 and 237**

Repeal the sections.

**21 Application of amendments made by this Schedule**

- (1) The amendments made by this Schedule apply in relation to applications for financial assistance made on or after the commencement of this Schedule (whether or not the eligible loss to which the application relates is suffered before or after the commencement of this Schedule).
- (2) However, if an application for financial assistance in relation to an eligible loss was made before the commencement of this Schedule, the amendments made by this Schedule do not apply in relation to any further application in respect of that loss.

## **Schedule 3—Accounts, reporting etc. obligations**

### ***Financial Institutions Supervisory Levies Collection Act 1998***

#### **1 Subparagraph 9(2)(a)(i)**

Repeal the subparagraph, substitute:

- (i) is specified in a notice given by APRA to the Treasurer on or after the day on which an annual return that is a reporting document under section 13 of the *Financial Sector (Collection of Data) Act 2001* and that relates to the previous financial year was received by APRA; and

### ***Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001***

#### **2 Item 152 of Schedule 2**

Repeal the item.

### ***Income Tax Assessment Act 1936***

#### **3 Subsection 161(3) (including the note)**

Omit “36A” (wherever occurring), substitute “35D”.

### ***Superannuation Industry (Supervision) Act 1993***

#### **4 Section 4 (table item for Part 4)**

Repeal the item, substitute:

- 4 accounts, audit and reporting obligations for superannuation entities

#### **5 Section 4 (table item for Part 13)**

Repeal the item.

#### **6 Subparagraph 6(1)(a)(vii)**

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Omit “Parts 13”, substitute “Part 14”.

## **7 After subsection 29N(1)**

Insert:

- (1A) APRA may cancel the registration of a superannuation entity that has become a self-managed superannuation fund.

## **8 Part 4**

Repeal the Part, substitute:

# **Part 4—Accounts, audit and reporting obligations for superannuation entities**

## **35 Objects of Part**

The objects of this Part are:

- (a) to set out rules about the accounts, statements and audits of superannuation entities; and
- (b) to require certain reports and returns relating to superannuation entities to be given to the Regulator.

## **35A Accounting records (all superannuation entities)**

- (1) Each trustee of a superannuation entity must ensure that:
  - (a) accounting records that correctly record and explain the transactions and financial position of the entity are kept; and
  - (b) if the entity is a registrable superannuation entity—the accounts of the entity are kept in a way that enables the preparation of reporting documents referred to in section 13 of the *Financial Sector (Collection of Data) Act 2001*; and
  - (c) if the entity is a self managed superannuation fund—the accounting records of the entity are kept in a way that enables the following to be prepared:
    - (i) the accounts and statements of the entity referred to in section 35B;
    - (ii) the returns of the entity referred to in section 35D; and
  - (d) the accounting records of the entity are kept in a way that enables those accounts, statements and returns to be

conveniently and properly audited in accordance with this Act.

- (2) If accounting records of a superannuation entity are kept in accordance with subsection (1), each trustee of the superannuation entity must ensure that:
- (a) the records are retained for at least 5 years after the end of the year of income to which the transactions relate; and
  - (b) the records are kept in Australia; and
  - (c) the records are kept:
    - (i) in writing in the English language; or
    - (ii) in a form in which they are readily accessible and readily convertible into writing in the English language.
- (3) A trustee commits an offence if the trustee contravenes subsection (1) or (2).

Penalty: 100 penalty units.

- (4) A trustee commits an offence if the trustee contravenes subsection (1) or (2). This is an offence of strict liability.

Penalty: 50 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **35B Accounts and statements (self-managed superannuation funds only)**

- (1) Each trustee of a superannuation entity that is a self managed superannuation fund must, in respect of each year of income of the fund, ensure that the following accounts and statements are prepared in respect of the entity:
- (a) except where the regulations provide that this paragraph does not apply—a statement of financial position;
  - (b) except where the regulations provide that this paragraph does not apply—an operating statement;
  - (c) the accounts and statements specified in the regulations.
- (2) The regulations may provide for or in relation to the preparation of accounts and statements covered by subsection (1). If the regulations do so, the accounts and statements covered by subsection (1) must be prepared in accordance with the regulations.

