Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018

No. 10, 2018

An Act to amend the law in relation to the financial sector, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018

No. 10, 2018

An Act to amend the law in relation to the financial sector, and for related purposes

[*Assented to 5 March 2018*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018*.

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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.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	5 March 2018
2. Schedules 1 to 7	The day this Act receives the Royal Assent.	5 March 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendment of the Banking Act 1959

Part 1—Main amendments

Banking Act 1959

1 Subsection 5(1) (definition of *ADI statutory manager*)

Repeal the definition.

2 Subsection 5(1)

Insert:

> ***administrator***, of a body corporate's business, means an administrator appointed under subsection 13A(1) to take control of the body corporate's business.

3 Subsection 5(1) (definition of *administrator of an ADI's business*)

Repeal the definition.

4 Subsection 5(1)

Insert:

> ***Australian business assets and liabilities***, of a foreign ADI, has the meaning given by subsection 11E(3).
>
> ***Banking Act statutory manager*** has the meaning given by subsection 13A(2).
>
> ***direction under this Act*** means a direction under any of the following provisions:
>
> (a) section 11CA;
> (b) section 11CC;
> (c) section 13E;
> (d) section 17;
> (e) section 23;
> (f) section 29;

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(g) section 31F.

5 Subsection 5(1) (paragraph (a) of the definition of *external administrator*)

Omit "or provisional liquidator".

6 Subsection 5(1) (paragraph (b) of the definition of *external administrator*)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

7 Subsection 5(1)

Insert:

financial market has the meaning given by section 761A of the *Corporations Act 2001*.

holding company, of a body corporate, means another body corporate of which the first body corporate is a subsidiary.

liquidator includes a provisional liquidator.

listing rules has the meaning given by section 761A of the *Corporations Act 2001*.

NOHC/NOHC subsidiary has the meaning given by subsection 13D(5).

8 Subsection 5(1) (definition of *prudential matters*)

Repeal the definition, substitute:

prudential matters means matters relating to:

(a) the conduct of any part of the affairs of, or the structuring or organising of, an ADI, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, in such a way as:

(i) to keep the ADI, NOHC, group or member or members of the group in a sound financial position; or

(ii) to facilitate resolution of the ADI, NOHC, group or member or members of the group; or

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(iii) to protect the interests of depositors of any ADI; or
(iv) not to cause or promote instability in the Australian financial system; or
(v) not to cause or promote instability in the New Zealand financial system; or

(b) the conduct of any part of the affairs of an ADI, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, with integrity, prudence and professional skill.

9 Subsection 5(1) (definition of *recapitalisation direction*)

Omit "subsection 13E(1)", substitute "subsection 13E(1) or (1B)".

10 Subsection 5(1)

Insert:

related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body, as determined in accordance with subsection 5(2A).

resolution means the process by which APRA or other relevant persons manage or respond to an entity:

(a) being unable to meet its obligations; or
(b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or
(c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

transferred liabilities determination means a determination under subsection 16AIA(1).

11 After subsection 5(2)

Insert:

Related bodies corporate

(2A) For the purposes of this Act, the question whether a body corporate is related to another body corporate is to be determined in the same

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way as that question is determined for the purposes of the *Corporations Act 2001*.

12 Subsection 5(6)

Omit "under section 14F on or after 12 October 2011", substitute "under section 16AAA".

13 Subsections 9(4) to (9)

Repeal the subsections, substitute:

(4) If APRA grants an authority under subsection (3), APRA must cause notice of that authority to be published in the *Gazette*. APRA may also cause notice of that authority to be published in any other way it considers appropriate.

(5) A failure to comply with subsection (4) does not affect the validity of the authority.

(6) Part VI applies to a decision to refuse an application under this section.

14 After section 9

Insert:

9AA Conditions on an authority

(1) APRA may, at any time, by giving written notice to a body corporate:

(a) impose conditions, or additional conditions, on the body corporate's section 9 authority; or

(b) vary or revoke conditions imposed on the body corporate's section 9 authority.

The conditions must relate to prudential matters.

(2) A condition may be expressed to have effect despite anything in the prudential standards or the regulations.

(3) Without limiting the conditions that APRA may impose on an authority, APRA may make the authority conditional on another body corporate, of which the body corporate is a subsidiary, being an authorised NOHC.

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(4) If APRA imposes, varies or revokes the conditions on a body corporate's section 9 authority, APRA must:
  (a) give written notice to the body corporate; and
  (b) ensure that notice that the action has been taken is published in the *Gazette*.

(5) The taking of an action is not invalid merely because of a failure to comply with subsection (4).

(6) Part VI applies to the following decisions made under this section:
  (a) a decision to impose conditions, or additional conditions, on a body corporate's section 9 authority;
  (b) a decision to vary conditions imposed on a body corporate's section 9 authority.

9AB Breach of authority conditions

(1) A body corporate commits an offence if:
  (a) the body corporate does an act or fails to do an act; and
  (b) doing the act or failing to do the act results in a contravention of a condition of the body corporate's section 9 authority; and
  (c) there is no determination in force under section 11 that this subsection does not apply to the body corporate.

Penalty: 300 penalty units.

(2) If an individual:
  (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
  (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

(3) An offence against this section is an offence of strict liability.

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

15 Section 9A (heading)

Repeal the heading, substitute:

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9A Revocation of authority etc.

16 Subsection 9A(2)

Repeal the subsection, substitute:

(2) APRA may revoke a body corporate's section 9 authority if APRA is satisfied that:

(a) the body corporate has, whether before or after the commencement of this paragraph, provided, in connection with its application for the authority, information that was false or misleading in a material particular; or

(b) the body corporate has failed to comply with any of the following:

(i) a requirement of this Act;

(ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*;

(iii) a requirement of the regulations or any other instrument made under this Act;

(iv) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations;

(v) a direction under this Act;

(vi) a condition of its section 9 authority; or

(c) it would be contrary to the national interest for the authority to remain in force; or

(d) it would be contrary to financial system stability in Australia for the authority to remain in force; or

(e) it would be contrary to the interests of depositors of the body corporate for the authority to remain in force; or

(f) the body corporate has failed to pay:

(i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or

(ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or

(g) the body corporate is insolvent and is unlikely to return to solvency within a reasonable period of time; or

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(h) the body corporate has ceased to carry on banking business in Australia; or

(j) the body corporate is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution, and:

(i) the body corporate is unlikely to be able to meet its liabilities in Australia and is unlikely to be able to do so within a reasonable period of time; or

(ii) an authority (however described) for the body corporate to carry on banking business in a foreign country has been revoked or otherwise withdrawn in that foreign country.

The procedures to be undergone before a revocation under this subsection are set out in subsection (3). Those procedures apply unless APRA determines under subsection (4) that they are not to apply.

17 Subsections 11AA(3) to (8)

Repeal the subsections, substitute:

(3) If APRA grants an authority under subsection (2), APRA must cause notice of that authority to be published in the *Gazette*. APRA may also cause notice of that authority to be published in any other way it considers appropriate.

