





# **Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010**

**No. 82, 2010**

**An Act to amend the law relating to banking,  
insurance and superannuation, and for other  
purposes**

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



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**No. 82, 2010**

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**An Act to amend the law relating to banking,  
insurance and superannuation, and for other  
purposes**

*[Assented to 29 June 2010]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Financial Sector Legislation  
Amendment (Prudential Refinements and Other Measures) Act  
2010*.

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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.

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| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  | 29 June 2010        |
| 2. Schedule 1, items 1 to 25  | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 3. Schedule 1, item 26  | The later of:<br>(a) the same time as the provision(s) covered by table item 2; and<br>(b) immediately after the commencement of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .<br><br>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. |                     |
| 4. Schedule 1, items 27 to 46   | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 5. Schedule 2, items 1 to 83  | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |

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| <b>Commencement information</b> |  |                     |
|---------------------------------|--|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provision(s)</b>             | <b>Commencement</b>  | <b>Date/Details</b> |
| 6. Schedule 2, item 84          | The later of:<br>(a) the same time as the provision(s) covered by table item 5; and<br>(b) immediately after the commencement of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .<br><br>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. |                     |
| 7. Schedule 2, items 85 to 93   | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 8. Schedule 3, items 1 to 51    | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 9. Schedule 3, item 52          | The later of:<br>(a) the same time as the provision(s) covered by table item 8; and<br>(b) immediately after the commencement of Schedule 5 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> .<br><br>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. |                     |
| 10. Schedule 3, item 53 to 63   | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 11. Schedule 4, items 1 to 3    | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 12. Schedule 4, item 4          | The day after this Act receives the Royal Assent.  | 30 June 2010        |
| 13. Schedule 4, items 5 to 25   | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |

| <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> |
| 14. Schedule 4, item 26         | The 28th day after this Act receives the Royal Assent.<br><br>However, if item 274 of Schedule 1 to the <i>Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007</i> commences before that day, the provision(s) do not commence at all. | 27 July 2010        |
| 15. Schedule 4, items 27 to 36  | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 16. Schedule 5                  | 1 July 2010.   | 1 July 2010         |
| 17. Schedule 6, items 1 to 64   | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 18. Schedule 6, item 65         | The 28th day after this Act receives the Royal Assent.<br><br>However, if item 84 of Schedule 2 to the <i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i> commences before that day, the provision(s) do not commence at all.                | 27 July 2010        |
| 19. Schedule 6, items 66 to 78  | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |
| 20. Schedule 7                  | The 28th day after this Act receives the Royal Assent.   | 27 July 2010        |

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—Amendment of the Banking Act 1959**

### **Part 1—Amendments**

#### **1 Subsection 5(1) (definition of *account-holder*)**

Omit “that has”, substitute “that holds in its name, or keeps in its name,”.

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

Insert:

*appointed auditor* means an auditor appointed in accordance with the prudential standards.

#### **3 Subsection 5(1)**

Insert:

*approved form* means a form approved, in writing, by APRA.

#### **4 Subsection 5(1)**

Insert:

*recapitalisation direction* means a direction given by APRA under subsection 13E(1).

#### **5 After subsection 9(2)**

Insert:

(2A) APRA may, by legislative instrument, set criteria for the granting of an authority to carry on banking business in Australia.

#### **6 Subsection 9(3A)**

Omit “of a NOHC”, substitute “of another body corporate”.

#### **7 After subsection 9A(5)**

Insert:

(5A) The notice of revocation of the authority may state that the authority continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations; or
  - (b) a specified provision of another law of the Commonwealth that is administered by APRA; or
  - (c) a specified provision of the prudential standards;
- and the statement has effect accordingly.

### **8 After subsection 11AA(1)**

Insert:

(1A) APRA may, by legislative instrument, set criteria for the granting of an authority under this section.

### **9 After subsection 11AB(5)**

Insert:

(5A) The notice of the revocation of the authority may state that the authority continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations; or
  - (b) a specified provision of another law of the Commonwealth that is administered by APRA; or
  - (c) a specified provision of the prudential standards;
- and the statement has effect accordingly.

### **10 After subsection 11AF(1AA)**

Insert:

(1AB) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may provide for matters relating to:

- (a) the appointment of auditors; or
- (b) the conduct of audits.

### **11 After subsection 11AF(7B)**

Insert:

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(7BA) A standard may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:

- (a) section 46AA of the *Acts Interpretation Act 1901*; and
- (b) section 14 of the *Legislative Instruments Act 2003*.

## **12 Subsection 11CA(1)**

Before “APRA may give”, insert “Without limiting subsection (1AA),”.

## **13 Paragraph 11CA(1)(h)**

Omit “sudden”.

## **14 After subsection 11CA(1)**

Insert:

(1AA) Without limiting subsection (1), APRA may give a body corporate that is an ADI or is an authorised NOHC a direction of a kind specified in subsection (2) if:

- (a) APRA has reason to believe that:
  - (i) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary’s liabilities; or
  - (ii) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or
  - (iii) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or
  - (iv) a subsidiary of the body corporate is conducting the subsidiary’s affairs in an improper or financially unsound way; or
  - (v) a subsidiary of the body corporate is conducting the subsidiary’s affairs in a way that may cause or promote instability in the Australian financial system; and
- (b) APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.

## **15 Paragraph 11CA(1A)(b)**

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

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**16 After subsection 11CA(1A)**

Insert:

- (1B) In deciding whether to give a direction under subsection (1) or (1AA) to an ADI, APRA may disregard any external support for the ADI.
- (1C) The regulations may specify that a particular form of support is not external support for the purposes of subsection (1B).

**17 After subsection 11CA(2A)**

Insert:

- (2B) Without limiting the generality of paragraph (2)(p), a direction under that paragraph to a foreign ADI may be any one or more of the following:
  - (a) a direction that the ADI act in a way that:
    - (i) a particular asset, or a particular class of assets, of the ADI is returned to the control (however described) of the part of the ADI's banking business that is carried on in Australia; or
    - (ii) a particular liability, or a particular class of liabilities, of the ADI ceases to be the responsibility (however described) of the part of the ADI's banking business that is carried on in Australia;
  - (b) a direction that the ADI not act in a way that:
    - (i) a particular asset, or a particular class of assets, of the ADI ceases to be under the control (however described) of the part of the ADI's banking business that is carried on in Australia; or
    - (ii) a particular liability, or a particular class of liabilities, of the ADI becomes the responsibility (however described) of the part of the ADI's banking business that is carried on in Australia.

**18 Section 11D**

Repeal the section.

**19 At the end of section 13**

Add:

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- (6) To avoid doubt, this section applies to an ADI that is, or becomes, an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other ADI.

**20 Subparagraph 13A(1)(b)(iii)**

Omit “and financial system stability in Australia”.

**21 At the end of paragraph 13A(1)(b)**

Add:

- (iv) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the stability of the financial system in Australia; or

**22 Paragraphs 13A(3)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) third, the ADI’s liabilities (if any) in Australia in relation to protected accounts that account-holders keep with the ADI;  
(d) fourth, the ADI’s debts (if any) to the Reserve Bank;  
(e) fifth, the ADI’s liabilities (if any) under an industry support contract that is certified under section 11CB;  
(f) sixth, the ADI’s other liabilities (if any) in the order of their priority apart from this subsection.

**23 Paragraph 13A(4)(a)**

After “goodwill”, insert “and any assets or other amount excluded by the prudential standards for the purposes of this subsection”.

**24 At the end of section 13A**

Add:

- (7) To avoid doubt, this section applies to an ADI that is, or becomes, an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other ADI.

**25 After Subdivision A**

Insert:

## Subdivision AA—Recapitalisation directions by APRA

### 13D Who this Subdivision applies to

This Subdivision applies to an ADI that:

- (a) is a company that:
  - (i) is registered under the *Corporations Act 2001*; and
  - (ii) has a share capital; and
- (b) does not have an ADI statutory manager.

### 13E Recapitalisation direction by APRA

- (1) APRA may give an ADI a direction (a *recapitalisation direction*) that requires the ADI to increase the ADI's level of capital to the level specified in the direction if:
  - (a) the ADI informs APRA that:
    - (i) the ADI considers that the ADI is likely to become unable to meet the ADI's obligations; or
    - (ii) the ADI is about to suspend payment; or
  - (b) APRA considers that, in the absence of external support:
    - (i) the ADI may become unable to meet the ADI's obligations; or
    - (ii) the ADI may suspend payment; or
    - (iii) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the interests of the ADI's depositors; or
    - (iv) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the stability of the financial system in Australia; or
  - (c) the ADI:
    - (i) becomes unable to meet the ADI's obligations; or
    - (ii) suspends payment.
- (2) In deciding whether to give a recapitalisation direction, APRA must consult with the Australian Competition and Consumer Commission (the *ACCC*), unless the *ACCC* notifies APRA, in writing, that the *ACCC* does not wish to be consulted about:
  - (a) the direction; or
  - (b) a class of directions that includes the direction.

- (3) The regulations may specify that a particular form of support is not external support for the purposes of paragraph (1)(b).
- (4) A recapitalisation direction is not a legislative instrument.

### **13F Additional contents of a recapitalisation direction**

- (1) A recapitalisation direction may direct the ADI to issue:
  - (a) shares, or rights to acquire shares, in the ADI; or
  - (b) other capital instruments of a kind specified in the direction.
- (2) A direction for the purposes of paragraph (1)(a) may specify that the shares or rights must:
  - (a) be of a kind specified in the direction; or
  - (b) have the characteristics specified in the direction.
- (3) A direction for the purposes of paragraph (1)(b):
  - (a) must not specify a kind of capital instrument unless that kind of capital instrument is specified in the regulations; and
  - (b) may specify that the capital instruments must have the characteristics specified in the direction.

### **13G Compliance with a recapitalisation direction**

*Giving members of the ADI notice of share issue etc.*

- (1) As soon as practicable after an ADI issues shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction, the ADI must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the ADI just before the issue.
- (2) The notice must:
  - (a) identify the issue; and
  - (b) explain the effect of the issue of the shares, rights to acquire shares, or other capital instruments on the members' interests.

*Issue of shares etc. despite other laws etc.*

- (3) An ADI may issue shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction despite:

- (a) the *Corporations Act 2001*; and
- (b) the ADI's constitution; and
- (c) any contract or arrangement to which the ADI is a party; and
- (d) any listing rules (as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section) in whose official list the ADI is included.

**13H APRA must obtain expert's report on the fair value of shares etc.**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs an ADI to issue shares, or rights to acquire shares, in the ADI, unless APRA is satisfied that compliance with this section would detrimentally affect:
  - (a) the depositors with the ADI; or
  - (b) the stability of the financial system in Australia.
- (2) APRA must:
  - (a) obtain a report on the fair value of the shares, or rights to acquire shares, in the ADI from an expert who is not an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
  - (b) consider the report.
- (3) The report must set out:
  - (a) the amount that is, in the expert's opinion, the fair value for each of those shares or rights; and
  - (b) the reasons for forming the opinion; and
  - (c) any relationship between the expert and:
    - (i) the ADI; or
    - (ii) a person who is an associate of the ADI under Division 2 of Part 1.2 of the *Corporations Act 2001*; including any circumstances in which the expert gives the ADI or person advice, or acts on behalf of the ADI or person, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with the ADI or person; and
  - (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the

expert's ability to give an unbiased opinion in relation to the matter being reported on.

### **13J Determination of the fair value of shares by an expert**

- (1) In determining the fair value for each share in an ADI for the purposes of paragraph 13H(3)(a), the expert must:
  - (a) first, assess the value of the ADI as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the ADI; and
  - (b) then, allocate that value among the classes of shares in the ADI that:
    - (i) have been issued; or
    - (ii) APRA proposes to direct be issued (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
  - (c) then, allocate the value of each class pro rata among the shares in that class that:
    - (i) have been issued; or
    - (ii) APRA proposes to direct be issued (without allowing a premium or applying a discount for particular shares in that class).
- (2) The Minister may give the expert written notice of assumptions for the valuation of the company.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

### **13K Determination of the fair value of rights by an expert**

- (1) In determining the fair value for each right to acquire shares in an ADI for the purposes of paragraph 13H(3)(a), the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of that right.
- (2) The Minister may give the expert written notice of assumptions for the valuation of such rights.

- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

**13L Ascertaining the fair value of other capital instruments**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs an ADI to issue capital instruments other than shares, or rights to acquire shares, in the ADI.
- (2) APRA must comply with any requirements of the regulations relating to ascertaining the fair value of the capital instruments.
- (3) Regulations made for the purposes of this section may specify different requirements in relation to different kinds of capital instruments.

**13M Contravention of certain provisions does not affect the validity of recapitalisation direction etc.**

A contravention of:

- (a) section 13H or subsection 13J(1) or 13K(1); or
- (b) section 13L or regulations made for the purposes of that subsection;

does not affect the validity of a recapitalisation direction or anything done in compliance with the direction.

**13N Recapitalisation direction not grounds for denial of obligations**

- (1) This section applies if an ADI is party to a contract, whether the proper law of the contract is:
  - (a) Australian law, including the law of a State or Territory; or
  - (b) law of a foreign country, including the law of part of a foreign country.
- (2) The fact that the ADI is subject to a recapitalisation direction does not allow the contract, or a party to the contract, other than the ADI, to do any of the following:
  - (a) deny any obligation under the contract;

- (b) accelerate any debt under the contract;
- (c) close out any transaction relating to the contract.

### **13P Supply of information about issue and revocation of recapitalisation directions**

#### *Power to publish notice of recapitalisation directions in Gazette*

- (1) APRA may publish in the *Gazette* notice of a recapitalisation direction.
- (2) The notice must include:
  - (a) the name of the ADI that is given the direction; and
  - (b) a summary of the direction.

#### *Requirement to publish notice of revocation of certain recapitalisation directions in Gazette*

- (3) If APRA publishes notice of a recapitalisation direction and later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation.
- (4) Failure to publish notice of the revocation does not affect the validity of the revocation.