- (3) The accounts and statements prepared in accordance with subsection (1) must be signed as follows:
- (a) if there is a single corporate trustee—by:
    - (i) if there is only one director of the corporate trustee—that director; or
    - (ii) otherwise—at least 2 directors of the corporate trustee; or
  - (b) if there is a group of individual trustees—by at least 2 of those trustees.
- (4) Each trustee must ensure that the accounts and statements prepared in accordance with subsection (1) are retained for a period of 5 years after the end of the year of income to which they relate.
- (5) A person commits an offence if the person contravenes this section.
- Penalty: 100 penalty units.
- (6) A person commits an offence if the person contravenes this section. This is an offence of strict liability.
- Penalty: 50 penalty units.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **35C Audit of accounts and statements (all superannuation entities)**

- (1) For each year of income, each trustee of a superannuation entity must ensure that an approved auditor is appointed to give the trustee or trustees a report, in the approved form, of the operations of the entity, and the RSE licensee (if any) of the entity, for that year. The appointment must be made within whichever of the periods set out in the regulations applies to the entity.
- (2) If an auditor requests, in writing, a trustee of a superannuation entity to give the auditor a document, each trustee of the entity must ensure that the document is given to the auditor within 14 days of the request being made. Only documents that are relevant to the preparation of the report may be requested.
- (3) A trustee commits an offence if the trustee contravenes subsection (1) or (2).

Penalty: Imprisonment for 2 years.

- (4) A trustee commits an offence if the trustee contravenes subsection (1) or (2). This is an offence of strict liability.

Penalty: 50 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) Without limiting subsection (1), an approved form:
- (a) must, if it is approved for a registrable superannuation entity, either:
    - (i) relate solely to the audit of financial statements given to APRA under the *Financial Sector (Collection of Data) Act 2001* and prepared in respect of a year of income; or
    - (ii) relate only to the audit of those statements and of any other accounts and statements, prepared in respect of a year of income, that are identified in the form; and
  - (b) must, if it is approved for a superannuation entity that is a self managed superannuation fund—either:
    - (i) relate solely to the audit of the accounts and statements referred to in subsection 35B(1) and prepared in respect of a year of income; or
    - (ii) relate only to the audit of those accounts and statements and of any other accounts and statements, prepared in respect of a year of income, that are identified in the form; and
  - (c) must include a statement by the auditor as to whether, in the auditor's opinion, each trustee of the entity and the RSE licensee (if any) of the entity has, during the year of income, complied with the provisions of:
    - (i) this Act and the regulations; and
    - (ii) if the entity is a registrable superannuation entity—the *Financial Sector (Collection of Data) Act 2001*, the *Corporations Act 2001* and the regulations under that Act;that are identified in the form; and
  - (d) must, if it is approved for a registrable superannuation entity that is registered under Part 2B, include a statement by the auditor as to whether, in the opinion of the auditor, the RSE licensee of the entity:

- (i) has complied with each risk management plan for the entity that applied during that year; and
  - (ii) has adequate systems to ensure future compliance with any risk management plan for the entity; and
  - (iii) has complied with each risk management strategy that applied to the RSE licensee during that year in relation to risks arising from any activities, and proposed activities, as RSE licensee of the entity, and all other activities, or proposed activities, relevant to those activities; and
  - (iv) has adequate systems to ensure future compliance with the risk management strategy for the RSE licensee in relation to future risks arising from any proposed future activities as RSE licensee of the entity, and all other proposed future activities relevant to those activities.
- (6) The auditor must give the report to each trustee of the entity within the prescribed period after the end of the year of income.
- (7) The auditor commits an offence if the auditor contravenes subsection (6).

Penalty: Imprisonment for 6 months.

- (8) The auditor commits an offence if the auditor contravenes subsection (6). This is an offence of strict liability.

Penalty: 50 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **35D Trustee to lodge annual returns (self-managed superannuation funds only)**

#### *Lodgment*

- (1) Each trustee of a superannuation entity that was a self managed superannuation fund at any time during a year of income must, within the reporting period, or within such longer period as the Commissioner of Taxation allows, ensure that the Commissioner of Taxation is given a return under this section.

*Period for lodgment*

- (2) The **reporting period** is the period that begins at the end of the year of income and whose length is:
- (a) prescribed by the regulations for the purposes of this paragraph; or
  - (b) if the length of the period is not prescribed—specified, by legislative instrument, by the Commissioner of Taxation.

*Form of return*

- (3) The return must:
- (a) be in the approved form; and
  - (b) contain the information required by the form in relation to the fund in respect of that year of income or in relation to another year of income, or both.