(4) A failure to comply with subsection (3) does not affect the validity of the authority.

(5) Part VI applies to a decision to refuse an application under this section.

18 After section 11AA

Insert:

11AAA Conditions on an authority

(1) APRA may, at any time, by giving written notice to a body corporate:

(a) impose conditions, or additional conditions, on the body corporate's NOHC authority; or

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(b) vary or revoke conditions imposed on the body corporate's NOHC authority.

The conditions must relate to prudential matters.

(2) A condition may be expressed to have effect despite anything in the prudential standards or the regulations.

(3) If APRA imposes, varies or revokes the conditions on a body corporate's NOHC authority, APRA must:
(a) give written notice to the body corporate; and
(b) ensure that notice that the action has been taken is published in the *Gazette*.

(4) The taking of an action is not invalid merely because of a failure to comply with subsection (3).

(5) Part VI applies to the following decisions made under this section:
(a) a decision to impose conditions, or additional conditions, on a body corporate's NOHC authority;
(b) a decision to vary conditions imposed on a body corporate's NOHC authority.

11AAB Breach of authority conditions

(1) A body corporate commits an offence if:
(a) the body corporate does an act or fails to do an act; and
(b) doing the act or failing to do the act results in a contravention of a condition of the body corporate's NOHC authority; and
(c) there is no determination in force under section 11 that this subsection does not apply to the body corporate.

Penalty: 300 penalty units.

(2) If an individual:
(a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

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(3) An offence against this section is an offence of strict liability.

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

19 Section 11AB (heading)

Repeal the heading, substitute:

11AB Revocation of authority etc.

20 Paragraph 11AB(2)(a)

Repeal the paragraph, substitute:

(a) the body corporate has failed to comply with any of the following:

(i) a requirement of this Act;

(ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*;

(iii) a requirement of the regulations or any other instrument made under this Act;

(iv) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations;

(v) a direction under this Act;

(vi) a condition of its NOHC authority; or

21 At the end of Division 1AA of Part II

Add:

11AE APRA may give notice to ensure that ADI has an authorised NOHC

(1) This section applies if:

(a) a body corporate is a holding company of an ADI; and

(b) the ADI is not a subsidiary of an authorised NOHC.

(2) APRA may, by notice in writing to the body corporate, require it to ensure, in accordance with the conditions (if any) specified in the notice, that either of the following occurs:

(a) the body corporate becomes an authorised NOHC of the ADI;

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(b) a subsidiary of the body corporate becomes an authorised NOHC of the ADI.

Note: See Part 4A of the *Financial Sector (Transfer and Restructure) Act 1999* for other provisions that deal with a restructure arrangement to make an operating body a subsidiary of a NOHC.

(3) The notice may deal with the time by which, or period during which, it is to be complied with.

(4) The body corporate has power to comply with the notice despite anything in its constitution or any contract or arrangement to which it is a party.

(5) APRA may, by notice in writing to the body corporate, vary the notice mentioned in subsection (2) if, at the time of the variation, it considers that the variation is necessary and appropriate.

(6) The notice mentioned in subsection (2) has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the notice mentioned in subsection (2) if, at the time of revocation, it considers that the notice is no longer necessary or appropriate.

(7) Part VI applies to a decision to give a notice under subsection (2).

(8) Section 11CG applies in relation to a notice to a body corporate under subsection (2) in the same way in which it applies to a direction to an ADI under Subdivision B of Division 1BA.

(9) However, section 11CG does not apply to a contravention by a body corporate of a requirement in a notice under subsection (2) if:

(a) the contravention happens merely because APRA refuses to grant the body corporate (or its subsidiary) an authority under subsection 11AA(2); and

(b) APRA's reasons for that refusal do not include the reason that one or more conditions specified in the notice are not satisfied.

22 Before section 11AF

Insert:

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Subdivision A—Prudential supervision and monitoring of ADIs and authorised NOHCs generally

23 Paragraphs 11AF(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) the subsidiaries of ADIs or authorised NOHCs; or

(d) a specified class of ADIs, authorised NOHCs or subsidiaries of ADIs or authorised NOHCs; or

(e) one or more specified ADIs, authorised NOHCs or subsidiaries of ADIs or authorised NOHCs.

24 Subsection 11AF(1A)

Repeal the subsection, substitute:

(1A) A standard may impose different requirements to be complied with:

(a) in different situations; or

(b) in respect of different activities;

including requirements to be complied with by different classes of ADIs, authorised NOHCs or subsidiaries of ADIs or authorised NOHCs.

25 After paragraph 11AF(1AA)(b)

Insert:

(ba) each subsidiary of an ADI or of an authorised NOHC; or

(bb) each subsidiary of an ADI or of an authorised NOHC, included in a specified class of subsidiaries; or

26 After paragraph 11AF(1AA)(d)

Insert:

or (e) a specified subsidiary of an ADI or of an authorised NOHC; or

(f) each of 2 or more specified subsidiaries of ADIs or of authorised NOHCs;

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27 Subsection 11AF(2)

Omit "one or more specified ADIs or authorised NOHCs", substitute "one or more specified ADIs or authorised NOHCs, or one or more specified subsidiaries of ADIs or authorised NOHCs".

28 Subsections 11AF(4A) and (5A)

Repeal the subsections, substitute:

(4A) If APRA determines or varies a standard referred to in paragraph (1)(e) it must, as soon as practicable:

(a) give a copy of the standard, or of the variation, to the ADI, authorised NOHC or subsidiary, or to each ADI, authorised NOHC or subsidiary, to which the standard applies; and

(b) give a copy of the standard, or of the variation, to the Treasurer.

(5A) If APRA revokes a standard referred to in paragraph (1)(e) it must, as soon as practicable:

(a) give notice of the revocation to the ADI, authorised NOHC or subsidiary, or to each ADI, authorised NOHC or subsidiary, to which the standard applied; and

(b) give a copy of the revocation to the Treasurer.

29 After section 11AF

Insert:

11AG Obligation to comply with the prudential standards

An ADI, authorised NOHC or a subsidiary of an ADI or authorised NOHC to which a prudential standard applies must comply with the standard.

30 Section 11A

Omit "ADIs and authorised NOHCs", substitute, "ADIs, authorised NOHCs, subsidiaries of ADIs and subsidiaries of authorised NOHCs".

31 At the end of Division 1A of Part II

Add:

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Subdivision B—Conversion and write-off provisions

11CAA Definitions

In this Subdivision:

clearing and settlement facility has the meaning given by Division 6 of Part 7.1 of the *Corporations Act 2001*.

conversion and write-off provisions means the provisions of the prudential standards that relate to the conversion or writing off of:

(a) Additional Tier 1 and Tier 2 capital; or

(b) any other instrument.

conversion entity: an entity (the ***first entity***) is a ***conversion entity*** for an instrument if:

(a) the instrument is issued by another entity, or another entity is a party to the instrument; and

(b) the instrument converts, in accordance with the terms of the instrument, into one or more ordinary shares or mutual equity interests of the first entity.

converts: an instrument ***converts*** into one or more ordinary shares or mutual equity interests of an entity including by redeeming or cancelling the instrument or rights under the instrument, and replacing the instrument or rights with ordinary shares or mutual equity interests (as the case requires).

mutual equity interests has the same meaning as in the prudential standards.

operating rules has the meaning given by section 761A of the *Corporations Act 2001*.

related subsidiary of an ADI means a subsidiary of a holding company of the ADI.

specified law means any of the following:

(a) the *Financial Sector (Shareholdings) Act 1998*;

(b) the *Foreign Acquisitions and Takeovers Act 1975*;

(c) Chapter 6 of the *Corporations Act 2001* (takeovers);

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(d) any other Australian law, or law of a foreign country or part of a foreign country, prescribed by the regulations for the purposes of this paragraph.