#### *Requirement to provide information about recapitalisation direction to Minister and Reserve Bank*

- (5) If the Minister or the Reserve Bank requests APRA to provide information about:
  - (a) any recapitalisation directions in respect of a particular ADI;
  - or
  - (b) any recapitalisation directions made during a specified period in respect of any ADIs;APRA must comply with the request.

#### *Power to inform Minister and Reserve Bank of recapitalisation direction*

- (6) APRA may provide any information that APRA considers appropriate to the Minister or the Reserve Bank about any recapitalisation directions, or revocations of recapitalisation directions, in respect of any ADI, at any time.

*Requirement to inform Minister and Reserve Bank of revocation of recapitalisation direction if informed of making of direction*

- (7) If APRA:
- (a) provides the Minister or the Reserve Bank with information about a recapitalisation direction; and
  - (b) later revokes the direction;
- APRA must notify that person of the revocation of the direction as soon as practicable after the revocation.
- (8) Failure to notify the person does not affect the validity of the revocation.

*Secrecy requirements*

- (9) Information relating to recapitalisation directions and revocations of recapitalisation directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette*.

### **13Q Non-compliance with a recapitalisation direction**

- (1) An ADI commits an offence if:
- (a) the ADI does, or refuses or fails to do, an act; and
  - (b) doing, or refusing or failing to do, the act results in a contravention of a recapitalisation direction given to the ADI.

Penalty: 50 penalty units.

- (2) However, subsection (1) does not apply if:
- (a) the ADI made reasonable efforts to comply with the recapitalisation direction; and
  - (b) the ADI's contravention is due to circumstances beyond the ADI's control.

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

- (3) If an ADI does, or refuses or fails to do, an act in circumstances that give rise to the ADI committing an offence against subsection (1), the ADI commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and

- (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (4) An officer of an ADI commits an offence if:
  - (a) the officer refuses or fails to take reasonable steps to ensure that the ADI complies with a recapitalisation direction given to the ADI; and
  - (b) the officer's duties include ensuring that the ADI complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

- (5) If an officer of an ADI refuses or fails to take reasonable steps to ensure that the ADI complies with a recapitalisation direction given to the ADI in circumstances that give rise to the officer committing an offence against subsection (4), the officer commits an offence against that subsection in respect of:
  - (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (6) In this section, **officer** has the meaning given by section 9 of the *Corporations Act 2001*.

### **13R Exceptions to Part IV of the *Trade Practices Act 1974***

For the purposes of subsection 51(1) of the *Trade Practices Act 1974*, the following things are specified and specifically authorised:

- (a) the acquisition of shares in an ADI as a direct result of:
  - (i) the issue of the shares in compliance with a recapitalisation direction given to the ADI; or

- (ii) the exercise of a right to acquire shares that was issued in compliance with such a recapitalisation direction;
- (b) the acquisition of other capital instruments as a direct result of the issue of the other capital instruments in compliance with a recapitalisation direction given to an ADI.

## 26 Section 13R

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

Note: The heading to section 13R is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

## 27 After section 14AC

Insert:

### 14AD APRA may require a person to give information etc. for the purposes of this Division

*APRA may require person to give information etc.*

- (1) APRA may require a person, by written notice given to the person, to give APRA information, or documents containing information, relating to the business of an ADI that has an ADI statutory manager if:
    - (a) in a case where the ADI statutory manager is APRA:
      - (i) APRA believes, on reasonable grounds, that the person has such information or documents; and
      - (ii) APRA requires the information or documents for the purposes of this Division; and
    - (b) in a case where the ADI statutory manager is not APRA:
      - (i) the ADI statutory manager requests, in writing, that APRA require the person to give the information or documents under this subsection; and
      - (ii) APRA believes, on reasonable grounds, that the person has such information or documents; and
      - (iii) APRA is satisfied that the ADI statutory manager requires the information or documents for the purposes of this Division.
  - (2) The notice:
-

- (a) must specify a period within which the information or documents must be given to APRA; and
  - (b) may specify the form and manner in which the information or documents must be given to APRA.
- (3) The period specified under paragraph (2)(a) must be reasonable in all the circumstances.

*Offence*

- (4) A person commits an offence if:
- (a) APRA requires the person to give APRA information or documents under subsection (1); and
  - (b) the person refuses or fails to give the information or documents as required.

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

*Self-incrimination*

- (5) A person is not excused from complying with a requirement under subsection (1) to give information or documents on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.
- (6) However, in the case of an individual:
- (a) the information or document given; and
  - (b) giving the information or document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or document;
- are not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information or document.

*Section 14A not limited*

- (7) This section does not limit section 14A.

**28 Subsection 14F(2)**

Omit “under which the ADI is incorporated or is taken to be incorporated”.

**29 After subsection 16AF(1)**

Insert:

- (1A) The interest is payable at:
- (a) the rate of interest that is payable according to the terms and conditions of the protected account; or
  - (b) if APRA considers that that rate is not certain—the rate of interest that APRA declares, in writing, is payable.
- (1B) A declaration under paragraph (1A)(b) is not a legislative instrument.

**30 At the end of section 16AF**

Add:

*Pooled accounts*

- (3) If:
- (a) one person holds the protected account mentioned in subsection (1); and
  - (b) the person is the trustee of 2 or more trusts; and
  - (c) the net credit balance of the account consists of the trust funds of 2 or more of those trusts;
- subsection (1) entitles the person to be paid, in connection with that account, the amount worked out under subsection (1).

**31 Section 16AJ**

Before “APRA”, insert “(1)”.

**32 Paragraph 16AJ(c)**

Omit “(including a provisional liquidator)”.

**33 At the end of section 16AJ**

Add:

- (2) Without limiting subsection (1), APRA may require a liquidator to assist APRA in APRA’s function of paying account holders their entitlements under Subdivision C.

- (3) For example, APRA may, by notice issued under subsection (1), require the liquidator to do the things specified in the notice, including:
- (a) carrying on the business of the ADI so far as necessary, or doing any other act or thing, to facilitate APRA's payment to account holders in accordance with Subdivision C; or
  - (b) seeking the re-entry of the ADI into a payment system (as defined in section 7 of the *Payment Systems (Regulation) Act 1998*); or
  - (c) transferring the entitlements of account holders to accounts held by the account holders in another ADI.
- (4) The liquidator must give compliance with a notice issued under subsection (1) precedence over the other aspects of winding up the ADI, including any requirements under the *Corporations Act 2001*.
- (5) However, the liquidator is not required to comply with a notice issued under subsection (1) unless there is sufficient available property to meet the liquidator's costs likely to be incurred in complying with the notice in full, unless APRA indemnifies the liquidator for those costs.
- (6) The liquidator has the powers that are necessary or convenient to comply with a notice issued under subsection (1).
- (7) The liquidator's costs of complying with a notice issued under subsection (1) are expenses properly incurred by a relevant authority for the purposes of section 556 of the *Corporations Act 2001*.
- (8) A reference in this section to a liquidator's costs includes:
- (a) remuneration, or fees for services, payable to the liquidator for complying with a notice issued under subsection (1); and
  - (b) expenses incurred by the liquidator in complying with a notice issued under subsection (1).
- (9) A reference in this section to a liquidator includes a reference to a provisional liquidator.

### **34 Paragraphs 16AK(2)(d) and (e)**

Repeal the paragraphs.

### **35 Subsection 16AO(1)**

---

Omit “(whether by APRA or by a delegate)”.

### **36 Before section 16B**

Insert:

#### **16AV Appointed auditor’s functions and duties**

- (1) This section applies if the prudential standards require an auditor to be appointed.
- (2) The appointed auditor must perform the functions and duties of an auditor that are set out in the prudential standards.
- (3) The appointed auditor must comply with the prudential standards in performing the functions and duties.
- (4) The ADI or authorised NOHC to whom the prudential standards apply must make any arrangements that are necessary to enable the appointed auditor to perform the functions and duties.

### **37 Paragraph 16BA(11)(c)**

Omit “the auditor”, substitute “an auditor”.

### **38 At the end of Division 2A of Part II**

Add:

#### **16D Appointed auditor must notify APRA of attempts to unduly influence etc. the appointed auditor**

- (1) If an appointed auditor of an ADI or authorised NOHC is aware of circumstances that amount to:
  - (a) an attempt by any person to unduly influence, coerce, manipulate or mislead the appointed auditor in connection with the performance of the appointed auditor’s functions or duties; or
  - (b) an attempt by any person to otherwise interfere with the performance of the appointed auditor’s functions or duties;the appointed auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the appointed auditor becomes aware of those circumstances.

- (2) An appointed auditor commits an offence if the appointed auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

### **16E Giving false or misleading information to auditor**

*Offence—person knows the information is false or misleading etc.*

- (1) A person commits an offence if:
- (a) the person is an employee or officer of a body corporate that is an ADI or authorised NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the body corporate; and
  - (c) the information relates to the affairs of the body corporate; and
  - (d) the person knows that the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

*Offence—person fails to ensure the information is not false or misleading etc.*

- (2) A person commits an offence if:
- (a) the person is an employee or officer of a body corporate that is an ADI or authorised NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the body corporate; and
  - (c) the information relates to the affairs of the body corporate; and
  - (d) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect; and
  - (e) the person did not take reasonable steps to ensure that the information:
    - (i) was not false or misleading in a material particular; or

- (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

*Determining whether information is false or misleading*

- (3) If information is given to the appointed auditor in response to a question asked by the appointed auditor, the information and the question must be considered together in determining whether the information is false or misleading.

### **39 Subsection 17(1)**

Before “auditor”, insert “appointed”.

### **40 After section 22**

Insert:

### **22A Privilege against exposure to penalty—disqualification under section 21**

*Proceedings*

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:
- (a) to answer a question or give information; or
  - (b) to produce books, accounts or other documents; or
  - (c) to do any other act;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 21.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

*Statutory requirements*

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:
- (a) to answer a question or give information; or
-

- (b) to produce books, accounts or other documents; or
- (c) to do any other act;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 21.

*Admissibility*

- (4) Subsections 14A(4), 14AD(6) and 52F(2) do not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 21.

*Other provisions*

- (5) Subsections (1) and (3) of this section have effect despite anything in:
  - (a) clause 5 of Schedule 2; or
  - (b) any other provision of this Act; or
  - (c) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

- (6) In this section:

*penalty* includes forfeiture.

**41 Subparagraphs 52A(2)(a)(ii) and 52E(1)(b)(i) and (c)(i)**

Omit “the auditor”, substitute “an auditor”.

**42 Before section 61**

Insert:

**60 Keeping of financial records**

*Financial records must be kept in Australia etc.*

- (1) If an ADI is required, under section 286 of the *Corporations Act 2001*, to keep financial records (within the meaning of that Act), the ADI must keep the records:

- (a) in the English language, or in a form in which the records are readily accessible and readily convertible into writing in the English language; and
  - (b) either:
    - (i) in Australia; or
    - (ii) if APRA gives written approval and the ADI meets the conditions (if any) specified in the approval—in another country specified in the approval.
- (2) The approval may be given subject to specified conditions.

*Notification of address where financial records are kept*

- (3) An ADI must notify APRA, in the approved form, of the address where the ADI's financial records are kept:
- (a) if, immediately before the commencement of this section, the ADI has a section 9 authority—within 28 days after that commencement; or
  - (b) otherwise—within 28 days after the ADI is granted a section 9 authority.
- (4) If:
- (a) an ADI has notified APRA of the address where the ADI's financial records are kept; and
  - (b) the ADI moves the financial records to a new address;
- the ADI must notify APRA, in the approved form, of the new address where the financial records are kept.
- (5) The notification must be given within 28 days after the day on which the financial records are moved to the new address.

*Offence*

- (6) An ADI commits an offence if the ADI contravenes subsection (1).
- Penalty: 200 penalty units.

*Merits review*

- (7) Part VI applies to the following decisions:
- (a) a refusal to give an approval under paragraph (1)(b);
  - (b) a decision to give the approval subject to conditions.
-

**43 At the end of section 61**

Add:

- (7) To avoid doubt, this section applies to a body corporate that is, or becomes, an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other body corporate.

**44 At the end of section 62**

Add:

- (3) To avoid doubt, this section applies to a person that is, or becomes, an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other person.

**45 Paragraphs 62A(1A)(a) and (1D)(a)**

Omit “the auditor”, substitute “an auditor”.

## **Part 2—Application provision**

### **46 Application—priorities for application of the assets of an ADI in Australia**

Subsection 13A(3) of the *Banking Act 1959*, as amended by this Schedule, applies to an ADI that becomes unable to meet the ADI's obligations, or suspends payment, on or after the commencement of this item.

## **Schedule 2—Amendment of the Insurance Act 1973**

### **Part 1—Amendments**

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

Insert:

*approved form* means (except in section 62ZZKA) a form approved, in writing, by APRA.

#### **2 Subsection 3(1) (paragraph (k) of the definition of *insurance business*)**

Omit “Act; or”, substitute “Act.”.

#### **3 Subsection 3(1) (paragraph (l) of the definition of *insurance business*)**

Repeal the paragraph.

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

Insert:

*principal auditor*, of a general insurer, means an auditor appointed by the insurer under paragraph 39(1)(a).

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

Insert:

*recapitalisation direction* means a direction given by APRA under subsection 103B(1).

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

Insert:

*wind up*, in relation to a company, means wind up the company in accordance with the *Corporations Act 2001*.

#### **7 After subsection 3(5)**

Insert:

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(5A) Subsection (5) does not apply if the contracts of insurance referred to in that subsection are contracts of reinsurance.

### **8 After subsection 3(6)**

Insert:

(6A) Subsection (6) does not apply if the business referred to in paragraph (a) of that subsection is solely a business of reinsurance.