Note: The approved form of return may require a trustee to set out the tax file number of the entity. See subsection 299U(2).

- (4) A person commits an offence if the person contravenes this section.

Penalty: 50 penalty units.

- (5) A person commits an offence if the person contravenes this section. This is an offence of strict liability.

Penalty: 25 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**36 Trustee to give copy of audit report to APRA (registrable superannuation entities only)**

*Lodgment*

- (1) Each trustee of a registrable superannuation entity must, within the prescribed period after the year of income, ensure that APRA is given a copy of the report given to a trustee of the entity by an approved auditor under section 35C in relation to the entity, and any RSE licensee of the entity, in respect of that year of income, certified to be a true copy of the report by:
- (a) if the trustee is a body corporate—a responsible officer of the body corporate; or

(b) if the trustee is a member of a group of individual trustees—  
at least one of those trustees; or

(c) in any other case—the trustee.

Note: The *Financial Sector (Collection of Data) Act 2001* makes provision for annual returns and other reporting documents to be given by trustees to APRA.

(2) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 50 penalty units.

(3) A trustee commits an offence if the trustee contravenes subsection (1). This is an offence of strict liability.

Penalty: 25 penalty units.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## 9 Part 13

Repeal the Part.

## 10 Paragraph 129(1)(a)

Repeal the paragraph, substitute:

- (a) the person forms the opinion that it is likely that a contravention of any of the following may have occurred, may be occurring, or may occur, in relation to the entity:
- (i) this Act or the regulations;
  - (ii) if the entity is a registrable superannuation entity—the *Financial Sector (Collection of Data) Act 2001*;
  - (iii) if the entity is a registrable superannuation entity—a provision of the *Corporations Act 2001* listed in a subparagraph of paragraph (b) of the definition of **regulatory provision** in section 38A of this Act or specified in regulations made for the purposes of subparagraph (b)(xvi) of that definition, as it applies in relation to superannuation interests; and

## 11 At the end of paragraph 130A(1)(c)

Add “or”.

## 12 After paragraph 130A(1)(c)

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Insert:

(d) the *Corporations Act 2001*;

***Superannuation (Self Managed Superannuation Funds)  
Taxation Act 1987***

**13 Section 15DA**

Omit “36A”, substitute “35D”.

**14 Saving and application provisions**

- (1) If, immediately before the commencement of this Schedule:
  - (a) subsection 111(2); or
  - (b) subsection 112(4);of the *Superannuation Industry (Supervision) Act 1993* applied to the trustee of a superannuation entity in relation to the accounting records of the entity, that subsection continues to apply to the trustee in relation to the records despite the repeal of the subsection by this Schedule.
- (2) If, before the commencement of this Schedule, an auditor had requested a trustee of a superannuation entity to give the auditor a document under subsection 113(1A) of the *Superannuation Industry (Supervision) Act 1993* and the request had not been complied with, the trustee’s obligation under subsection 113(1A) to ensure that the document is given to the auditor continues to apply despite the repeal of the subsection by this Schedule.
- (3) Sections 35B, 35C and 35D of the *Superannuation Industry (Supervision) Act 1993* apply in relation to a superannuation entity in respect of the year of income in which those sections commence and each later year of income.

## **Schedule 4—Technical amendments relating to legislative instruments**

### ***Australian Securities and Investments Commission Act 2001***

#### **1 Subsection 285(4)**

Repeal the subsection, substitute:

- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made for the purposes of this section may be expressed to take effect from a date before the regulations are registered under that Act.

### ***Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998***

#### **2 Subsection 7(3)**

Omit “in writing”, substitute “by legislative instrument”.

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

Repeal the subsection.

### ***Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998***

#### **4 Subsection 7(1)**

Omit “in writing” (wherever occurring), substitute “, by legislative instrument,”.

#### **5 Subsection 7(3)**

Repeal the subsection.

### ***Banking Act 1959***

#### **6 Subsection 63(8)**

Omit “in writing”, substitute “by legislative instrument”.

**7 Subsection 63(11)**

Repeal the subsection.

**8 Subsection 66(5)**

Repeal the subsection, substitute:

- (5) APRA may, by legislative instrument, determine that a specified word or expression is to be a restricted word or expression for the purposes of this section.