11CAB Conversion and write-off provisions

Application

(1) This section applies in relation to an instrument that contains terms that are for the purposes of the conversion and write-off provisions and that is issued by, or to which any of the following is a party:
(a) an ADI;
(b) a holding company of an ADI;
(c) a subsidiary or related subsidiary of an ADI;
(d) an entity of a kind prescribed by the regulations for the purposes of this paragraph.

Conversion of instrument despite other laws etc.

(2) The instrument may be converted in accordance with the terms of the instrument despite:
(a) any Australian law or any law of a foreign country or a part of a foreign country, other than a specified law; and
(b) the constitution of any of the following entities (the ***relevant entity***):
(i) the entity issuing the instrument;
(ii) any entity that is a party to the instrument;
(iii) any conversion entity for the instrument; and
(c) any contract or arrangement to which a relevant entity is a party; and
(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and
(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

Write-off of instrument despite other laws etc.

(3) The instrument may be written off in accordance with the terms of the instrument despite:

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(a) any Australian law or any law of a foreign country or a part of a foreign country; and
(b) the constitution of either of the following entities (the ***relevant entity***):
  (i) the entity issuing the instrument;
  (ii) any entity that is a party to the instrument; and
(c) any contract or arrangement to which a relevant entity is a party; and
(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and
(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

11CAC Conversion or write-off etc. not grounds for denial of obligations

(1) This section applies if an entity (the ***first entity***) 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the first entity), 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;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) a relevant instrument being converted in accordance with the terms of the instrument;
  (b) a relevant instrument being written off in accordance with the terms of the instrument;
  (c) the making of a determination (however described) by APRA that results in a relevant instrument being required to be converted or written off in accordance with the terms of the instrument.

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(4) In this section:

relevant instrument means:

(a) an instrument to which section 11CAB applies:

(i) that is issued by the first entity; or

(ii) to which the first entity is a party; or

(iii) for which the first entity is a conversion entity; or

(b) if the first entity is a body corporate that is a member of a relevant group of bodies corporate—an instrument to which section 11CAB applies:

(i) that is issued by another member of the group; or

(ii) to which another member of the group is a party; or

(iii) for which another member of the group is a conversion entity.

32 Subsection 11CA(1)

Omit "Without limiting subsection (1AA), APRA may", substitute "APRA may".

33 Paragraph 11CA(1)(c)

Omit "and such a contravention is likely to give rise to a prudential risk", substitute "and the direction is reasonably necessary for one or more prudential matters relating to the body corporate".

34 Subsection 11CA(1AA)

Repeal the subsection, substitute:

(1AA) 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 APRA has reason to believe that:

(a) a subsidiary of the body corporate has contravened a provision of:

(i) this Act; or

(ii) the *Financial Sector (Collection of Data) Act 2001*; or

(b) a subsidiary of the body corporate has contravened a prudential requirement regulation or a prudential standard; or

(c) a subsidiary of the body corporate is likely to contravene this Act, a prudential requirement regulation, a prudential

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standard or the *Financial Sector (Collection of Data) Act 2001*; or

(d) the direction is in respect of a subsidiary of the body corporate and is necessary in the interests of:
  (i) if the body corporate is an ADI—depositors of the ADI; or
  (ii) if the body corporate is an authorised NOHC—depositors of any ADI that is a subsidiary of the NOHC; or

(e) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary's liabilities; or

(f) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or

(g) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or

(h) a subsidiary of the body corporate is conducting the subsidiary's affairs in an improper or financially unsound way; or

(j) 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; or

(k) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause it to be unable to continue to supply services to:
  (i) if the body corporate is an ADI—the ADI; or
  (ii) if the body corporate is an authorised NOHC—any ADI that is a subsidiary of the NOHC; or

(l) the direction is in respect of a subsidiary of the body corporate and the failure to issue a direction would materially prejudice the interests of:
  (i) if the body corporate is an ADI—depositors of the ADI; or
  (ii) if the body corporate is an authorised NOHC—depositors of any ADI that is a subsidiary of the NOHC.

(1AB) However, APRA can only make a direction as a result of a ground referred to in paragraph (1AA)(a), (b), (c), (e), (f), (g), (h) or (k) if

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

(1AC) APRA may give a body corporate that is a subsidiary of an ADI or of an authorised NOHC a direction of a kind specified in subsection (2) if:

(a) APRA has given the ADI or authorised NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary; or

(b) APRA may give the ADI or authorised NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary.

(1AD) APRA cannot give a direction under subsection (1AC) to a body corporate of a kind specified in regulations (if any) made for the purposes of this subsection.

(1AE) Subsections (1), (1AA) and (1AC) do not limit each other.

35 Paragraph 11CA(1A)(b)

Repeal the paragraph, substitute:

(b) specify:

(i) in the case of a direction under subsection (1AC)—the ground referred to in subsection (1AA) as a result of which the direction is given; or

(ii) otherwise—the ground referred to in subsection (1) or (1AA) as a result of which the direction is given.

36 Subsection 11CA(1B)

Repeal the subsection, substitute:

(1B) In deciding whether to give a direction under subsection (1), (1AA) or (1AC) to a body corporate, APRA may disregard any external support for the body corporate.

37 Paragraph 11CA(2)(p)

Repeal the paragraph, substitute:

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(p) to make changes to the body corporate's systems, business practices or operations;

(q) to reconstruct, amalgamate or otherwise alter all or part of any of the following:

(i) the business, structure or organisation of the body corporate;

(ii) the business, structure or organisation of the group constituted by the body corporate and its subsidiaries;

(r) to do, or to refrain from doing, anything else in relation to the affairs of the body corporate.

38 After subsection 11CA(2A)

Insert:

(2AAA) The kinds of direction that may be given as mentioned in subsection (2) are not limited by any other provision in this Part (apart from subsection (2AA)).

(2AAB) The kinds of direction that may be given as mentioned in a particular paragraph of subsection (2) are not limited by any other paragraph of that subsection.

39 Subsection 11CA(2B)

Omit "paragraph (2)(p)", substitute "paragraph (2)(r)".

40 Paragraph 11CA(2B)(a)

Omit "in a way that", substitute "in a way so as to ensure that".

41 Paragraph 11CA(2B)(b)

Omit "in a way that", substitute "in a way that has the result that".