### **9 After subsection 12(1A)**

Insert:

(1B) APRA may, by legislative instrument, set criteria for the authorisation of a body corporate to carry on insurance business in Australia.

### **10 Subsection 12(3)**

Omit “of a NOHC”, substitute “of another body corporate”.

### **11 After section 16**

Insert:

### **16A Continuation of effect of general insurer’s authorisation**

If APRA gives a notice of revocation of a general insurer’s authorisation under subsection 15(5) or 16(2), the notice may state that the authorisation continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations; or
  - (b) a specified provision of another law of the Commonwealth that is administered by APRA; or
  - (c) a specified provision of the prudential standards;
- and the statement has effect accordingly.

### **12 After subsection 18(2)**

Insert:

(2A) APRA may, by legislative instrument, set criteria for the granting of an authorisation under this section.

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### **13 After section 22**

Insert:

#### **22A Continuation of effect of body corporate's NOHC authorisation**

If APRA gives a notice of revocation of a body corporate's NOHC authorisation under subsection 21(5) or 22(2), the notice may state that the authorisation continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations; or
  - (b) a specified provision of another law of the Commonwealth that is administered by APRA; or
  - (c) a specified provision of the prudential standards;
- and the statement has effect accordingly.

### **14 After section 26**

Insert:

#### **26A Privilege against exposure to penalty—disqualification under section 25A or 44**

##### *Proceedings*

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:
  - (a) to answer a question or give information; or
  - (b) to produce books, accounts or other documents; or
  - (c) to do any other act;on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 25A or 44.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

*Statutory requirements*

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:
- (a) to answer a question or give information; or
  - (b) to produce books, accounts or other documents; or
  - (c) to do any other act;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 25A or 44.

*Admissibility*

- (4) Subsection 38F(2) does not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 25A or 44.

*Other provisions*

- (5) Subsections (1) and (3) of this section have effect despite anything in:
- (a) clause 5 of Schedule 1; or
  - (b) any other provision of this Act; or
  - (c) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

- (6) In this section:

*penalty* includes forfeiture.

**15 Subsection 27(7)**

After “general insurer”, insert “, authorised NOHC”.

**16 Paragraphs 27(7)(a) and (b)**

After “the insurer”, insert “, NOHC”.

**17 Paragraph 28(a)**

After “and any”, insert “assets or”.

**18 After subsection 32(2)**

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Insert:

- (3) Without limiting the prudential matters in relation to which APRA may determine a prudential standard, a prudential standard may:
- (a) require the following companies to ensure that the company's subsidiaries (or particular subsidiaries), or the company and the company's subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to prudential matters:
    - (i) each general insurer or authorised NOHC;
    - (ii) each general insurer or authorised NOHC included in a specified class of general insurers or authorised NOHCs;
    - (iii) a specified general insurer or authorised NOHC;
    - (iv) each of 2 or more specified general insurers or authorised NOHCs; or
  - (b) provide for matters relating to:
    - (i) the appointment of auditors; or
    - (ii) the conduct of audits.

**19 Paragraph 38AA(3)(a)**

Omit "the auditor or actuary", substitute "an auditor or the actuary".

**20 Subsection 38AA(6)**

Omit "subsection (5)", substitute "subsection (4)".

Note: The heading to subsection 38AA(6) is replaced by the heading "*Offence in relation to matters requiring notice as soon as practicable*".

**21 Paragraph 38AA(7)(a)**

Omit "the auditor or actuary", substitute "an auditor or the actuary".

**22 Subparagraphs 38A(2)(a)(ii) and 38E(1)(b)(i) and (c)(i)**

Omit "the auditor", substitute "an auditor".

**23 Division 1 of Part IV (heading)**

Repeal the heading, substitute:

## **Division 1—The auditors and actuary of a general insurer**

### **24 Subsection 39(2)**

Omit “appointed auditor or actuary”, substitute “principal auditor or the actuary”.

### **25 Subsection 39(2)**

Omit “its auditor or actuary”, substitute “the principal auditor or the actuary”.

### **26 Subsection 39(3)**

Omit “the auditor”, substitute “an auditor”.

### **27 Subsection 39(4)**

Omit “a general insurer’s auditor or actuary”, substitute “the principal auditor or the actuary of a general insurer”.

### **28 After section 39**

Insert:

### **40 Additional auditors**

- (1) APRA may, by written notice, require a general insurer to appoint a person who is specified in the notice to be an auditor for a purpose that is specified in the notice.

Example: APRA may require a general insurer to appoint an auditor who has specialist qualifications or experience to perform a special purpose audit.

- (2) The specified person may be:
  - (a) the principal auditor; or
  - (b) another auditor.

### **29 Subsection 43(2)**

After “a person’s appointment as”, insert “an”.

### **30 Subsection 46(1)**

Omit “its auditor”, substitute “an auditor”.

### **31 Subsection 46(2)**

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Omit “appointed auditor or”, substitute “principal auditor or the”.

**32 Paragraphs 49(1)(a) and 49A(1)(a)**

Omit “(whether or not the person was appointed under section 39)”.

**33 Paragraph 49A(11)(c)**

Omit “the auditor or actuary”, substitute “an auditor or the actuary”.

**34 Paragraph 49B(a)**

Omit “(whether or not the person was appointed under section 39)”.

**35 At the end of Division 2 of Part IV**

Add:

**49D Auditor must notify APRA of attempts to unduly influence etc. the auditor**

- (1) If an auditor of a general insurer or authorised NOHC is aware of circumstances that amount to:
  - (a) an attempt by any person to unduly influence, coerce, manipulate or mislead the auditor in connection with the performance of the auditor’s functions or duties; or
  - (b) an attempt by any person to otherwise interfere with the performance of the auditor’s functions or duties;the auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.
- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

**49DA Giving false or misleading information to auditor**

*Offence—person knows the information is false or misleading etc.*

- (1) A person commits an offence if:
  - (a) the person is an employee or officer of a general insurer or authorised NOHC; and

- (b) the person gives information, or allows information to be given, to an auditor of the general insurer or authorised NOHC; and
- (c) the information relates to the affairs of the general insurer or authorised NOHC; and
- (d) the person knows that the information:
  - (i) is false or misleading in a material particular; or
  - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

*Offence—person fails to ensure the information is not false or misleading etc.*

- (2) A person commits an offence if:
- (a) the person is an employee or officer of a general insurer or authorised NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the general insurer or authorised NOHC; and
  - (c) the information relates to the affairs of the general insurer or authorised NOHC; and
  - (d) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect; and
  - (e) the person did not take reasonable steps to ensure that the information:
    - (i) was not false or misleading in a material particular; or
    - (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

*Determining whether information is false or misleading*

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.
-

### **36 Subsection 49J(1)**

Repeal the subsection, substitute:

- (1) For each general insurer:
  - (a) the principal auditor of the insurer must audit the insurer's yearly statutory accounts; and
  - (b) an auditor of the insurer must perform for the insurer the functions of an auditor set out in the prudential standards; and
  - (c) an auditor of the insurer must prepare, and give to the insurer, the reports (if any) required by the prudential standards to be prepared by the auditor.

### **37 Subsection 49J(2)**

Omit "the auditor", substitute "an auditor".

### **38 Subsection 49J(3)**

Omit "auditor must give the general insurer", substitute "principal auditor of a general insurer must give the insurer".

### **39 Subsection 49J(4)**

Omit "the auditor", substitute "an auditor".

### **40 Paragraphs 49Q(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) in writing:
  - (i) in the English language; or
  - (ii) in a form in which the records are readily accessible and readily convertible into writing in the English language; and
- (b) either:
  - (i) in Australia; or
  - (ii) if APRA gives written approval and the insurer meets the conditions (if any) specified in the approval—in another country specified in the approval.

Note: The following heading to subsection 49Q(1) is inserted "*Accounting records must be kept in Australia etc.*".

### **41 After subsection 49Q(1)**

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Insert:

(1A) The approval may be given subject to specified conditions.

*Notification of address where accounting records are kept*

(1B) A general insurer must notify APRA, in the approved form, of the address where the insurer's accounting records are kept:

- (a) if, immediately before the commencement of this subsection, the insurer has an authorisation under section 12—within 28 days after that commencement; or
- (b) otherwise—within 28 days after the insurer is granted an authorisation under that section.

(1C) If:

- (a) a general insurer has notified APRA of the address where the insurer's accounting records are kept; and
- (b) the insurer moves the accounting records to a new address; the insurer must notify APRA, in the approved form, of the new address where the accounting records are kept.

(1D) The notification must be given within 28 days after the day on which the accounting records are moved to the new address.

#### **42 Subsection 49Q(2)**

Omit “contravenes this section”, substitute “contravenes subsection (1)”.

Note: The following heading to subsection 49Q(2) is inserted “*Offence*”.

#### **43 At the end of section 49Q**

Add:

*Merits review*

- (3) Part VI applies to the following decisions:
  - (a) a refusal to give an approval under paragraph (1)(b);
  - (b) a decision to give the approval subject to conditions.

#### **44 Paragraph 49R(1)(a)**

Omit “the auditor”, substitute “an auditor”.

---

**45 Paragraph 49R(3)(a)**

Omit “the auditor or actuary”, substitute “an auditor or the actuary”.

**46 At the end of section 52**

Add:

- (6) To avoid doubt, this section applies to a body corporate that is, or becomes, an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other body corporate.

**47 After subparagraph 60(2)(c)(i)**

Insert:

- (ia) any recapitalisation directions that should be given to the body corporate; and

**48 Subparagraph 62M(a)(ii)**

After “assets in Australia”, insert “(other than any assets or amount excluded by the prudential standards for the purposes of paragraph 28(b))”.

**49 After subparagraph 62M(a)(iii)**

Insert:

- (iiia) the general insurer has failed to comply with a recapitalisation direction; or

**50 At the end of section 62R**

Add:

- (3) However, APRA is entitled to be heard in proceedings before the Court for the cancellation of the appointment.

**51 At the end of subsection 62T(1)**

Add:

- ; and (c) the judicial manager has the powers and functions of the members of the board of directors of the general insurer (collectively and individually), including the board’s powers of delegation.

**52 Section 62ZD**

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Repeal the section, substitute:

**62ZD Request by APRA for information**

- (1) APRA may require a judicial manager, by written notice given to the judicial manager, to give APRA information about one or more of the following matters:
  - (a) the conduct of the judicial management;
  - (b) the financial position of the general insurer under judicial management;
  - (c) a matter that APRA considers will enable APRA to perform APRA's functions under Part VC.
- (2) The notice must specify a reasonable period within which the information must be given to APRA.
- (3) A judicial manager commits an offence if:
  - (a) APRA requires the judicial manager to give APRA information under subsection (1); and
  - (b) the judicial manager refuses or fails to give the information.Penalty: Imprisonment for 6 months or 100 penalty units, or both.
- (4) A judicial manager commits an offence if:
  - (a) APRA requires the judicial manager to give APRA information under subsection (1); and
  - (b) the judicial manager refuses or fails to give the information.Penalty: 60 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

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

**53 After paragraph 62ZI(2)(a)**

Insert:

- (aa) to transfer the business, or part of the business, of the company to another company under section 25 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*;

**54 Subsection 62ZQ(1)**

Repeal the subsection, substitute:

---

(1) This section applies if a person, other than APRA, wants to apply to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a general insurer.

(1A) The person must give the following documents to APRA before the person makes the application:

- (a) a copy of the application;
- (b) a copy of all the documents that will be filed in support of the application.

**55 Subsection 62ZQ(3)**

Repeal the subsection.

**56 Paragraph 62ZQ(4)(b)**

Repeal the paragraph, substitute:

- (b) the person did not give the following documents to APRA before the person made the application:
  - (i) a copy of the application;
  - (ii) a copy of all the documents that will be filed in support of the application.

**57 Subsection 62ZV(2)**

Repeal the subsection.

**58 Paragraph 62ZW(a)**

Repeal the paragraph, substitute:

- (a) allows the Minister to make a declaration about a general insurer:
  - (i) that is under judicial management and APRA believes is insolvent; or
  - (ii) for which an external administrator has been appointed under Chapter 5 of the *Corporations Act 2001* and APRA believes is insolvent; and

**59 Subsection 62ZZA(1)**

After “subparagraph 62ZZF(1)(b)(ii)”, insert “or 62ZZG(1)(aa)(ii)”.

**60 Section 62ZZB**

Repeal the section.

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**61 Paragraph 62ZZC(1)(a)**

Repeal the paragraph, substitute:

(a) either:

- (i) the general insurer is under judicial management under Division 1 of Part VB; or
- (ii) an external administrator for the general insurer has been appointed under Chapter 5 of the *Corporations Act 2001*; and

**62 Subparagraph 62ZZC(1)(b)(ii)**

After “assets in Australia”, insert “(other than any assets or amount excluded by the prudential standards for the purposes of paragraph 28(b))”.

**63 Paragraph 62ZZE(1)(b)**

After “assets in Australia”, insert “(other than any assets or amount excluded by the prudential standards for the purposes of paragraph 28(b))”.

**64 Paragraph 62ZZF(1)(a)**

Repeal the paragraph, substitute:

- (a) the person is entitled to claim under insurance cover provided under a protected policy:
  - (i) that a general insurer issued before becoming a declared general insurer; or
  - (ii) in respect of which liability was accepted by a general insurer before becoming a declared general insurer;whether the entitlement to claim arises because the cover is provided to the person under the policy or because the person is otherwise entitled to claim under the cover; and

**65 Paragraph 62ZZF(1)(b)**

After “cover”, insert “, in the approved form (if any),”.

**66 Paragraph 62ZZG(1)(a)**

Repeal the paragraph, substitute:

- (a) the person may recover an amount (the *recoverable amount*) in accordance with a determination made by APRA under subsection 62ZZJ(4); and
-

- (aa) the person makes a claim in relation to the recoverable amount, in the approved form (if any), within the period:
  - (i) starting on the day prescribed by the regulations for the purposes of this subparagraph; and
  - (ii) ending on a day prescribed by the regulations for the purposes of this subparagraph or, if APRA specifies a later day, that later day; and

**67 Subsection 62ZZH(1)**

After “a general insurer”, insert “, or in respect of which liability has been accepted by a general insurer,”.