**9 Saving provision**

Instruments in force under subsection 66(5) of the *Banking Act 1959* immediately before the commencement of item 8 continue in force, on and after that commencement, according to their terms and subject to the *Legislative Instruments Act 2003*, as if they had been made under that provision of the *Banking Act 1959* as amended by this Act.

***Cheques Act 1986***

**10 Subsection 70A(4)**

Repeal the subsection, substitute:

- (4) The Reserve Bank of Australia may, by legislative instrument, determine that a settlement system is a recognised settlement system for the purposes of this section. The Reserve Bank of Australia is to take the public interest into account in determining that a settlement system is a recognised settlement system, and, in doing so, is to have regard to the rules that govern the system.

**11 Saving provision**

Instruments in force under subsection 70A(4) of the *Cheques Act 1986* immediately before the commencement of item 10 continue in force, on and after that commencement, according to their terms and subject to the *Legislative Instruments Act 2003*, as if they had been made under that provision of the *Cheques Act 1986* as amended by this Act.

***Commonwealth Bank Sale Act 1995***

**12 Subsection 19(3)**

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Omit “48(2) of the *Acts Interpretation Act 1901*”, substitute “12(2) of the *Legislative Instruments Act 2003*”.

### ***Commonwealth Borrowing Levy Collection Act 1987***

#### **13 Subsection 4(1)**

Omit “(1)”.

#### **14 Subsection 4(1)**

Omit “by determination published in the *Gazette*”, substitute “by legislative instrument”.

#### **15 Subsections 4(2) and (3)**

Repeal the subsections.

### ***Corporations Act 2001***

#### **16 Subsection 334(1)**

After “AASB may”, insert “, by legislative instrument,”.

#### **17 Subsection 334(1)**

Omit “must be in writing and”.

#### **18 Subsection 334(2)**

Repeal the subsection (including the note).

#### **19 Subsection 336(1)**

After “AUASB may”, insert “, by legislative instrument,”.

#### **20 Subsection 336(1)**

Omit “must be in writing and”.

#### **21 Subsection 336(2)**

Repeal the subsection (including the note).

#### **22 Subsection 850B(2)**

Omit “section 48 of the *Acts Interpretation Act 1901*”, substitute “Part 5 of the *Legislative Instruments Act 2003*”.

**23 Subsection 926A(4)**

Omit “disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “legislative instrument”.

**24 Subsection 926A(5)**

Omit “subsection 48(1) of the *Acts Interpretation Act 1901* as applying because of section 46A of that Act”, substitute “the *Legislative Instruments Act 2003* (if the declaration is of a kind referred to in subsection (4))”.

**25 Subsection 1409(4)**

Repeal the subsection, substitute:

- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations for the purposes of this section may be expressed to take effect from a date before the regulations are registered under that Act.

**26 Subsection 1438(6)**

Omit “in writing”, substitute “, by legislative instrument,”.

**27 Paragraph 1438(7)(a)**

Repeal the paragraph.

**28 Subsection 1444(6)**

Repeal the subsection, substitute:

- (6) Despite subsections 12(2) and (3) of the *Legislative Instruments Act 2003*, regulations made for the purposes of this section:
- (a) may be expressed to take effect from a date before the regulations are registered under that Act; and
  - (b) may provide for a determination of a kind referred to in subsection (5) to take effect from a date before the determination is made (including a date before the regulations are registered under that Act).

**29 Subsection 1445(1)**

Omit “determination in writing, deal”, substitute “legislative instrument, make a determination dealing”.

**30 Subsection 1445(2)**

Repeal the subsection, substitute:

- (2) A determination overrides any inconsistent regulations made for the purposes of section 1444, other than any such regulations that are expressed to have effect despite anything in a determination under this section (in which case, the determination is of no effect, to the extent of the inconsistency).

***Currency Act 1965***

**31 Subsection 13(2)**

Omit “signed instrument”, substitute “legislative instrument”.

**32 Subsection 13(6)**

Repeal the subsection.

**33 Subsection 13A(1)**

Omit “signed instrument”, substitute “legislative instrument”.

**34 Subsection 13A(4)**

Repeal the subsection.

***Financial Sector (Business Transfer and Group Restructure) Act 1999***

**35 Subsection 46(1)**

Omit “(1) APRA may, in writing”, substitute “APRA may, by legislative instrument”.

**36 Subsection 46(2)**

Repeal the subsection.