42 Subsection 11CA(5A)

Repeal the subsection, substitute:

(5A) Part VI applies to a decision to give a direction:

(a) under subsection (1) as a result of the ground referred to in paragraph (1)(a), (b), (c), (d) or (e); or

(b) under subsection (1AA) as a result of the ground referred to in paragraph (1AA)(a), (b), (c) or (d); or

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(c) under subsection (1AC) as a result of the ground referred to in paragraph (1AC)(a) or (b), to the extent that the paragraph relates to a ground referred to in paragraph (1AA)(a), (b), (c) or (d).

43 Subsections 11CD(1), (1A) and (2)

Repeal the subsections, substitute:

(1) This section applies if a body corporate 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).

(1A) None of the matters mentioned in subsection (1B) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
(a) deny any obligations under the contract;
(b) accelerate any debt under the contract;
(c) close out any transaction relating to the contract;
(d) enforce any security under the contract.

This subsection has effect subject to subsections (2) and (3) of this section and section 31B.

(1B) The matters are as follows:
(a) the body corporate being given a direction by APRA under Subdivision A or B or section 29;
(b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being given a direction by APRA under Subdivision A or B or section 29.

(2) If the body corporate is prevented from fulfilling its obligations under the contract because of a direction under Subdivision A, other than a direction under paragraph 11CA(2)(m), or because of a direction under section 29, the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the body corporate under the contract.

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44 Subsection 11CE(1)

Omit "ADI or authorised NOHC", substitute "ADI, authorised NOHC or other body corporate".

45 Paragraph 11CE(3)(a)

Omit "a particular ADI or authorised NOHC", substitute "a particular ADI, authorised NOHC or other body corporate".

46 Paragraph 11CE(3)(b)

Omit "any ADIs or authorised NOHCs", substitute "any ADIs, authorised NOHCs or other bodies corporate".

47 Subsection 11CE(4)

Omit "any ADI or authorised NOHC", substitute "any ADI, authorised NOHC or other body corporate".

48 Section 11CF

Repeal the section.

49 Subsection 11CG(1)

Omit "An ADI or an authorised NOHC", substitute "An ADI, authorised NOHC or other body corporate".

50 Subsection 11CG(1A)

Omit "an ADI or an authorised NOHC", substitute "an ADI, authorised NOHC or other body corporate".

51 Subsection 11CG(1A)

Omit "ADI or NOHC" (wherever occurring), substitute "ADI, NOHC or other body corporate".

52 Subsection 11CG(2)

Omit "an ADI or an authorised NOHC", substitute "an ADI, authorised NOHC or other body corporate".

53 Subsection 11CG(2)

Omit "ADI or NOHC" (wherever occurring), substitute "ADI, NOHC or other body corporate".

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54 Subsection 11CG(2A)

Omit "an ADI or an authorised NOHC", substitute "an ADI, authorised NOHC or other body corporate".

55 Subsection 11CG(2A)

Omit "ADI or NOHC", substitute "ADI, NOHC or other body corporate".

56 At the end of Division 1BA of Part II

Add:

Subdivision D—Secrecy and disclosure provisions relating to all directions

11CH APRA may determine that a direction is covered by secrecy provision

(1) This section applies if APRA has given an entity (the ***directed entity***) a direction under this Act.

(2) APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the depositors of any ADI or to promote financial system stability in Australia.

Note: For repeal of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) APRA must give the directed entity a copy of the determination as soon as practicable after making it.

(4) An instrument under subsection (2) is not a legislative instrument.

(5) If APRA makes a determination under subsection (2), APRA must consider whether it is appropriate in the circumstances to also make a determination under either or both of subsections 11CK(2) and 11CK(5).

11CI Secrecy relating to directions

(1) A person commits an offence if:

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(a) APRA has given an entity (the ***directed entity***) a direction under this Act; and
(b) the direction is covered by a determination under subsection 11CH(2); and
(c) the person is, or has been, covered by subsection (2) of this section in relation to the direction; and
(d) the person discloses information; and
(e) the information reveals the fact that the direction was made.

Penalty: Imprisonment for 2 years.

(2) A person is covered by this subsection in relation to the direction if the person is:
(a) the directed entity; or
(b) an officer, employee or contractor of the directed entity at a time on or after APRA gave the directed entity the direction; or
(c) any other person who, because of his or her employment, or in the course of that employment, has acquired information that reveals the fact that the direction was made.

Exception

(3) Subsection (1) does not apply if:
(a) the disclosure is authorised by section 11CJ, 11CK, 11CL, 11CM, 11CN or 11CO; or
(b) the disclosure is required by an order or direction of a court or tribunal.

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

11CJ Disclosure of publicly available information

A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made, to the extent that the information has already been lawfully made available to the public.

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11CK Disclosure allowed by APRA

(1) A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) a determination under subsection (2) or (5) allows the disclosure by the person; and

(b) if APRA has included conditions in the determination—those conditions are satisfied.

Determinations relating to specified person

(2) APRA may, in writing, make a determination allowing:

(a) a specified person covered by subsection 11CI(2) in relation to a specified direction; or

(b) a specified person covered by subsection 11CI(2) in relation to a direction that is in a specified class of directions;

to disclose specified information in relation to the direction.

(3) An instrument under subsection (2) is not a legislative instrument.

(4) APRA must give a copy of the determination as soon as practicable after making it to:

(a) the directed entity; and

(b) the person specified, or each person specified, in the determination.

Determinations relating to specified class of persons

(5) APRA may, by legislative instrument, make a determination allowing a specified class of persons covered by subsection 11CI(2) in relation to a direction that is in a specified class of directions to disclose:

(a) specified kinds of information in relation to the direction; or

(b) any kind of information in relation to the direction.

Conditions in determinations

(6) APRA may include conditions in a determination under subsection (2) or (5) that relate to any of the following:

(a) the kind of entities to which the disclosure may be made;

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(b) the way in which the disclosure is to be made;
(c) any other matter that APRA considers appropriate.

11CL Disclosure to legal representative for purpose of seeking legal advice

A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) the disclosure is to the person's legal representative; and
(b) the purpose of the person making the disclosure is for the legal representative to provide legal advice, or another legal service, in relation to the direction.

11CM Disclosure allowed by APRA Act secrecy provision

(1) A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) the person is:
(i) an APRA member (within the meaning of subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*); or
(ii) an APRA staff member (within the meaning of that subsection); or
(iii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who is covered by paragraph (c) of the definition of ***officer*** in subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*; and
(b) the information is protected information (within the meaning of subsection 56(1) of that Act), or is contained in a protected document (within the meaning of that subsection); and
(c) the disclosure is in accordance with subsection 56(3), (4), (5), (5AA), (6), (6A), (7), (7A), (7B) or (7C) of that Act.

Relationship to APRA Act secrecy provision

(2) Disclosure of information in relation to a direction is not an offence under section 56 of the *Australian Prudential Regulation*

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Authority Act 1998 if the disclosure is authorised by section 11CJ, 11CK, 11CL, 11CN or 11CO.