**68 Subsection 62ZZI(1)**

Omit “issued by a general insurer that became a declared general insurer after the issue”, substitute “of a kind referred to in paragraph 62ZZF(1)(a)”.

**69 After subsection 62ZZI(1)**

Insert:

- (1A) Without limiting subsection (1), the amount of the liability (if any) determined under subsection (1) may be an amount agreed to by APRA and the person.

**70 Subsections 62ZZJ(1) and (3)**

Omit “in the form (if any) approved by APRA for the purposes of this subsection”, substitute “in the approved form (if any)”.

**71 Subsection 62ZZJ(3)**

After “Act 1984”, insert “, or section 601AG of the *Corporations Act 2001*,”.

**72 Subsection 62ZZJ(3)**

Omit all the words after “provided under a”, substitute:

protected policy:

- (a) that the insurer issued before becoming a declared general insurer; or
- (b) in respect of which liability was accepted by the insurer before becoming a declared general insurer.

**73 Paragraph 62ZZJ(4)(a)**

After “Act 1984”, insert “, or section 601AG of the *Corporations Act 2001*,”.

**74 After subsection 62ZZJ(4)**

Insert:

- (4A) Without limiting subsection (4), the amount (if any) determined under subsection (4) may be an amount agreed to by APRA and the person.

**75 Subsection 62ZZM(1)**

Omit “, for the purposes described in subsection (2),”.

**76 Subsection 62ZZM(2)**

Repeal the subsection, substitute:

- (2) However, the regulations may prescribe a purpose for which a person is taken not to have been paid an amount, under the terms and conditions of a policy, by:
- (a) a general insurer; or
  - (b) a class of general insurers; or
  - (c) all general insurers.

**77 Section 62ZZO**

Omit “either”, substitute “any”.

**78 At the end of section 62ZZO (before the note)**

Add:

; (c) a judicial manager of a general insurer.

**79 After paragraph 62ZZP(1)(b)**

Insert:

or (c) a judicial manager of a general insurer;

**80 Subsection 62ZZP(1)**

Omit “or liquidator”, substitute “, liquidator or judicial manager”.

**81 At the end of section 62ZZQ**

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Add:

*Requirement made of judicial manager of general insurer—civil penalty*

- (8) A judicial manager of a general insurer must comply with a requirement made of the judicial manager under section 62ZZO or subsection 62ZZP(1).

Civil penalty: 200 penalty units.

*Requirement made of judicial manager of general insurer—offence*

- (9) A judicial manager of a general insurer commits an offence if:
- (a) the judicial manager does, or refuses or fails to do, an act; and
  - (b) the doing of the act, or the failure to do the act, results in a contravention of a requirement made under section 62ZZO or subsection 62ZZP(1).

Penalty: 100 penalty units.

- (10) An offence against subsection (9) is an indictable offence.

Note: Section 4K (Continuing and multiple offences) of the *Crimes Act 1914* applies to an offence against subsection (9), so the judicial manager commits an offence for each day that the judicial manager does not comply with a requirement under subsection 62ZZP(1).

## **82 Subsection 62ZZU(1)**

Omit “(whether by APRA or by a delegate)”.

## **83 Before section 104**

Insert:

## **Division 1—Recapitalisation directions**

### **103A Who this Division applies to**

This Division applies to a general insurer that:

- (a) is a company that:
  - (i) is registered under the *Corporations Act 2001*; and
  - (ii) has a share capital; and

(b) does not have a judicial manager.

### **103B Recapitalisation direction by APRA**

- (1) APRA may give a general insurer a direction (a *recapitalisation direction*) that requires the insurer to increase the insurer's level of capital to the level specified in the direction if:
  - (a) the insurer informs APRA that:
    - (i) the insurer considers that the insurer is likely to become unable to meet the insurer's obligations; or
    - (ii) the insurer is about to suspend payment; or
  - (b) APRA considers that:
    - (i) the insurer may become unable to meet the insurer's obligations; or
    - (ii) the insurer may suspend payment; or
    - (iii) it is likely that the insurer will be unable to carry on insurance business in Australia consistently with the interests of the insurer's policyholders; or
    - (iv) it is likely that the insurer will be unable to carry on insurance business in Australia consistently with the stability of the financial system in Australia; or
  - (c) the insurer:
    - (i) becomes unable to meet the insurer's obligations; or
    - (ii) suspends payment.
- (2) In deciding whether to give a recapitalisation direction, APRA must consult with the Australian Competition and Consumer Commission (the *ACCC*), unless the ACCC notifies APRA, in writing, that the ACCC does not wish to be consulted about:
  - (a) the direction; or
  - (b) a class of directions that includes the direction.
- (3) A recapitalisation direction is not a legislative instrument.

### **103C Additional contents of a recapitalisation direction**

- (1) A recapitalisation direction may direct a general insurer to issue:
  - (a) shares, or rights to acquire shares, in the insurer; or
  - (b) other capital instruments of a kind specified in the direction.

- (2) A direction for the purposes of paragraph (1)(a) may specify that the shares or rights must:
  - (a) be of a kind specified in the direction; or
  - (b) have the characteristics specified in the direction.
- (3) A direction for the purposes of paragraph (1)(b):
  - (a) must not specify a kind of capital instrument unless that kind of capital instrument is specified in the regulations; and
  - (b) may specify that the capital instruments must have the characteristics specified in the direction.

### **103D Compliance with a recapitalisation direction**

*Giving members of the general insurer notice of share issue etc.*

- (1) As soon as practicable after a general insurer issues shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction, the insurer must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the insurer just before the issue.
- (2) The notice must:
  - (a) identify the issue; and
  - (b) explain the effect of the issue of the shares, rights to acquire shares, or other capital instruments on the members' interests.

*Issue of shares etc. despite other laws etc.*

- (3) A general insurer may issue shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction despite:
  - (a) the *Corporations Act 2001*; and
  - (b) the insurer's constitution; and
  - (c) any contract or arrangement to which the insurer is a party; and
  - (d) any listing rules (as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section) in whose official list the insurer is included.

**103E APRA must obtain expert's report on the fair value of shares etc.**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a general insurer to issue shares, or rights to acquire shares, in the insurer, unless APRA is satisfied that compliance with this section would detrimentally affect:
  - (a) the policyholders of the insurer; or
  - (b) the stability of the financial system in Australia.
- (2) APRA must:
  - (a) obtain a report on the fair value of the shares, or rights to acquire shares, in the insurer from an expert who is not an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
  - (b) consider the report.
- (3) The report must set out:
  - (a) the amount that is, in the expert's opinion, the fair value for each of those shares or rights; and
  - (b) the reasons for forming the opinion; and
  - (c) any relationship between the expert and:
    - (i) the insurer; or
    - (ii) a person who is an associate of the insurer under Division 2 of Part 1.2 of the *Corporations Act 2001*; including any circumstances in which the expert gives the insurer or person advice, or acts on behalf of the insurer or person, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with the insurer or person; and
  - (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on.

**103F Determination of the fair value of shares by an expert**

- (1) In determining the fair value for each share in a general insurer for the purposes of paragraph 103E(3)(a), the expert must:
-

- (a) first, assess the value of the insurer as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the insurer; and
  - (b) then, allocate that value among the classes of shares in the insurer that:
    - (i) have been issued; or
    - (ii) APRA proposes to direct be issued (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
  - (c) then, allocate the value of each class pro rata among the shares in that class that:
    - (i) have been issued; or
    - (ii) APRA proposes to direct be issued (without allowing a premium or applying a discount for particular shares in that class).
- (2) The Minister may give the expert written notice of assumptions for the valuation of the company.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

### **103G Determination of the fair value of rights by an expert**

- (1) In determining the fair value for each right to acquire shares in a general insurer for the purposes of paragraph 103E(3)(a), the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of that right.
- (2) The Minister may give the expert written notice of assumptions for the valuation of such rights.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

**103H Ascertaining the fair value of other capital instruments**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a general insurer to issue capital instruments other than shares, or rights to acquire shares, in the insurer.
- (2) APRA must comply with any requirements of the regulations relating to ascertaining the fair value of the capital instruments.
- (3) Regulations made for the purposes of this section may specify different requirements in relation to different kinds of capital instruments.

**103J Contravention of certain provisions does not affect the validity of recapitalisation direction etc.**

A contravention of:

- (a) section 103E or subsection 103F(1) or 103G(1); or
- (b) section 103H or regulations made for the purposes of that subsection;

does not affect the validity of a recapitalisation direction or anything done in compliance with the direction.

**103K Recapitalisation direction not grounds for denial of obligations**

- (1) This section applies if a general insurer is party to a contract, whether the proper law of the contract is:
  - (a) Australian law, including the law of a State or Territory; or
  - (b) law of a foreign country, including the law of part of a foreign country.
- (2) The fact that the insurer is subject to a recapitalisation direction does not allow the contract, or a party to the contract, other than the insurer, to do any of the following:
  - (a) deny any obligation under the contract;
  - (b) accelerate any debt under the contract;
  - (c) close out any transaction relating to the contract.

**103L Supply of information about issue and revocation of recapitalisation directions**

*Power to publish notice of recapitalisation directions in Gazette*

- (1) APRA may publish in the *Gazette* notice of a recapitalisation direction.
- (2) The notice must include:
  - (a) the name of the general insurer that is given the direction; and
  - (b) a summary of the direction.

*Requirement to publish notice of revocation of certain recapitalisation directions in Gazette*

- (3) If APRA publishes notice of a recapitalisation direction and later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation.
- (4) Failure to publish notice of the revocation does not affect the validity of the revocation.

*Requirement to provide information about recapitalisation direction to Minister and Reserve Bank*

- (5) If the Minister or the Reserve Bank requests APRA to provide information about:
  - (a) any recapitalisation directions in respect of a particular general insurer; or
  - (b) any recapitalisation directions made during a specified period in respect of any general insurers;APRA must comply with the request.

*Power to inform Minister and Reserve Bank of recapitalisation direction*

- (6) APRA may provide any information that APRA considers appropriate to the Minister or the Reserve Bank about any recapitalisation directions, or revocations of recapitalisation directions, in respect of any general insurer, at any time.

*Requirement to inform Minister and Reserve Bank of revocation of recapitalisation direction if informed of making of direction*

- (7) If APRA:
- (a) provides the Minister or the Reserve Bank with information about a recapitalisation direction; and
  - (b) later revokes the direction;
- APRA must notify that person of the revocation of the direction as soon as practicable after the revocation.
- (8) Failure to notify the person does not affect the validity of the revocation.

*Secrecy requirements*

- (9) Information relating to recapitalisation directions and revocations of recapitalisation directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette*.

**103M Non-compliance with a recapitalisation direction**

- (1) A general insurer commits an offence if:
- (a) the insurer does, or refuses or fails to do, an act; and
  - (b) doing, or refusing or failing to do, the act results in a contravention of a recapitalisation direction given to the insurer.

Penalty: 50 penalty units.

- (2) However, subsection (1) does not apply if:
- (a) the insurer made reasonable efforts to comply with the recapitalisation direction; and
  - (b) the insurer's contravention is due to circumstances beyond the insurer's control.

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

- (3) If a general insurer does, or refuses or fails to do, an act in circumstances that give rise to the insurer committing an offence against subsection (1), the insurer commits an offence against that subsection in respect of:

- (a) the first day on which the offence is committed; and
- (b) each subsequent day (if any) on which the circumstances that gave rise to the insurer committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (4) An officer of a general insurer commits an offence if:
  - (a) the officer refuses or fails to take reasonable steps to ensure that the insurer complies with a recapitalisation direction given to the insurer; and
  - (b) the officer's duties include ensuring that the insurer complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

- (5) If an officer of a general insurer refuses or fails to take reasonable steps to ensure that the insurer complies with a recapitalisation direction given to the insurer in circumstances that give rise to the officer committing an offence against subsection (4), the officer commits an offence against that subsection in respect of:
  - (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (6) In this section, **officer** has the meaning given by section 9 of the *Corporations Act 2001*.

### **103N Exceptions to Part IV of the *Trade Practices Act 1974***

For the purposes of subsection 51(1) of the *Trade Practices Act 1974*, the following things are specified and specifically authorised:

- (a) the acquisition of shares in a general insurer as a direct result of:

- (i) the issue of the shares in compliance with a recapitalisation direction given to the insurer; or
- (ii) the exercise of a right to acquire shares that was issued in compliance with such a recapitalisation direction;
- (b) the acquisition of other capital instruments as a direct result of the issue of the other capital instruments in compliance with a recapitalisation direction given to a general insurer.

## Division 2—Other directions

### 84 Section 103N

Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

Note: The heading to section 103N is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

### 85 Subsection 104(1)

Before “APRA may give”, insert “Without limiting subsection (1A),”.

### 86 Paragraph 104(1)(g)

Omit “sudden”.

### 87 After subsection 104(1)

Insert:

- (1A) Without limiting subsection (1), APRA may give a body corporate that is a general insurer or is an authorised NOHC a direction of a kind specified in subsection (3) if:
  - (a) APRA has reason to believe that:
    - (i) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary’s liabilities; or
    - (ii) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or
    - (iii) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or
    - (iv) a subsidiary of the body corporate is conducting the subsidiary’s affairs in an improper or financially unsound way; or

- (v) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause or promote instability in the Australian financial system; and
- (b) APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.

**88 Paragraph 104(2)(b)**

After "subsection (1)", insert "or (1A)".

**89 Subsection 116A(1) (note 2)**

After "assets in Australia", insert "referred to in that section".

**90 Subsection 116A(1) (note 3)**

After "assets in Australia", insert "referred to in those sections".