***Financial Sector (Collection of Data) Act 2001***

**37 Paragraph 13(1)(a)**

Omit “by writing”, substitute “by legislative instrument”.

**38 Subsection 13(8)**

Repeal the subsection.

**39 Subsection 16(1)**

Omit “by writing”, substitute “by legislative instrument”.

**40 Subsection 16(3)**

Repeal the subsection.

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

**41 Subsection 65(1)**

Omit “signed instrument”, substitute “legislative instrument”.

**42 Subsection 65(3)**

Repeal the subsection.

***Insurance Act 1973***

**43 Subsection 3(2)**

Omit “signed writing”, substitute “legislative instrument”.

**44 Subsection 3(3)**

Repeal the subsection.

**45 Subsection 68(1)**

Omit “written”, insert “legislative”.

**46 Subsection 68(10)**

Repeal the subsection.

**47 Subsection 70(1)**

Omit “written”, substitute “legislative”.

**48 Subsection 70(7)**

Repeal the subsection.

**49 Paragraph 75(2)(b)**

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Omit “written determination made”, substitute “determination made, by legislative instrument”.

**50 Subsection 75(9)**

Repeal the subsection.

***Life Insurance Supervisory Levy Imposition Act 1998***

**51 Subsection 7(3)**

Omit “in writing”, substitute “by legislative instrument”.

**52 Subsection 7(7)**

Repeal the subsection.

***Payment Systems and Netting Act 1998***

**53 Subsection 9(1)**

After “The Reserve Bank may”, insert “, by legislative instrument”.

**54 Subsection 9(3)**

Repeal the subsection, substitute:

- (3) An approval may be given subject to the terms and conditions specified in the approval.

***Retirement Savings Account Providers Supervisory Levy Imposition Act 1998***

**55 Subsection 7(3)**

Omit “in writing”, substitute “by legislative instrument”.

**56 Subsection 7(7)**

Repeal the subsection.

***Superannuation Industry (Supervision) Act 1993***

**57 Subsection 11E(1)**

Omit “(1)”.

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**58 Subsection 11E(1)**

Omit “determines in writing”, substitute “, by legislative instrument, determines”.

**59 Subsection 11E(2)**

Repeal the subsection.

**60 Subsection 50(6)**

Omit “49A of the *Acts Interpretation Act 1901*”, substitute “14 of the *Legislative Instruments Act 2003*”.

Note: The heading to subsection 50(6) is replaced by the heading “*Section 14 of the Legislative Instruments Act 2003*”.

**61 Paragraph 66(2)(d)**

Omit “written determination”, substitute “legislative instrument”.

**62 Subsection 66(2B)**

Repeal the subsection.

**63 Subparagraph 67(3)(b)(ii)**

Omit “written determination made”, substitute “determination made, by legislative instrument,”.

**64 Subsection 67(4)**

Repeal the subsection.

**65 Paragraph 71(1)(f)**

Omit “written determination”, substitute “legislative instrument”.

**66 Subsection 71(6)**

Repeal the subsection.

**67 Subparagraph 95(3)(b)(ii)**

Omit “written determination made”, substitute “determination made, by legislative instrument,”.

**68 Subsection 95(4)**

Repeal the subsection.

**69 Subparagraph 97(3)(b)(ii)**

Omit “written determination made”, substitute “determination made, by legislative instrument”.

**70 Subsection 97(4)**

Repeal the subsection.

**71 Subsection 142(1)**

Omit “writing”, substitute “legislative instrument”.

**72 Subsection 142(8)**

Repeal the subsection.

**73 Subsection 142(9)**

Omit “Subsection (8)”, substitute “Section 42 of the *Legislative Instruments Act 2003*”.

***Superannuation Supervisory Levy Determination Validation Act 2000***

**74 Subsection 4(2)**

Omit “48(2) of the *Acts Interpretation Act 1901*”, substitute “12(2) of the *Legislative Instruments Act 2003*”.

***Superannuation Supervisory Levy Imposition Act 1998***

**75 Subsection 7(3)**

Omit “in writing”, substitute “by legislative instrument”.

**76 Subsection 7(5)**

Repeal the subsection.

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*[Minister's second reading speech made in—  
House of Representatives on 21 June 2007  
Senate on 13 September 2007]*

(125/07)

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118      *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act*  
2007      *No. 154, 2007*