11CN Disclosure in circumstances set out in the regulations

A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made, if the disclosure is made in circumstances (if any) set out in the regulations.

11CO Disclosure for purpose

A person covered by subsection 11CI(2) (the ***relevant person***) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) another person covered by subsection 11CI(2) in relation to the direction disclosed that information to the relevant person for a particular purpose in accordance with section 11CK, 11CL, 11CM or 11CN, or in accordance with a previous operation of this section; and

(b) the disclosure by the relevant person is for the same purpose.

11CP Exceptions operate independently

Sections 11CJ, 11CK, 11CL, 11CM, 11CN and 11CO do not limit each other.

57 Section 11E (Heading)

Repeal the heading, substitute:

11E Limited application of Division 2 etc. to foreign ADIs

58 Subsection 11E(1)

Repeal the subsection, substitute:

(1) The provisions listed in subsection (1A) do not apply in relation to:

(a) business of a foreign ADI (other than Australian business assets and liabilities); or

(b) the management of a foreign ADI, to the extent that the management relates to such business of the foreign ADI.

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(1A) The provisions are as follows:

(a) sections 12, 13BA and 13C, and Subdivision B of Division 2 (statutory management);

(b) subsections 13A(1) to (2), to the extent that those subsections relate to statutory management;

(c) sections 62B, 62C, 62D and 62E.

(1B) The following provisions do not apply in relation to a foreign ADI:

(a) Division 2 (apart from the provisions in that Division listed in subsection (1A));

(b) Division 2AA.

59 At the end of section 11E

Add:

(3) In this section:

asset has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

Australian business assets and liabilities, of a foreign ADI, means the following:

(a) the assets and liabilities of the foreign ADI in Australia;

(b) any other assets and liabilities of the foreign ADI that:

(i) are related to its operations in Australia; and

(ii) if regulations are made for the purposes of this subparagraph—are of a kind specified in those regulations.

liability has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

60 After section 11E

Insert:

11EA APRA's power to apply for foreign ADI to be wound up

(1) APRA may apply to the Federal Court of Australia for an order that a foreign ADI be wound up if APRA considers that any of the following requirements are satisfied:

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(a) the foreign ADI is unable to meet its liabilities in Australia, or in one or more foreign countries, as and when they become due and payable;
(b) an application for the appointment of an external administrator of the foreign ADI, or for a similar procedure in respect of the foreign ADI, has been made in a foreign country;
(c) an external administrator has been appointed to the foreign ADI, or a similar appointment has been made in respect of the foreign ADI, in a foreign country.

(2) To avoid doubt, subsection (1) applies whether or not an ADI statutory manager is in control of the Australian business assets and liabilities of the foreign ADI.

(3) The winding up of the foreign ADI is to be conducted in accordance with the *Corporations Act 2001*.

Note: See Part 5.7 of the *Corporations Act 2001*.

(4) If APRA makes an application under subsection (1), APRA must inform the Minister of the application as soon as possible.

61 Section 11F

Before "If", insert "(1)".

62 At the end of section 11F

Add:

(2) Subsection (1) does not constrain:
(a) the exercise of powers or the performance of functions under this Act of a Banking Act statutory manager of a foreign ADI; or
(b) an entity acting at the direction or request of a Banking Act statutory manager of a foreign ADI exercising powers or performing functions under this Act.

63 Section 13A (heading)

Repeal the heading, substitute:

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13A Consequences of inability or failure of ADI etc. to meet certain requirements

64 After paragraph 13A(1)(c)

Insert:

; or (d) an external administrator has been appointed to a holding company of the ADI (or a similar appointment has been made in a foreign country in respect of such a holding company), and APRA considers that the appointment poses a significant threat to:

(i) the operation or soundness of the ADI; or

(ii) the interests of depositors of the ADI; or

(iii) the stability of the financial system in Australia; or

(e) if the ADI is a foreign ADI:

(i) an application for the appointment of an external administrator of the foreign ADI, or for a similar procedure in respect of the foreign ADI, has been made in a foreign country; or

(ii) an external administrator has been appointed to the foreign ADI, or a similar appointment has been made in respect of the foreign ADI, in a foreign country.

65 Subsection 13A(2)

Repeal the subsection, substitute:

(1B) APRA may take any of the actions mentioned in subsection (1C) in relation to a body corporate (the ***target body corporate***) if:

(a) the target body corporate is any of the following:

(i) an authorised NOHC of an ADI (the ***relevant ADI***);

(ii) a subsidiary of an authorised NOHC of an ADI (also the ***relevant ADI***);

(iii) a subsidiary of an ADI (also the ***relevant ADI***); and

(b) the condition in subsection (1D), (1E) or (1F) is satisfied; and

(c) the target body corporate is incorporated in Australia; and

(d) the target body corporate is not a body corporate of a kind specified in regulations (if any) made for the purposes of this paragraph.

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(1C) The actions are as follows:

(a) taking control of the business of the target body corporate;

(b) appointing an administrator to take control of the business of the target body corporate.

Note: For information about another circumstance in which APRA may take control of the business of the target body corporate, see section 65.

(1D) The condition in this subsection is satisfied if:

(a) either:

(i) a Banking Act statutory manager has taken control of the relevant ADI; or

(ii) the conditions in any or all of paragraphs (1)(a), (b), (c), (d) or (e) are satisfied in relation to the relevant ADI, and APRA intends that a Banking Act statutory manager will take control of the relevant ADI; and

(b) APRA considers that the target body corporate provides services that are, or conducts business that is, essential to the capacity of the relevant ADI to maintain its operations.

(1E) The condition in this subsection is satisfied if:

(a) either:

(i) a Banking Act statutory manager has taken control of the relevant ADI; or

(ii) the conditions in any or all of paragraphs (1)(a), (b), (c), (d) or (e) are satisfied in relation to the relevant ADI, and APRA intends that a Banking Act statutory manager will take control of the relevant ADI; and

(b) APRA considers that it is necessary for a Banking Act statutory manager to take control of the target body corporate, in order to facilitate the resolution of any of the following:

(i) the relevant ADI;

(ii) an authorised NOHC of the relevant ADI;

(iii) a relevant group of bodies corporate of which the relevant ADI is a member;

(iv) a particular member or particular members of such a group.

(1F) The condition in this subsection is satisfied if:

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(a) there is an external administrator of the target body corporate, or APRA considers that, in the absence of external support:

(i) the target body corporate may become unable to meet its obligations; or

(ii) the target body corporate may suspend payment; and

(b) APRA considers that it is necessary to take an action mentioned in subsection (1C) in respect of the target body corporate in order to enable the relevant ADI to maintain its operations, or in order to facilitate the resolution of any of the following:

(i) the relevant ADI;

(ii) an authorised NOHC of the relevant ADI;

(iii) a relevant group of bodies corporate of which the relevant ADI is a member;

(iv) a particular member or particular members of such a group.

(2) If:

(a) APRA is in control of a body corporate's business under this Subdivision—APRA is the ***Banking Act statutory manager*** of the body corporate; or

(b) an administrator appointed by APRA is in control of a body corporate's business under this Subdivision—the administrator is the ***Banking Act statutory manager*** of the body corporate.