**91 Subsection 116A(3)**

Omit "and 6ZZE", substitute ", 6ZZE and 116".

## Part 2—Saving and application provisions

### 92 Saving—appointment as an auditor of a general insurer

- (1) This item applies if:
  - (a) a person was appointed as the auditor of a general insurer under paragraph 39(1)(a) of the *Insurance Act 1973* before the commencement of this item; and
  - (b) the appointment had not ended immediately before the commencement.
- (2) After that commencement of this item, the appointment has effect as if the appointment had been made under paragraph 39(1)(a) of the *Insurance Act 1973* as amended by this Schedule.
- (3) To avoid doubt, the person is the principal auditor of the general insurer for the purposes of the *Insurance Act 1973*.

### 93 Application—powers and functions of a judicial manager

Subsection 62T(1) of the *Insurance Act 1973*, as amended by this Schedule, applies whether the order referred to in subsection 62T(1) was made before, on, or after the commencement of this item.

## **Schedule 3—Amendment of the Life Insurance Act 1995**

### **Part 1—Amendments**

#### **1 Paragraph 3(2)(d)**

Omit “policyholders”, substitute “policy owners”.

#### **2 After subsection 20(2)**

Insert:

(2A) APRA may, by legislative instrument, set criteria for the registration of a company under this Act.

#### **3 At the end of Part 3**

Add:

#### **28 Continuation of effect of company’s registration**

If APRA cancels a company’s registration by a notice under subsection 26(2) or 27(1), the notice may state that the registration continues in effect in relation to a specified matter or specified period, as though the cancellation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations that is administered by APRA; or
- (b) a specified provision of another law of the Commonwealth that is administered by APRA;

and the statement has effect accordingly.

#### **4 After subsection 28A(2)**

Insert:

(2A) APRA may, by legislative instrument, set criteria for the registration of a body corporate under this section.

#### **5 At the end of Division 2 of Part 3**

Add:

## **28E Continuation of body corporate's NOHC registration**

If APRA revokes a body corporate's NOHC registration by a notice under subsection 28C(4) or 28D(2), the notice may state that the registration continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

- (a) a specified provision of this Act or the regulations that is administered by APRA; or
  - (b) a specified provision of another law of the Commonwealth that is administered by APRA;
- and the statement has effect accordingly.

## **6 Subsection 38(4)**

Omit "regulations", substitute "prudential standards".

## **7 Section 44**

Repeal the section.

## **8 Subsection 74(2)**

Omit "98 and 98A", substitute "88B, 98, 98A and 98B".

## **9 After section 76**

Insert:

## **76A Keeping records**

*Records must be kept in Australia etc.*

- (1) A life company must keep any records that the company is required to keep under section 75 or 76, or under section 286 of the *Corporations Act 2001*:
  - (a) in writing:
    - (i) in the English language; or
    - (ii) in a form in which the records are readily accessible and readily convertible into writing in the English language; and
  - (b) either:
    - (i) in Australia; or

(ii) if APRA gives written approval and the company meets the conditions (if any) specified in the approval—in another country specified in the approval.

(2) APRA’s approval may be given subject to specified conditions.

*Notification of address where records are kept*

(3) A life company must notify APRA, in the approved form, of the address where the company’s records are kept:

- (a) if, immediately before the commencement of this section, the company is registered under this Act—within 28 days after that commencement; or
- (b) otherwise—within 28 days after the company is registered under this Act.

(4) If:

- (a) a life company has notified APRA of the address where the company’s records are kept; and
- (b) the company moves the financial records to a new address; the company must notify APRA, in the approved form, of the new address where the records are kept.

(5) The notification must be given within 28 days after the day on which the records are moved to the new address.

*Offence*

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

Penalty: 200 penalty units.

**10 Subsection 80(3)**

Omit “the auditor”, substitute “the principal auditor”.

**11 Section 83**

Repeal the section, substitute:

### 83 Requirement for life company to have an auditor

- (1) A life company must have an auditor appointed by the life company (the *principal auditor*) to perform the functions of an auditor set out in the prudential standards.
- (2) Within 6 weeks after a person stops being the principal auditor of a life company, the life company must appoint another person to be the principal auditor.
- (3) The principal auditor must perform the functions of an auditor set out in:
  - (a) the prudential standards; and
  - (b) the reporting standards determined by APRA under the *Financial Sector (Collection of Data) Act 2001*.

#### 83A Additional auditors

- (1) APRA may, by written notice, require a life company to appoint a person who is specified in the notice to be an auditor for a purpose that is specified in the notice.

Example: APRA may require a life company to appoint an auditor who has specialist qualifications or experience to perform a special purpose audit.
- (2) The specified person may be:
  - (a) the principal auditor; or
  - (b) another auditor.

#### 83B Compliance with prudential standards

An auditor appointed by a life company must comply with the prudential standards in performing his or her duties or exercising his or her powers.

### 12 Section 84

Omit “the auditor of the life company”, substitute “an auditor of the life company”.

### 13 Paragraph 84(a)

Omit “the auditor of a”, substitute “an auditor of a”.

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**14 Subsection 85(1)**

Omit “as auditor”, substitute “as an auditor”.

**15 Paragraph 85(1)(a)**

Omit “the auditor”, substitute “an auditor”.

**16 Paragraph 85(2)(a)**

Omit “as auditor”, substitute “as an auditor”.

**17 Paragraph 85(2)(b)**

Omit “the auditor”, substitute “an auditor”.

**18 Subsection 85(2)**

Omit “to be the auditor”, substitute “to be an auditor”.

**19 After section 85**

Insert:

**86 Life company must enable auditors**

A life company must make any arrangements that are necessary to enable an auditor to perform the auditor’s functions or exercise the auditor’s powers.

**20 Subsection 87(1)**

Omit “its auditor”, substitute “an auditor of the company”.

**21 Subsections 87(3) and (4)**

Omit “the auditor”, substitute “the principal auditor”.

**22 Subsection 88(1)**

Omit “The auditor”, substitute “An auditor”.

**23 Subsection 88(2)**

Omit “If the auditor”, substitute “If an auditor”.

**24 Subsection 88(2A)**

Omit “apply to the auditor”, substitute “apply to an auditor”.

**25 Paragraphs 88(2B)(c), (3)(a) and (4)(b)**

Omit “the auditor of”, substitute “an auditor of”.

**26 Subsection 88(4)**

Omit “still the auditor”, substitute “still an auditor”.

**27 After section 88A**

Insert:

**88B Duty of auditor to give information when required**

- (1) APRA may, by written notice given to a person who is, or was, an auditor of a life company, require the person:
  - (a) to give APRA information about the life company; or
  - (b) to produce books, accounts or documents about the life company;if APRA considers that the giving of the information, or the production of the books, accounts or documents, will assist APRA in performing APRA’s functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.
- (2) The person must comply with the notice and, in doing so, must not give APRA information that is false or misleading.
- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 6 months or 100 penalty units, or both.
- (4) A person commits an offence if the person contravenes subsection (2).

Penalty: 60 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

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

**28 Subsection 89(1)**

Omit “the auditor”, substitute “an auditor”.

**29 At the end of Division 2 of Part 6**

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Add:

**90 Auditor must notify APRA of attempts to unduly influence etc. the auditor**

- (1) If an auditor of a life company or registered NOHC is aware of circumstances that amount to:
- (a) an attempt by any person to unduly influence, coerce, manipulate or mislead the auditor in connection with the performance of the auditor's functions or duties; or
  - (b) an attempt by any person to otherwise interfere with the performance of the auditor's functions or duties;
- the auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.
- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

**91 Giving auditor false or misleading information**

*Offence—person knows the information is false or misleading etc.*

- (1) A person commits an offence if:
- (a) the person is an employee or officer of a life company or registered NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the life company or registered NOHC; and
  - (c) the information relates to the affairs of the life company or registered NOHC; and
  - (d) the person knows that the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

*Offence—person fails to ensure the information is not false or misleading etc.*

- (2) A person commits an offence if:
- (a) the person is an employee or officer of a life company or registered NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the life company or registered NOHC; and
  - (c) the information relates to the affairs of the life company or registered NOHC; and
  - (d) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect; and
  - (e) the person did not take reasonable steps to ensure that the information:
    - (i) was not false or misleading in a material particular; or
    - (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

*Determining whether information is false or misleading*

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

### **30 After section 98A**

Insert:

### **98B Duty of appointed actuary to give information when required**

- (1) APRA may, by written notice given to a person who is, or was, the appointed actuary of a life company, require the person:
- (a) to give APRA information about the life company; or
  - (b) to produce books, accounts or documents about the life company;

if APRA considers that the giving of the information, or the production of the books, accounts or documents, will assist APRA in performing APRA's functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.

(2) The person must comply with the notice and, in doing so, must not give APRA information that is false or misleading.

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

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

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

Penalty: 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

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

### **31 Subsection 124(1)**

Repeal the subsection, substitute:

(1) The owner of a policy issued by a life company is entitled to be provided by the company with a copy of a reporting document (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) relating to the company, or part of that document, if:

(a) a reporting standard determined under section 13 of that Act specifies that a copy of that document, or part of that document, is to be provided under this section on the request of an owner of the policy; and

(b) the owner of the policy requests a copy of that document or part of that document.

Note: The heading to section 124 is altered by omitting “**annual financial statements and annual return**” and substituting “**reporting documents**”.

### **32 Paragraph 125(1)(b)**

Omit “the auditor”, substitute “an auditor”.

### **33 Paragraph 125A(1)(a)**

Omit “the auditor”, substitute “an auditor”.

**34 Subsection 126(1) (subparagraph (a)(iii) of the definition of officer)**

Omit “the auditor”, substitute “an auditor”.

**35 Subsection 126(1) (paragraph (c) of the definition of relevant person)**

Omit “the auditor”, substitute “an auditor”.

**36 Paragraph 132A(3)(a)**

Omit “the auditor or appointed actuary”, substitute “an auditor or the appointed actuary”.

**37 Subsection 132A(3) (note 1)**

Omit “and 98”, substitute “, 88B, 98 and 98B”.

**38 Paragraph 132A(7)(a)**

Omit “the auditor”, substitute “an auditor”.

**39 Subsection 132A(7) (note 1)**

Omit “and 98”, substitute “, 88B, 98 and 98B”.

**40 At the end of section 137**

Add:

- (3) To avoid doubt, this section applies to a life company that is, or becomes, an externally-administered body corporate (within the meaning of the *Corporations Act 2001*) in the same way as the section applies to any other life company.

**41 Subparagraphs 156A(2)(a)(ii) and 156E(1)(b)(i) and (c)(i)**

Omit “the body’s auditor”, substitute “an auditor of the body,”.

**42 At the end of section 163**

Add:

- (3) However, APRA is entitled to be heard in proceedings before the Court for the cancellation of the appointment.

**43 At the end of subsection 165(1)**

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Add:

- ; and (e) the judicial manager has the powers and functions of the members of the board of directors of the company (collectively and individually), including the board's powers of delegation.

#### **44 After paragraph 175(2)(a)**

Insert:

- (aa) to transfer the business, or part of the business, of the company to another company under section 25 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*;

#### **45 Subsection 179C(1)**

Repeal the subsection, substitute:

- (1) This section applies if a person, other than APRA, wants to apply to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a life company.
- (1A) The person must give the following documents to APRA before the person makes the application:
  - (a) a copy of the application;
  - (b) a copy of all the documents that will be filed in support of the application.

#### **46 Subsection 179C(3)**

Repeal the subsection.

#### **47 Paragraph 179C(4)(b)**

Repeal the paragraph, substitute:

- (b) the person did not give the following documents to APRA before the person made the application:
  - (i) a copy of the application;
  - (ii) a copy of all the documents that will be filed in support of the application.

#### **48 Paragraphs 209(5)(a) and (b)**

Omit "policy-owner", substitute "policy owner".

#### 49 After subsection 230A(1)

Insert:

- (1A) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may provide for matters relating to:
- (a) the appointment of auditors; or
  - (b) the conduct of audits.

#### 50 After subsection 230A(12B)

Insert:

- (12C) A standard may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:
- (a) section 46AA of the *Acts Interpretation Act 1901*; and
  - (b) section 14 of the *Legislative Instruments Act 2003*.

#### 51 Before section 230B

Insert:

### Subdivision A—Recapitalisation directions

#### 230AA Who this Subdivision applies to

This Subdivision applies to a life company that:

- (a) is a company that:
  - (i) is registered under the *Corporations Act 2001*; and
  - (ii) has a share capital; and
- (b) does not have a judicial manager.

#### 230AB Recapitalisation direction by APRA

- (1) APRA may give a life company a direction (a *recapitalisation direction*) that requires the company to increase the company's level of capital to the level specified in the direction, if:
- (a) the company informs APRA that:
    - (i) the company considers that the company is likely to become unable to meet the company's obligations; or

- (ii) the company is about to suspend payment; or
  - (b) APRA considers that:
    - (i) the company may become unable to meet the company's obligations; or
    - (ii) the company may suspend payment; or
    - (iii) it is likely that the company will be unable to carry on insurance business in Australia consistently with the interests of the company's policy owners; or
    - (iv) it is likely that the company will be unable to carry on insurance business in Australia consistently with the stability of the financial system in Australia; or
  - (c) the company:
    - (i) becomes unable to meet the company's obligations; or
    - (ii) suspends payment.
- (2) In deciding whether to give a recapitalisation direction, APRA must consult with the Australian Competition and Consumer Commission (the *ACCC*), unless the *ACCC* notifies APRA, in writing, that the *ACCC* does not wish to be consulted about:
- (a) the direction; or
  - (b) a class of directions that includes the direction.
- (3) A recapitalisation direction is not a legislative instrument.

### **230AC Additional contents of a recapitalisation direction**

- (1) A recapitalisation direction may direct a life company to issue:
- (a) shares, or rights to acquire shares, in the company; or
  - (b) other capital instruments of a kind specified in the direction.
- (2) A direction for the purposes of paragraph (1)(a) may specify that the shares or rights must:
- (a) be of a kind specified in the direction; or
  - (b) have the characteristics specified in the direction.
- (3) A direction for the purposes of paragraph (1)(b):
- (a) must not specify a kind of capital instrument unless that kind of capital instrument is specified in the regulations; and
  - (b) may specify that the capital instruments must have the characteristics specified in the direction.

### **230AD Compliance with a recapitalisation direction**

*Giving members of the life company notice of share issue etc.*

- (1) As soon as practicable after a life company issues shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction, the company must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the company just before the issue.
- (2) The notice must:
  - (a) identify the issue; and
  - (b) explain the effect of the issue of the shares, rights to acquire shares, or other capital instruments on the members' interests.

*Issue of shares etc. despite other laws etc.*

- (3) A life company may issue shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction despite:
  - (a) the *Corporations Act 2001*; and
  - (b) the company's constitution; and
  - (c) any contract or arrangement to which the company is a party; and
  - (d) any listing rules (as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section) in whose official list the company is included.

### **230AE APRA must obtain expert's report on the fair value of shares etc.**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a life company to issue shares, or rights to acquire shares, in the company, unless APRA is satisfied that compliance with the section would detrimentally affect:
  - (a) the policy owners of the company; or
  - (b) the stability of the financial system in Australia.
- (2) APRA must:

- (a) obtain a report on the fair value of the shares, or rights to acquire shares, in the company from an expert who is not an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
  - (b) consider the report.
- (3) The report must set out:
- (a) the amount that is, in the expert's opinion, the fair value for each of those shares or rights; and
  - (b) the reasons for forming the opinion; and
  - (c) any relationship between the expert and:
    - (i) the company; or
    - (ii) a person who is an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*;including any circumstances in which the expert gives the company or person advice, or acts on behalf of the company or person, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with the company or person; and
  - (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on.

### **230AF Determination of the fair value of shares by an expert**

- (1) In determining the fair value for each share in a life company for the purposes of paragraph 230AE(3)(a), the expert must:
- (a) first, assess the value of the company as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the company; and
  - (b) then, allocate that value among the classes of shares in the company that:
    - (i) have been issued; or
    - (ii) APRA proposes to direct be issued (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
  - (c) then, allocate the value of each class pro rata among the shares in that class that:
    - (i) have been issued; or

- (ii) APRA proposes to direct be issued (without allowing a premium or applying a discount for particular shares in that class).
- (2) The Minister may give the expert written notice of assumptions for the valuation of the company.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

**230AG Determination of the fair value of rights by an expert**

- (1) In determining the fair value for each right to acquire shares in a life company for the purposes of paragraph 230AE(3)(a), the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of that right.
- (2) The Minister may give the expert written notice of assumptions for the valuation of such rights.
- (3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.
- (4) A notice given under subsection (2) or (3) is not a legislative instrument.

**230AH Ascertaining the fair value of other capital instruments**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a life company to issue capital instruments other than shares, or rights to acquire shares, in the company.
- (2) APRA must comply with any requirements of the regulations relating to ascertaining the fair value of the capital instruments.
- (3) Regulations made for the purposes of this section may specify different requirements in relation to different kinds of capital instruments.

**230AI Contravention of certain provisions does not affect the validity of recapitalisation direction etc.**

A contravention of:

- (a) section 230AE or subsection 230AF(1) or 230AG(1); or
- (b) subsection 230AH(1) or regulations made for the purposes of that subsection;

does not affect the validity of a recapitalisation direction or anything done in compliance with the direction.

**230AJ Recapitalisation direction not grounds for denial of obligations**

- (1) This section applies if a life company is party to a contract, whether the proper law of the contract is:
  - (a) Australian law, including the law of a State or Territory; or
  - (b) law of a foreign country, including the law of part of a foreign country.
- (2) The fact that the company is subject to a recapitalisation direction does not allow the contract, or a party to the contract, other than the company, to do any of the following:
  - (a) deny any obligation under the contract;
  - (b) accelerate any debt under the contract;
  - (c) close out any transaction relating to the contract.

**230AK Supply of information about issue and revocation of recapitalisation directions**

*Power to publish notice of recapitalisation directions in Gazette*

- (1) APRA may publish in the *Gazette* notice of a recapitalisation direction.
- (2) The notice must include:
  - (a) the name of the life company that is given the direction; and
  - (b) a summary of the direction.

*Requirement to publish notice of revocation of certain recapitalisation directions in Gazette*

- (3) If APRA publishes notice of a recapitalisation direction and later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation.
- (4) Failure to publish notice of the revocation does not affect the validity of the revocation.

*Requirement to provide information about recapitalisation direction to Minister and Reserve Bank*

- (5) If the Minister or the Reserve Bank requests APRA to provide information about:
  - (a) any recapitalisation directions in respect of a particular life company; or
  - (b) any recapitalisation directions made during a specified period in respect of any life companies;APRA must comply with the request.

*Power to inform Minister and Reserve Bank of recapitalisation direction*

- (6) APRA may provide any information that APRA considers appropriate to the Minister or the Reserve Bank about any recapitalisation directions, or revocations of recapitalisation directions, in respect of any life company, at any time.

*Requirement to inform Minister and Reserve Bank of revocation of recapitalisation direction if informed of making of direction*

- (7) If APRA:
  - (a) provides the Minister or the Reserve Bank with information about a recapitalisation direction; and
  - (b) later revokes the direction;APRA must notify that person of the revocation of the direction as soon as practicable after the revocation.
- (8) Failure to notify the person does not affect the validity of the revocation.

*Secrecy requirements*

- (9) Information relating to recapitalisation directions and revocations of recapitalisation directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette*.

**230AL Non-compliance with a recapitalisation direction**

- (1) A life company commits an offence if:
- (a) the company does, or refuses or fails to do, an act; and
  - (b) doing, or refusing or failing to do, the act results in a contravention of a recapitalisation direction given to the company.

Penalty: 50 penalty units.

- (2) However, subsection (1) does not apply if:
- (a) the company made reasonable efforts to comply with the recapitalisation direction; and
  - (b) the company's contravention is due to circumstances beyond the company's control.

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

- (3) If a life company does, or refuses or fails to do, an act in circumstances that give rise to the company committing an offence against subsection (1), the company commits an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the company committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (4) An officer of a life company commits an offence if:
- (a) the officer refuses or fails to take reasonable steps to ensure that the company complies with a recapitalisation direction given to the company; and

- (b) the officer's duties include ensuring that the company complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

- (5) If an officer of a life company refuses or fails to take reasonable steps to ensure that the company complies with a recapitalisation direction given to the company in circumstances that give rise to the officer committing an offence against subsection (4), the officer commits an offence against that subsection in respect of:
  - (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (6) In this section, **officer** has the meaning given by section 9 of the *Corporations Act 2001*.

### **230AM Exceptions to Part IV of the *Trade Practices Act 1974***

For the purposes of subsection 51(1) of the *Trade Practices Act 1974*, the following things are specified and specifically authorised:

- (a) the acquisition of shares in a life company as a direct result of:
  - (i) the issue of the shares in compliance with a recapitalisation direction given to the company; or
  - (ii) the exercise of a right to acquire shares that was issued in compliance with such a recapitalisation direction;
- (b) the acquisition of other capital instruments as a direct result of the issue of the other capital instruments in compliance with a recapitalisation direction given to a life company.

### **Subdivision B—Other directions**

#### **52 Section 230AM**

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Omit “*Trade Practices Act 1974*”, substitute “*Competition and Consumer Act 2010*”.

Note: The heading to section 230AM is altered by omitting “*Trade Practices Act 1974*” and substituting “*Competition and Consumer Act 2010*”.

**53 Subsection 230B(1)**

Before “APRA may give”, insert “Without limiting subsection (1AA),”.

**54 Paragraph 230B(1)(g)**

Omit “sudden”.

**55 After subsection 230B(1)**

Insert:

(1AA) Without limiting subsection (1), APRA may give a body corporate that is a life company or is a registered NOHC a direction of a kind specified in subsection (2) if:

(a) APRA has reason to believe that:

- (i) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary’s liabilities; or
- (ii) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or
- (iii) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or
- (iv) a subsidiary of the body corporate is conducting the subsidiary’s affairs in an improper or financially unsound way; or
- (v) a subsidiary of the body corporate is conducting the subsidiary’s affairs in a way that may cause or promote instability in the Australian financial system; and

(b) APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.

**56 Paragraph 230B(1A)(b)**

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

**57 Subsection 236(1) (after paragraph (n) of the definition of *reviewable decision*)**

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Insert:

- (o) a refusal to give an approval under paragraph 76A(1)(b);
- (p) a decision to give an approval under paragraph 76A(1)(b) subject to conditions;

## **58 After section 245B**

Insert:

### **245C Privilege against exposure to penalty—disqualification under section 245A**

#### *Proceedings*

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:
  - (a) to answer a question or give information; or
  - (b) to produce books, accounts or other documents; or
  - (c) to do any other act;on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 245A.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

#### *Statutory requirements*

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:
  - (a) to answer a question or give information; or
  - (b) to produce books, accounts or other documents; or
  - (c) to do any other act;on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 245A.

*Admissibility*

- (4) Subsection 156F(2) does not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 245A.

*Other provisions*

- (5) Subsections (1) and (3) of this section have effect despite anything in:
- (a) any other provision of this Act; or
  - (b) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

- (6) In this section:

*penalty* includes forfeiture.

**59 Dictionary in the Schedule**

Insert:

*approved form* means a form approved, in writing, by APRA.

**60 Dictionary in the Schedule**

Insert:

*principal auditor*, of a life company, means an auditor appointed by the life company under subsection 83(1).

**61 Dictionary in the Schedule**

Insert:

*recapitalisation direction* means a direction given by APRA under subsection 230AB(1).

## Part 2—Saving and application provisions

### 62 Saving—appointment as an auditor of a life company

- (1) This item applies if:
  - (a) a person was appointed as the auditor of a life company under subsection 83(1) of the *Life Insurance Act 1995* before the commencement of this item; and
  - (b) the appointment had not ended immediately before the commencement.
- (2) After the commencement of this item, the appointment has effect as if the appointment had been made under subsection 83(1) of the *Life Insurance Act 1995* as in force after the commencement.
- (3) To avoid doubt, the person is the principal auditor of the life company for the purposes of the *Life Insurance Act 1995*.

### 63 Application—powers and functions of a judicial manager

Subsection 165(1) of the *Life Insurance Act 1995*, as amended by this Schedule, applies whether the order referred to in subsection 165(1) was made before, on, or after the commencement of this item.

## **Schedule 4—Amendment of other Acts**

### **Part 1—Amendments**

#### ***Australian Prudential Regulation Authority Act 1998***

##### **1 Subsection 56(1) (paragraphs (a) to (cc) of the definitions of *protected document* and *protected information*)**

Repeal the paragraphs, substitute:

- (a) a financial sector entity; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity;

##### **2 After paragraph 59(2)(b)**

Insert:

- (ba) a statement of the number of times during the year that APRA determined, under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001*, a reporting standard that is not a legislative instrument;

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

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

Omit “Treasurer”, substitute “trustee”.

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

##### **4 Subparagraph 25(1C)(a)(iii)**

Repeal the subparagraph, substitute:

- (iii) a judicial manager of the transferring body has recommended, under subsection 175(2) of the *Life Insurance Act 1995*, that the business or part of the business of the body be transferred to another company; and

## 5 After subsection 25(1C)

Insert:

### *Transfer of unregulated business from life insurance company*

- (1D) APRA may make a written determination that there is to be a transfer of only the business that is not regulated business from a life insurance company to a body corporate that is not an insurance company or life insurance company if, and only if:
  - (a) APRA is satisfied that:
    - (i) the transferring body has contravened the *Life Insurance Act 1995*, any regulations or other instruments made under that Act or conditions imposed under that Act; or
    - (ii) APRA has given the transferring body a written notice under subsection 139(1) of the *Life Insurance Act 1995* stating that APRA proposes to investigate life insurance business of the body; or
    - (iii) a judicial manager of the transferring body has recommended, under subsection 175(2) of the *Life Insurance Act 1995*, that the business or part of the business of the body be transferred to another company; or
    - (iv) APRA has made a determination under subsection (1C) for the transfer of some or all of the transferring body's regulated business to another life insurance company (whether or not the transfer has yet happened); and
  - (b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to those interests, it would be appropriate for the transfer to be made; and
  - (c) the conditions in subsection (2) exist.

*Transfer of business from general insurer*

- (1E) APRA may make a written determination that there is to be a transfer of business from one general insurer to another general insurer, other than a transfer only of business of the transferring body that is not regulated business, if, and only if:
- (a) APRA is satisfied that:
    - (i) the transferring body has contravened the *Insurance Act 1973*, any regulations or other instruments made under that Act or conditions imposed under that Act; or
    - (ii) APRA has served on the transferring body a written notice under subsection 52(4) of the *Insurance Act 1973* specifying matters into which an investigation under section 52 of that Act is to be made; or
    - (iii) a judicial manager of the transferring body has recommended, under section 62ZI of the *Insurance Act 1973*, that the body's business be transferred to another general insurer; and
  - (b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to those interests, it would be appropriate for the transfer to be made; and
  - (c) APRA is satisfied that the transfer is appropriate, having regard to the interests of policy owners of the receiving body when viewed as a group; and
  - (d) the conditions in subsection (2) exist.