Note: This section and other provisions relating to statutory management do not apply to the aspects described in subsection 11E(1) of the business and management of a foreign ADI.

(2A) If APRA appoints 2 or more Banking Act statutory managers of a body corporate, or appoints one or more additional Banking Act statutory managers of a body corporate:

(a) the functions and powers under this Act of a Banking Act statutory manager of the body corporate may be performed or exercised by:

(i) all of the Banking Act statutory managers of the body corporate acting jointly; or

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(ii) each of the Banking Act statutory managers of the body corporate acting individually (except to the extent (if any) specified in a notice given by APRA under paragraph (b)); and

(b) at the time of appointment, APRA may give all of the Banking Act statutory managers of the body corporate a notice in writing for the purposes of subparagraph (a)(ii), specifying limits or conditions on their ability to perform functions and exercise powers individually; and

(c) treat a reference in this Act to a Banking Act statutory manager as being a reference to whichever one or more of those Banking Act statutory managers the case requires.

66 Paragraph 13A(3)(a)

Omit "section 16AI", substitute "section 16AI or 16AIC".

67 Subsection 13A(3) (note)

Repeal the note.

68 After subsection 13A(3)

Insert:

(3AA) Subsection (3) does not constrain:

(a) the exercise of powers or the performance of functions under this Act of a Banking Act statutory manager of an ADI; or

(b) an entity acting at the direction or request of a Banking Act statutory manager of an ADI exercising powers or performing functions under this Act.

69 Subsection 13A(7)

Omit "an ADI", substitute "a body corporate".

70 Subsection 13A(7)

Omit "other ADI", substitute "other body corporate".

71 Section 13BA (heading)

Repeal the heading, substitute:

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13BA Start of control of body corporate's business by Banking Act statutory manager

72 Subsection 13BA(1)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

73 Subsection 13BA(1)

Omit "an ADI's business", substitute "a body corporate's business".

74 Subsection 13BA(1)

Omit "give the ADI", substitute "give the body corporate".

75 Subsection 13BA(1)

Omit "the ADI statutory manager", substitute "the Banking Act statutory manager".

76 Subsection 13BA(2)

Omit "An ADI statutory manager takes control of an ADI's business", substitute "A Banking Act statutory manager takes control of a body corporate's business".

77 Section 13BA(2)

Omit "the ADI statutory manager" (wherever occurring), substitute "the Banking Act statutory manager".

78 Section 13C (heading)

Repeal the heading, substitute:

13C Banking Act statutory managers—termination of control

79 Subsection 13C(1)

Repeal the subsection, substitute:

Conditions necessary for termination of control

(1) If APRA assumes control of a body corporate's business or appoints an administrator of a body corporate's business, APRA

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must ensure that either it or an administrator of the body corporate's business has control of the body corporate's business until:

(a) APRA considers that it is no longer necessary for it or an administrator to remain in control of the body corporate's business; or

(b) APRA has applied for the body corporate to be wound up.

A termination of control that is permitted under this section is called an ***ultimate termination of control***.

Note: This provision does not prevent a change, or changes, between control of a body corporate's business by APRA and an administrator or between administrators.

80 Subsection 13C(2)

Omit "an ADI statutory manager of an ADI's business", substitute "a Banking Act statutory manager of a body corporate's business".

81 Paragraph 13C(2)(a)

Omit "of the ADI", substitute "of the body corporate".

82 Paragraph 13C(2)(a)

Omit "the ADI's" (wherever occurring), substitute "the body corporate's".

83 Paragraph 13C(2)(a)

Omit "ADI statutory manager", substitute "Banking Act statutory manager".

84 Paragraphs 13C(2)(b) and (c)

Omit "the ADI", substitute "the body corporate".

85 Subsection 13C(3)

Omit "an ADI's business by an ADI statutory manager", substitute "a body corporate's business by a Banking Act statutory manager".

86 Subsection 13C(4)

Omit "the ADI statutory manager", substitute "the Banking Act statutory manager".

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87 Subsection 13C(5)

Omit "the ADI statutory manager's", substitute "the Banking Act statutory manager's".

88 Subsection 13C(5)

Omit "the ADI's" (wherever occurring), substitute "the body corporate's".

89 Subsection 13C(5) (note)

Omit "an ADI statutory manager is in control of an ADI's business", substitute "a Banking Act statutory manager is in control of a body corporate's business".

90 Section 13D

Repeal the section, substitute:

13D Who this Subdivision applies to

(1) 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 a Banking Act statutory manager.

(2) Subsections (3) and (4) apply if:
  (a) APRA has given a recapitalisation direction to an ADI under subsection 13E(1) (the ***primary recapitalisation direction***); and
  (b) the ADI is a subsidiary of a NOHC/NOHC subsidiary; and
  (c) the NOHC/NOHC subsidiary is a company that:
    (i) is registered under the *Corporations Act 2001*; and
    (ii) has a share capital; and
  (d) the NOHC/NOHC subsidiary does not have a Banking Act statutory manager.

(3) This Subdivision applies to the NOHC/NOHC subsidiary in the same way that it does to an ADI.

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(4) However, disregard the following provisions in applying this Subdivision to the NOHC/NOHC subsidiary:
(a) subsection 13E(1);
(b) subsection 13F(1).

(5) In this section:

NOHC/NOHC subsidiary means a body corporate that is any of the following:
(a) an authorised NOHC;
(b) a subsidiary of an authorised NOHC.

91 After subsection 13E(1)

Insert:

(1A) Subsection (1B) applies if subsections 13D(3) and (4) apply to a NOHC/NOHC subsidiary because of a primary recapitalisation direction given to an ADI (as mentioned in subsection 13D(2)).

(1B) For the purposes of facilitating compliance with the primary recapitalisation direction, APRA may give the NOHC/NOHC subsidiary a direction (also a ***recapitalisation direction***) that requires the NOHC/NOHC subsidiary to do anything that is specified in the direction.

92 At the end of section 13E

Add:

(5) A recapitalisation direction may deal with the time by which, or period during which, it is to be complied with.

(6) APRA may, by notice in writing to the ADI, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(7) The direction has effect until APRA revokes it by notice in writing to the ADI. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

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93 After subsection 13F(1)

Insert:

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), the direction may direct the NOHC/NOHC subsidiary to do any of the following:

(a) issue:

(i) shares, or rights to acquire shares, in the NOHC/NOHC subsidiary; or

(ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;

(b) acquire:

(i) shares, or rights to acquire shares, in the ADI mentioned in subsection 13E(1A); or

(ii) other capital instruments in the ADI mentioned in subsection 13E(1A) of a kind specified in the direction;

(c) acquire:

(i) shares, or rights to acquire shares, in a specified body corporate covered by subsection (1B); or

(ii) other capital instruments in a specified body corporate covered by subsection (1B), of a kind specified in the direction.