*Transfer of unregulated business from general insurer*

- (1F) APRA may make a written determination that there is to be a transfer of only the business that is not regulated business from a general insurer to a body corporate that is not an insurance company or life insurance company if, and only if:
- (a) APRA is satisfied that:
    - (i) the transferring body has contravened the *Insurance Act 1973*, any regulations or other instruments made under that Act or conditions imposed under that Act; or
    - (ii) APRA has served on the transferring body a written notice under subsection 52(4) of the *Insurance Act 1973* specifying matters into which an investigation under section 52 of that Act is to be made; or

- (iii) a judicial manager of the transferring body has recommended, under section 62ZI of the *Insurance Act 1973*, that the body's business be transferred to another general insurer; or
- (iv) APRA has made a determination under subsection (1E) for the transfer of some or all of the transferring body's regulated business to another general insurer (whether or not the transfer has yet happened); and
- (b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to those interests, it would be appropriate for the transfer to be made; and
- (c) the conditions in subsection (2) exist.

**6 Subsection 36C(4) (paragraph (b) of the definition of prudential requirements)**

Omit "section 360A", substitute "section 230A".

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

**7 Subsection 3(1)**

Repeal the subsection, substitute:

- (1) The object of this Act is to enable the Australian Prudential Regulation Authority (*APRA*) to collect information in order to assist:
  - (a) APRA in the prudential regulation or monitoring of bodies in the financial sector; and
  - (b) another financial sector agency to perform its functions or exercise its powers; and
  - (c) the Minister to formulate financial policy.

**8 At the end of subsection 5(2)**

Add:

- ; or (e) a person who:
  - (i) provides a financial service (within the meaning of section 766A of the *Corporations Act 2001*); and
  - (ii) is not an entity, corporation or fund referred to in paragraphs (a) to (d) of this subsection; or

- (f) a person who:
  - (i) is a participant in a payment system (within the meaning of section 7 of the *Payment Systems (Regulation) Act 1998*); and
  - (ii) is not an entity, corporation or fund referred to in paragraphs (a) to (d) of this subsection.

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

Add:

- (7) Despite subsection (2), the Reserve Bank is not a *financial sector entity*.

## **10 Paragraph 13(1)(a)**

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

Note: The heading to section 13 is replaced by “**Determination of reporting standards for, and the provision of, certain documents**”.

## **11 Paragraph 13(1)(a)**

After “financial sector entities”, insert “of a kind referred to in paragraphs 5(2)(a) to (d)”.

## **12 Paragraph 13(1)(b)**

After “standards”, insert “that are legislative instruments”.

## **13 After subsection 13(1)**

Insert:

- (1A) A reporting standard is a legislative instrument, unless:
  - (a) APRA considers, on reasonable grounds, that the reporting standard includes confidential information, the publication of which is likely to have a detrimental effect on:
    - (i) the stability of the financial system; or
    - (ii) the stability of one or more financial institutions; and
  - (b) APRA considers, on reasonable grounds, that the information to be contained in the reporting documents is required urgently by APRA for any of the following purposes:
    - (i) to determine the financial or prudential condition of financial sector entities;

- (ii) to determine the nature or level of exposure that financial sector entities have to risks, including risks relating to particular transactions, entities, business sectors, asset classes or events;
  - (iii) to assess potential threats to the stability of the financial system;
  - (iv) to assist APRA, the Minister or a financial sector agency to respond to any threats to the stability of the financial system;
  - (v) to determine what, if any, action should be taken by, or in relation to, one or more financial sector entities; and
- (c) the reporting standard does not require the information referred to in paragraph (b) to be given on an ongoing basis.
- (1B) If the Minister directs APRA under section 13C to determine reporting standards under this subsection in relation to a financial sector entity or financial sector entities, APRA must:
- (a) by legislative instrument, determine reporting standards that are required to be complied with by the financial sector entity or entities with respect to any of the following documents (*reporting documents*):
    - (i) statements, reports, returns, certificates or other documents containing information of a financial or accounting nature relating to the business or activities of the entities;
    - (ii) surveys, reports, returns, certificates or other documents containing other information relating to the business or activities of the entities; and
  - (b) publish those reporting standards in any way that APRA considers appropriate.

Note: When APRA has determined a reporting standard, APRA has power at any time to revoke or vary the standard (see subsection 33(3) of the *Acts Interpretation Act 1901*).

#### **14 After paragraph 13(2)(b)**

Insert:

- (bb) the auditing of reporting documents; and

#### **15 After subsection 13(2)**

Insert:

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- (2A) Without limiting the matters that may be included in the reporting standards under paragraph (2)(b), the matters may relate to information (including personal information or tax file numbers, for example) that APRA requires to perform APRA's functions under:
- (a) Division 2AA of Part II of the *Banking Act 1959*; or
  - (b) Part VC of the *Insurance Act 1973*.

#### **16 Subsection 13(6)**

Repeal the subsection, substitute:

- (6) However, subsection (5) does not apply if APRA is satisfied that the delay that would be involved in holding the consultations would:
- (a) prejudice the interests of depositors, policy holders or members of the financial sector entity or financial sector entities concerned; or
  - (b) have a detrimental effect on the stability of the financial system.

#### **17 After section 13**

Insert:

#### **13A Copy of reporting standard to be given to financial sector entities and the Minister etc.**

- (1) If a reporting standard determined under subsection 13(1) is not a legislative instrument, APRA must, as soon as practicable after the reporting standard is determined, give a copy of the standard to:
- (a) each financial sector entity that is required to comply with the standard; and
  - (b) the Minister.
- (2) At the same time that a copy of the reporting standard is given to a financial sector entity under subsection (1), APRA must give the financial sector entity a written statement that explains the effect of section 13B.

**13B Financial sector entity must not disclose that it has been given a copy of a reporting standard etc.**

- (1) If APRA gives a financial sector entity a copy of a reporting standard under subsection 13A(1), the financial sector entity must not disclose to any person:
- (a) that the financial sector entity has been given a copy of the reporting standard; or
  - (b) any confidential information that is included in the reporting standard.

Penalty: Imprisonment for 2 years.

- (2) However, subsection (1) does not apply if:
- (a) the disclosure is to:
    - (i) APRA for the purposes of APRA performing APRA's functions under this Act or any other law of the Commonwealth; or
    - (ii) an employee, officer or contractor of the financial sector entity for the purposes of the employee, officer or contractor performing his or her duties in relation to reporting standards; or
    - (iii) to a lawyer for the financial sector entity; or
  - (b) the disclosure is authorised under an Act or another law; or
  - (c) the confidential information included in the reporting standard has already been lawfully made available to the public from other sources.

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

**13C Minister may direct APRA to determine reporting standards**

- (1) The Minister may, in writing, direct APRA to determine reporting standards under subsection 13(1B) that are to be complied with by any of the following:
- (a) financial sector entities of a kind referred to in paragraph 5(2)(e), or a class of those entities;
  - (b) financial sector entities of a kind referred to in paragraph 5(2)(f), or a class of those entities;

- (c) a particular financial sector entity of a kind referred to in paragraph 5(2)(e) or (f), or particular financial sector entities of that kind.
- (2) A direction under subsection (1) is not a legislative instrument.
- (3) This section does not limit the power of APRA to determine reporting standards under subsection 13(1).

### **18 Subsection 16(1)**

Repeal the subsection, substitute:

- (1) APRA may, by written notice, exempt a financial sector entity from the requirement to comply with:
  - (a) all the requirements contained in any one or more applicable reporting standards; or
  - (b) a specified requirement or requirements contained in an applicable reporting standard or applicable reporting standards.
- (1A) A notice under subsection (1) is not a legislative instrument.
- (1B) APRA may, by legislative instrument, exempt a class or kind of financial sector entities from the requirement to comply with:
  - (a) all the requirements contained in any one or more applicable reporting standards; or
  - (b) a specified requirement or requirements contained in an applicable reporting standard or applicable reporting standards.

### **19 Subsection 16(2)**

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

### **20 After Division 2 of Part 3**

Insert:

## **Division 2A—Auditing of documents**

### **17A Application of this Division**

- (1) This Division applies if a financial sector entity is required to appoint an auditor under reporting standards that relate to the collection of information that APRA requires:
  - (a) to perform APRA's functions under:
    - (i) Division 2AA of Part II of the *Banking Act 1959*; or
    - (ii) Part VC of the *Insurance Act 1973*; or
  - (b) to assist a financial sector agency to perform its functions or exercise its powers.
- (2) Also, this Division applies if a financial sector entity is required to appoint an auditor under reporting standards that APRA issued on the direction of the Minister.

### **17B Auditor's functions and duties**

- (1) The auditor must perform the functions and duties of an auditor that are set out in the reporting standards.
- (2) The auditor must comply with the reporting standards in performing their functions and duties.
- (3) The financial sector entity must make any arrangements that are necessary to enable the auditor to perform their functions and duties.

### **17C Auditor must notify APRA of attempts to unduly influence etc. the auditor**

- (1) If the auditor is aware of circumstances that amount to:
  - (a) an attempt by any person to unduly influence, coerce, manipulate or mislead the auditor in connection with the performance of the auditor's functions or duties; or
  - (b) an attempt by any person to otherwise interfere with the performance of the auditor's functions or duties;the auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

- (2) The auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

### **17D Giving false or misleading information to auditor**

*Offence—person knows the information is false or misleading etc.*

- (1) A person commits an offence if:
- (a) the person is:
    - (i) a financial sector entity; or
    - (ii) an employee, officer or trustee of a financial sector entity; and
  - (b) the person gives information, or allows information to be given, to an auditor of the financial sector entity; and
  - (c) the information relates to the affairs of the financial sector entity; and
  - (d) the person knows that the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

*Offence—person fails to ensure the information is not false or misleading etc.*

- (2) A person commits an offence if:
- (a) the person is an employee or officer of a financial sector entity; and
  - (b) the person gives information, or allows information to be given, to an auditor of the financial sector entity; and
  - (c) the information relates to the affairs of the financial sector entity; and
  - (d) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect; and
  - (e) the person did not take reasonable steps to ensure that the information:

- (i) was not false or misleading in a material particular; or
- (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

*Determining whether information is false or misleading*

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

## **21 Before section 30**

Insert:

### **29A Delegation by Minister**

The Minister may, in writing, delegate all or any of his or her functions or powers under this Act to:

- (a) the Secretary of the Department; or
- (b) an SES employee, or acting SES employee, in the Department.

## **22 Section 31**

Insert:

*financial sector agency* means:

- (a) ASIC; or
- (b) the Reserve Bank; or
- (c) a Commonwealth, State or Territory authority prescribed by the regulations.

## **23 Section 31 (definition of *financial sector entity*)**

Omit “subsection 5(2)”, substitute “section 5”.

## **24 Section 31 (definition of *financial sector supervisory agency*)**

Repeal the definition.

**25 Section 31 (at the end of the definition of *reporting document*)**

Add “or 13(1B)(a)(i) or (ii)”.

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

**26 Items 274 and 275 of Schedule 1**

Repeal the items.

***Reserve Bank Act 1959***

**27 Section 86**

Omit “other than debts due to the Commonwealth”.

***Retirement Savings Accounts Act 1997***

**28 After section 67A**

Insert:

**67AA Privilege against exposure to penalty—disqualification under section 67**

*Proceedings*

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:
  - (a) to answer a question or give information; or
  - (b) to produce books; or
  - (c) to do any other act;on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 67.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

*Statutory requirements*

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:
- (a) to answer a question or give information; or
  - (b) to produce books; or
  - (c) to do any other act;
- on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 67.

*Admissibility*

- (4) Subsections 66B(2), 117(3) and 120(2) do not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 67.

*Other provisions*

- (5) Subsections (1) and (3) of this section have effect despite anything in:
- (a) any other provision of this Act; or
  - (b) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

- (6) In this section:

*penalty* includes forfeiture.

**29 At the end of Part 6**

Add:

**69 Auditor must notify the Regulator of attempts to unduly influence etc. the auditor etc.**

- (1) If an auditor of an RSA provider for the purposes of this Act is aware of circumstances that amount to:
- (a) an attempt, in relation to an audit of the RSA provider, by any person to unduly influence, coerce, manipulate or

mislead the auditor or a member of the audit team conducting the audit; or

- (b) an attempt by any person to otherwise interfere with the proper conduct of the audit;

the auditor must notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

## **70 Giving false or misleading information to auditor**

*Offence—person knows the information is false or misleading etc.*

- (1) A person commits an offence if:
  - (a) the person is an employee or officer of an RSA provider; and
  - (b) the person gives information, or allows information to be given, to an auditor of the RSA provider; and
  - (c) the information relates to the affairs of the RSA provider; and
  - (d) the person knows that the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

*Offence—person fails to ensure the information is not false or misleading etc.*

- (2) A person commits an offence if:
  - (a) the person is an employee or officer of an RSA provider; and
  - (b) the person gives information, or allows information to be given, to an auditor of the RSA provider; and
  - (c) the information relates to the affairs of the RSA provider; and
  - (d) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect; and

- (e) the person did not take reasonable steps to ensure that the information:
  - (i) was not false or misleading in a material particular; or
  - (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

*Determining whether information is false or misleading*

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

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

#### **30 Subsection 10(1) (after paragraph (do) of the definition of reviewable decision)**

Insert:

- (dp) a decision of the Regulator refusing to give an approval under paragraph 35A(2)(b); or
- (dq) a decision of the Regulator to give such an approval subject to conditions under subsection 35A(2A); or

#### **31 Paragraph 35A(2)(b)**

Repeal the paragraph, substitute:

- (b) the records are kept either:
  - (i) in any case—in Australia; or
  - (ii) in the case of a registrable superannuation entity—in another country if the Regulator gives written approval for the records to be kept in that country, and the conditions (if any) specified in the approval are met; and

Note: The following heading to subsection 35A(1) is inserted “*Accounting records must be kept etc.*”.

#### **32 After subsection 35A(2)**

Insert:

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- (2A) An approval given under paragraph (2)(b) may be given subject to specified conditions.