(1B) This subsection covers a body corporate if:

(a) the body corporate is a subsidiary of the NOHC/NOHC subsidiary; and

(b) the ADI is a subsidiary of the body corporate.

(1C) Without limiting the generality of subsections (1), (1A) and (2), but subject to subsection (3), a direction referred to in those subsections may:

(a) deal with some only of the matters referred to in those subsections; or

(b) deal with a particular class or particular classes of those matters; or

(c) make different provision with respect to different matters or different classes of matters.

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94 Subsection 13F(2)

Omit "paragraph (1)(a)", substitute "paragraph (1)(a) or subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i)".

95 Subsection 13F(3)

Omit "paragraph (1)(b)", substitute "paragraph (1)(b) or subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii)".

96 Subsection 13G(3) (heading)

Repeal the heading, substitute:

Issue or acquisition of shares etc. despite other laws etc.

97 Subsection 13G(3)

After "issue", insert "or acquire".

98 Paragraph 13G(3)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 70B of this Act)".

99 Paragraph 13G(3)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

100 After subsection 13H(1)

Insert:

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), treat the reference in paragraph (1)(a) to "the depositors with the ADI" as being a reference to "the depositors with the ADI mentioned in subsection 13E(1A)".

101 At the end of section 13H

Add:

(4) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), treat the references in

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paragraph (3)(c) to "the ADI" as being a reference to "the NOHC/NOHC subsidiary mentioned in subsection 13E(1B)".

102 Section 13N

Repeal the section, substitute:

13N Recapitalisation direction not grounds for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), 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;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) the body corporate being subject to a recapitalisation direction;
  (b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a recapitalisation direction.

103 Subsection 13P(9)

Repeal the subsection.

104 Subdivision B of Division 2 of Part II (heading)

Repeal the heading, substitute:

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Subdivision B—Provisions dealing with control of a body corporate's business by a Banking Act statutory manager

105 Section 14A (heading)

Repeal the heading, substitute:

14A Banking Act statutory manager's powers and functions

106 Subsection 14A(1) (heading)

Repeal the heading, substitute:

Banking Act statutory manager's powers and functions include powers and functions of board

107 Subsection 14A(1)

Omit "An ADI statutory manager has the powers and functions of the members of the board of directors of the ADI", substitute "A Banking Act statutory manager of a body corporate has the powers and functions of the members of the board of directors of the body corporate".

108 Subsection 14A(1) (note)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

109 Subsection 14A(1) (note)

Omit "an ADI,", substitute "a body corporate,".

110 Subsection 14A(1) (note)

Omit "the ADI", substitute "the body corporate".

111 Subsection 14A(2) (heading)

Repeal the heading, substitute:

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Banking Act statutory manager's power to obtain information

112 Subsection 14A(2)

Omit "An ADI statutory manager may, for the purposes of this Division, require a person who has, at any time, been an officer of the ADI to give the ADI statutory manager any information relating to the business of the ADI that the ADI statutory manager requires.", substitute "A Banking Act statutory manager of a body corporate may, for the purposes of this Division, require a person who has, at any time, been an officer of the body corporate to give the statutory manager any information relating to the business of the body corporate that the statutory manager requires.".

113 Subsection 14A(2A)

Omit "officer of an ADI", substitute "officer of a body corporate".

114 Paragraph 14A(2A)(a)

Omit "an ADI statutory manager in relation to the ADI", substitute "a Banking Act statutory manager of the body corporate".

115 Paragraph 14A(2A)(b)

Omit "ADI statutory manager", substitute "Banking Act statutory manager".

116 Subsection 14A(5) (heading)

Repeal the heading, substitute:

Banking Act statutory manager's power to sell whole or part of body corporate's business

117 Subsection 14A(5)

Omit "An ADI statutory manager", substitute "A Banking Act statutory manager".

118 Subsection 14A(5)

Omit "the ADI's business", substitute "the body corporate's business".

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119 Subsection 14A(5)

Omit "the ADI statutory manager", substitute "the Banking Act statutory manager".

120 Subsection 14A(5A) (heading)

Repeal the heading, substitute:

Banking Act statutory manager to alter body corporate's constitution etc.

121 Subsection 14A(5A)

Omit "An ADI statutory manager may, if the ADI concerned", substitute "A Banking Act statutory manager may, if the body corporate concerned".

122 Subsection 14A(5A)

Omit "the ADI's constitution", substitute "the body corporate's constitution".

123 Paragraph 14A(5A)(a)

Omit "the ADI statutory manager's functions and duties, or the exercise of the ADI statutory manager's other powers, under this Division in relation to the ADI", substitute "the Banking Act statutory manager's functions and duties, or the exercise of the Banking Act statutory manager's other powers, under this Division in relation to the body corporate".

124 Subparagraph 14A(5A)(b)(i)

Omit "the ADI", substitute "the relevant ADI mentioned in subsection 13A(1B)".

125 Subsection 14A(5B)

Omit "An ADI statutory manager", substitute "A Banking Act statutory manager".

126 Subsection 14A(5B)

Omit "subsection (5A)", substitute "subsection (5) or (5A)".

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127 Paragraph 14A(5B)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 70B of this Act)".

128 Paragraph 14A(5B)(b)

Omit "the ADI's", substitute "the body corporate's".

129 Paragraphs 14A(5B)(c) and (d)

Omit "the ADI", substitute "the body corporate".

130 Paragraph 14A(5B)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

131 After section 14A

Insert:

14AAA Safeguards on exercise of Banking Act statutory manager's powers and functions

(1) Despite anything else in this Subdivision, a Banking Act statutory manager of a body corporate (the ***body corporate under management***) may not perform a function or exercise a power under section 14A if:

(a) either or both of subsections (2) and (3) apply; and

(b) the performance of the function or the exercise of the power is not for the purposes of:

(i) an act of the Banking Act statutory manager under subsection 14AA(1); or

(ii) Part 3 or 4 of the *Financial Sector (Transfer and Restructure) Act 1999*.

(2) This subsection applies if:

(a) the body corporate under management is not an ADI; and

(b) the performance or the exercise would result in:

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(i) the provision of services by the body corporate under management to a related body corporate of the body corporate under management; or

(ii) the provision of services by a related body corporate of the body corporate under management to the body corporate under management; or

(iii) subject to subsection (4), the transfer of assets between the body corporate under management and another body corporate (otherwise than in the ordinary course of business); and

(c) the performance or the exercise is not required or permitted by a binding arrangement that was in existence immediately before the Banking Act statutory manager started to be in control of the business of the body corporate under management; and

(d) the provision or transfer is not for fair value.

(3) This subsection applies if:

(a) the body corporate under management is an authorised NOHC of an ADI; and

(b) the performance or the exercise requires using funds of the body corporate or a subsidiary of the body corporate to increase the level of capital of the ADI to a specified level; and

(c) the shareholders of the body corporate have not agreed, by ordinary resolution, to that use of the funds.