*Notification of address where accounting records are kept*

- (2B) A trustee of a superannuation entity that is a registrable superannuation entity must notify APRA, in the approved form, of the address where the entity's accounting records are kept:
- (a) if, immediately before the commencement of this subsection, the entity is registered under section 29M—within 28 days after that commencement; or
  - (b) otherwise—within 28 days after the entity is registered under that section.
- (2C) If:
- (a) a trustee of a superannuation entity has notified APRA of the address where the entity's accounting records are kept; and
  - (b) the entity moves the accounting records to a new address;
- a trustee of the entity must notify APRA, in the approved form, of the new address where the accounting records are kept.
- (2D) The notification must be given within 28 days after the day on which the accounting records are moved to the new address.

Note: The following heading to subsection 35A(3) is inserted "*Offences*".

**33 Subdivision C of Division 3 of Part 15 (heading)**

Repeal the heading, substitute:

**Subdivision C—Other matters relating to disqualification**

**34 At the end of Subdivision C of Division 3 of Part 15**

Add:

**126L Privilege against exposure to penalty—disqualification under section 126A, 126H or 130D**

*Proceedings*

- (1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:

- (a) to answer a question or give information; or
- (b) to produce books; or
- (c) to do any other act;

on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 126A, 126H or 130D.

- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

*Statutory requirements*

- (3) A person is not entitled to refuse or fail to comply with a requirement under this Act:

- (a) to answer a question or give information; or
- (b) to produce books; or
- (c) to do any other act;

on the ground that the answer or information, production of the books, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 126A, 126H or 130D.

*Admissibility*

- (4) Subsections 130B(2), 287(3), 290(2) and 336F(2) do not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 126A, 126H or 130D.

*Other provisions*

- (5) Subsections (1) and (3) of this section have effect despite anything in:
  - (a) section 199; or
  - (b) any other provision of this Act; or
  - (c) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

- (6) In this section:

**penalty** includes forfeiture.

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### **35 After section 130B**

Insert:

#### **130BA Auditor must notify the Regulator of attempts to unduly influence etc. the auditor etc.**

- (1) If an auditor of a superannuation entity is aware of circumstances that amount to:
- (a) an attempt, in relation to an audit of the superannuation entity, by any person to unduly influence, coerce, manipulate or mislead the auditor or a member of the audit team conducting the audit; or
  - (b) an attempt by any person to otherwise interfere with the proper conduct of the audit;
- the auditor must notify the Regulator in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.
- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

#### **130BB Giving false or misleading information to auditor**

*Offence—person knows the information is false or misleading etc.*

- (1) A person commits an offence if:
- (a) the person is:
    - (i) the trustee of a superannuation entity; or
    - (ii) a responsible officer of the trustee of a superannuation entity; or
    - (iii) an employee of the trustee of a superannuation entity; and
  - (b) the person gives information, or allows information to be given, to an auditor of the superannuation entity; and
  - (c) the information relates to the affairs of the superannuation entity; and
  - (d) the person knows that the information:
    - (i) is false or misleading in a material particular; or

- (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

*Offence—person fails to ensure the information is not false or misleading etc.*

- (2) A person commits an offence if:
  - (a) the person is:
    - (i) the trustee of a superannuation entity; or
    - (ii) a responsible officer of the trustee of a superannuation entity; or
    - (iii) an employee of the trustee of a superannuation entity; and
  - (b) the person gives information, or allows information to be given, to an auditor of the superannuation entity; and
  - (c) the information relates to the affairs of the superannuation entity; and
  - (d) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) is missing something that makes the information misleading in a material respect; and
  - (e) the person did not take reasonable steps to ensure that the information:
    - (i) was not false or misleading in a material particular; or
    - (ii) was not missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

*Determining whether information is false or misleading*

- (3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

### **36 At the end of section 263**

Add:

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- (3) To avoid doubt, this section applies to a superannuation entity, in the same way as this section applies to any other superannuation entity, if either of the following apply:
- (a) the superannuation entity is wound up, dissolved or terminated;
  - (b) the trustee of the superannuation entity is or becomes:
    - (i) if the trustee is a body corporate—an externally-administered body corporate (within the meaning of the *Corporations Act 2001*); or
    - (ii) if the trustee is an individual—insolvent under administration.

## Part 2—Saving provision

### 37 Saving—exemptions under subsection 16(1) of the *Financial Sector (Collection of Data) Act 2001*

(1) If:

- (a) APRA exempted a financial sector entity under subsection 16(1) of the *Financial Sector (Collection of Data) Act 2001* before the commencement of this item; and
- (b) the exemption was in force immediately before the commencement;

the exemption has effect, after that commencement, as if the exemption had been made under subsection 16(1) of that Act as inserted by this Schedule.

(2) If:

- (a) APRA exempted a class or kind of financial sector entities under subsection 16(1) of the *Financial Sector (Collection of Data) Act 2001* before the commencement of this item; and
- (b) the exemption was in force immediately before the commencement;

the exemption has effect, after that commencement, as if the exemption had been made under subsection 16(1B) of that Act as inserted by this Schedule.

## **Schedule 5—Amendments relating to levies**

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

**1 Paragraph 7(1A)(a)**

Omit “asset value”, substitute “levy base”.

**2 Subsection 7(1A) (note)**

Omit “asset value”, substitute “levy base”.

**3 Subsection 7(1B)**

Omit “asset value”, substitute “levy base”.

**4 Paragraph 7(3)(d)**

Omit “*asset value*”, substitute “*levy base*”.

**5 Subsection 7(4A)**

Repeal the subsection.

**6 Subsection 7(5)**

Omit “asset value” (wherever occurring), substitute “levy base”.

### ***First Home Saver Account Providers Supervisory Levy Imposition Act 2008***

**7 Paragraph 7(2)(a)**

Omit “asset value”, substitute “levy base”.

**8 Subsection 7(2) (note)**

Omit “asset value”, substitute “levy base”.

**9 Subsection 7(3)**

Omit “asset value”, substitute “levy base”.

**10 Paragraph 7(5)(e)**

Omit “*asset value*”, substitute “*levy base*”.

**11 Subsection 7(7)**

Omit “asset value”, substitute “levy base”.

**12 Subsection 7(8)**

Omit “asset value” (wherever occurring), substitute “levy base”.

***General Insurance Supervisory Levy Imposition Act 1998***

**13 Paragraph 8(1A)(a)**

Omit “asset value”, substitute “levy base”.

**14 Subsection 8(1A) (note)**

Omit “asset value”, substitute “levy base”.

**15 Subsection 8(1B)**

Omit “asset value”, substitute “levy base”.

**16 Paragraph 8(3)(d)**

Omit “*asset value*”, substitute “*levy base*”.

**17 Subsection 8(5)**

Omit “asset value” (wherever occurring), substitute “levy base”.

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

**18 Paragraph 7(1A)(a)**

Omit “asset value”, substitute “levy base”.

**19 Subsection 7(1A) (note)**

Omit “asset value”, substitute “levy base”.

**20 Subsection 7(1B)**

Omit “asset value”, substitute “levy base”.

**21 Paragraph 7(3)(d)**

Omit “*asset value*”, substitute “*levy base*”.

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**22 Subsection 7(4A)**

Repeal the subsection.

**23 Subsection 7(5)**

Omit “asset value” (wherever occurring), substitute “levy base”.

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

**24 Paragraph 7(1A)(a)**

Omit “asset value”, substitute “levy base”.

**25 Subsection 7(1A) (note)**

Omit “asset value”, substitute “levy base”.

**26 Subsection 7(1B)**

Omit “asset value”, substitute “levy base”.

**27 Paragraph 7(3)(d)**

Omit “*asset value*”, substitute “*levy base*”.

**28 Subsection 7(5)**

Omit “asset value” (wherever occurring), substitute “levy base”.

***Superannuation Supervisory Levy Imposition Act 1998***

**29 Subparagraph 7(1A)(a)(i)**

Omit “asset value”, substitute “levy base”.

**30 Subparagraph 7(1A)(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) if the superannuation entity was an unregulated entity, or was not in existence, on 30 June of the previous financial year—the entity’s levy base on the day when the entity became a superannuation entity; or

**31 Subsection 7(1A) (note)**

Omit “asset value”, substitute “levy base”.

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### 32 Subsection 7(1B)

Repeal the subsection, substitute:

- (1B) The *unrestricted levy component* for the financial year is the amount that, for the financial year, is the unrestricted levy percentage of:
- (a) if the superannuation entity was an unregulated entity, or was not in existence, on 30 June of the previous financial year—the entity’s levy base on the day when the entity became a superannuation entity; or
  - (b) otherwise—the superannuation entity’s levy base on 30 June of the previous financial year.

Note: The unrestricted levy percentage is as determined under subsection (3).

### 33 Paragraph 7(3)(d)

Omit “*asset value*”, substitute “*levy base*”.

## **Schedule 6—Technical amendments**

### **1 Amendment of Acts**

The specified provisions of the Acts listed in this Schedule are amended by omitting “Maximum Penalty” and substituting “Penalty”.

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

- 2 Subsection 7(1) (penalty)**
- 3 Subsection 8(1) (penalty)**
- 4 Subsection 9(6) (penalty)**
- 5 Subsection 10(3) (penalty)**
- 6 Subsection 11(3) (penalty)**
- 7 Subsection 11AA(5) (penalty)**
- 8 Subsections 11CG(1) and (2) (penalty)**
- 9 Subsection 11E(2) (penalty)**
- 10 Subsection 13(3) (penalty)**
- 11 Subsection 13A(4) (penalty)**
- 12 Subsection 13B(1A) (penalty)**
- 13 Subsection 14A(2A) (penalty)**
- 14 Subsection 16B(1A) (penalty)**
- 15 Subsection 33(4) (penalty)**
- 16 Subsections 36(1A) and (2A) (penalty)**
- 17 Subsection 41(2) (penalty)**

- 18 Subsections 42(1A) and (3) (penalty)**
- 19 Subsections 45(1A) and (4) (penalty)**
- 20 Subsection 46(2) (penalty)**
- 21 Subsection 51B(7) (penalty)**
- 22 Subsection 51D(3) (penalty)**
- 23 Subsection 61(3) (penalty)**
- 24 Subsection 62(1A) (penalty)**
- 25 Subsections 63(1) and (4) (penalty)**
- 26 Subsections 66(1) and (3) (penalty)**
- 27 Subsection 66A(1) (penalty)**
- 28 Subsections 67(1) and (3) (penalty)**
- 29 Subsections 69(3AA), (5A) and (7A) (penalty)**

*Insurance Act 1973*

- 30 Subsection 7A(1) (penalty)**
  - 31 Subsection 9(1) (penalty)**
  - 32 Subsections 10(1) and (2) (penalty)**
  - 33 Subsection 14(1) (penalty)**
  - 34 Subsection 17(8) (penalty)**
  - 35 Subsection 20(1) (penalty)**
  - 36 Subsection 27(7) (penalty)**
  - 37 Section 28 (penalty)**
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**38 Subsections 49(3) and (4) (penalty)**

**39 Subsections 49A(3) and (4) (penalty)**

**40 Subsections 49F(1) and (2) (penalty)**

**41 Subsection 49L(1) (penalty)**

**42 Subsection 49Q(2) (penalty)**

***Life Insurance Act 1995***

**43 Subsections 16E(1) and (7) (penalty)**

**44 Subsection 16L(4) (penalty)**

**45 Subsection 16Q(4) (penalty)**

**46 Subsection 16R(6) (penalty)**

**47 Subsection 16U(4) (penalty)**

**48 Subsection 16V(7) (penalty)**

**49 Subsection 180(4) (penalty)**

**50 Subsections 230F(1) and (3) (penalty)**

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

**51 Subsections 11B(3) and (4) (penalty)**

**52 Subsections 11C(2), (3) and (4) (penalty)**

**53 Subsections 64(3) and (3A) (penalty)**

**54 Subsection 103(3) (penalty)**

**55 Subsection 104(2) (penalty)**

**56 Subsection 104A(3) (penalty)**

- 57 Subsection 105(2) (penalty)**
  - 58 Subsections 107(3) and (4) (penalty)**
  - 59 Subsections 108(3) and (4) (penalty)**
  - 60 Subsection 122(2) (penalty)**
  - 61 Subsection 124(2) (penalty)**
  - 62 Subsections 131B(1) and (2) (penalty)**
  - 63 Subsections 141A(3) and (6) (penalty)**
  - 64 Subsections 154(2) and (2A) (penalty)**
  - 65 Subsections 252C(2) and (10) (penalty)**
  - 66 Subsections 254(4) and (5) (penalty)**
  - 67 Subsections 260(2) and (3) (penalty)**
  - 68 Subsections 262(1) and (2) (penalty)**
  - 69 Subsection 299C(3) (penalty)**
  - 70 Subsections 299F(4) and (4A) (penalty)**
  - 71 Subsections 299G(4) and (4A) (penalty)**
  - 72 Subsections 299H(6) and (7) (penalty)**
  - 73 Subsections 299J(6) and (7) (penalty)**
  - 74 Subsections 299K(6) and (7) (penalty)**
  - 75 Subsections 299L(6) and (7) (penalty)**
  - 76 Subsections 299M(4) and (5) (penalty)**
  - 77 Subsections 299Y(2) and (3) (penalty)**
  - 78 Subsection 347A(6) (penalty)**
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## **Schedule 7—Repeal of Acts**

### ***Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Act 2000***

#### **1 The whole of the Act**

Repeal the Act.

### ***General Insurance Supervisory Levy Determination Validation Act 2000***

#### **2 The whole of the Act**

Repeal the Act.

### ***Life Insurance Supervisory Levy Determination Validation Act 2000***

#### **3 The whole of the Act**

Repeal the Act.

### ***Retirement Savings Account Providers Supervisory Levy Determination Validation Act 2000***

#### **4 The whole of the Act**

Repeal the Act.

### ***Superannuation Supervisory Levy Determination Validation Act 2000***

#### **5 The whole of the Act**

Repeal the Act.

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*[Minister's second reading speech made in—  
House of Representatives on 26 May 2010  
Senate on 22 June 2010]*

(112/10)

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112      *Financial Sector Legislation Amendment (Prudential Refinements and Other  
Measures) Act 2010    No. 82, 2010*