(4) Treat the requirement in subparagraph (2)(b)(iii) as not being met if:

(a) the body corporate under management is an authorised NOHC of an ADI; and

(b) the transfer of assets mentioned in that subparagraph is a transfer of funds to increase the level of capital of the ADI to a specified level; and

(c) the shareholders of the body corporate have agreed, by ordinary resolution, to that use of the funds.

132 Section 14AA (heading)

Repeal the heading, substitute:

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14AA Banking Act statutory manager's additional powers to facilitate recapitalisation

133 Subsection 14AA(1)

Omit "An ADI statutory manager of an ADI", substitute "A Banking Act statutory manager of a body corporate".

134 Subsection 14AA(1)

Omit "the ADI statutory manager", substitute "the Banking Act statutory manager".

135 Subsection 14AA(1) (note)

Omit "the ADI statutory manager", substitute "the Banking Act statutory manager".

136 Subsection 14AA(2)

Omit "the ADI statutory manager", substitute "the Banking Act statutory manager".

137 Subsection 14AA(4)

Omit "An ADI statutory manager", substitute "A Banking Act statutory manager".

138 Paragraph 14AA(4)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 70B of this Act)".

139 Paragraph 14AA(4)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

140 Section 14AB

Omit "the ADI statutory manager" (wherever occurring), substitute "the Banking Act statutory manager".

141 Subparagraphs 14AB(2)(c)(iii) and (iv)

Repeal the subparagraphs, substitute:

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(iii) the body corporate;
(iv) a person who is an associate of the body corporate under Division 2 of Part 1.2 of the *Corporations Act 2001*;

142 Subsection 14AB(8)

Repeal the subsection, substitute:

Exemption from subsection (1)

(8) APRA may determine in writing that subsection (1) does not apply in relation to an act relating to shares or rights if APRA is satisfied that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:
(a) depositors with:
(i) if the company is an ADI—the ADI; or
(ii) if the company is not an ADI—the relevant ADI mentioned in subsection 13A(1B); and
(b) financial system stability in Australia.

143 Section 14AC

Repeal the section, substitute:

14AC Act under section 14AA not ground for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), 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;
(d) enforce any security under the contract.

(3) The matters are as follows:

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(a) a Banking Act statutory manager of the body corporate doing an act under subsection 14AA(1) relating to the body corporate;
(b) if the body corporate is a member of a relevant group of bodies corporate—a Banking Act statutory manager of another member of the group doing an act under subsection 14AA(1) relating to that other member.

144 Subsection 14AD(1)

Omit "the business of an ADI that has an ADI statutory manager", substitute "the business of a body corporate that has a Banking Act statutory manager".

145 Paragraphs 14AD(1)(a) and (b)

Omit "the ADI statutory manager" (wherever occurring), substitute "the Banking Act statutory manager".

146 Subsection 14B(1)

Repeal the subsection, substitute:

Types of recommendation

(1) An administrator of a body corporate's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:
(a) that APRA make a particular direction under Division 1BA, subsection 14D(3) or section 29 in respect of the body corporate;
(b) that APRA apply for the body corporate to be wound up;
(c) if the body corporate is an ADI—that APRA revoke the ADI's section 9 authority;
(d) if the body corporate is an authorised NOHC—that APRA revoke the authorised NOHC's authority under subsection 11AA(2).

147 Subsection 14B(2)

Omit "an ADI's business", substitute "a body corporate's business".

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148 Section 14C (heading)

Repeal the heading, substitute:

14C Banking Act statutory manager's liabilities and duties

149 Subsections 14C(1), (2), (3) and (4)

Repeal the subsections, substitute:

Immunity

(1) A Banking Act statutory manager, or a person acting on behalf of a Banking Act statutory manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Banking Act statutory manager by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) To avoid doubt, a Banking Act statutory manager is not liable under section 588G of the *Corporations Act 2001* in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Banking Act statutory manager by or under this Act. This subsection does not limit the scope of subsection (1).

150 Subsection 14C(5)

Omit "ADI statutory managers", substitute "Banking Act statutory managers".

151 After section 14C

Insert:

14CA Transaction by Banking Act statutory manager not voidable under section 588FE of the *Corporations Act 2001*

A transaction of a body corporate is not voidable under section 588FE of the *Corporations Act 2001* merely because:

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(a) the transaction was entered into at a time when a Banking Act statutory manager was in control of the body corporate's business; and

(b) the transaction is:

(i) an uncommercial transaction (within the meaning of that Act) of the body corporate; or

(ii) an unfair preference (within the meaning of that Act) given by the body corporate to a creditor of the company; or

(iii) an insolvent transaction (within the meaning of that Act) of the body corporate.

152 Subsection 14D(1)

Omit "an ADI's business", substitute "a body corporate's business".

153 Subsection 14D(1)

Omit "the ADI's business", substitute "the body corporate's business".

154 Subsection 14D(2)

Omit "an ADI's business", substitute "a body corporate's business".

155 Subsection 14D(2)

Omit "the ADI's business", substitute "the body corporate's business".

156 Subsection 14D(3)

Omit "an ADI's business", substitute "a body corporate's business".

157 Subsection 14D(3)

Omit "the ADI's business" (wherever occurring), substitute "the body corporate's business".

158 Subsection 14D(4)

Omit "an ADI's business", substitute "a body corporate's business".

159 Subsection 14DAA(1)

Omit "an ADI's business", substitute "a body corporate's business".

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160 Subsection 14DA(1)

Omit "an ADI's business", substitute "a body corporate's business".

161 Subsection 14DA(7)

Omit "an ADI's business", substitute "a body corporate's business".

162 Subsections 14E(1) and (2)

Repeal the subsections, substitute:

(1) APRA may terminate the appointment of an administrator of a body corporate's business and either appoint another person as administrator of the body corporate's business or itself take control of the body corporate's business if:

(a) the administrator contravenes a requirement of this Division; or

(b) APRA considers such action necessary to:

(i) facilitate the resolution of the body corporate, a relevant group of bodies corporate of which the body corporate is a member, or another member of such a group; or

(ii) if the body corporate is an ADI—protect the interests of depositors of the ADI; or

(iii) promote financial system stability in Australia.

(2) The terms and conditions of an administrator's appointment may provide for termination in circumstances in addition to those mentioned in subsection (1).

(2A) If:

(a) APRA is the statutory manager of a body corporate; and

(b) the requirement in paragraph (1)(b) is satisfied;

it may cease to be the statutory manager of the body corporate and appoint a person as administrator of the body corporate's business.

163 Section 14F

Repeal the section.

164 Section 15 (heading)

Repeal the heading, substitute:

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15 Effect on directors of Banking Act statutory manager taking control of a body corporate's business

165 Subsection 15(1)

Omit "an ADI cease", substitute "a body corporate cease".

166 Subsection 15(1)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

167 Subsection 15(1)

Omit "the ADI's business", substitute "the body corporate's business".

168 Subsection 15(2)

Omit "an ADI must not", substitute "a body corporate must not".

169 Subsection 15(2)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

170 Subsection 15(2)

Omit "the ADI's business", substitute "the body corporate's business".

171 Subsection 15(3)

Omit "the ADI appointed", substitute "the body corporate appointed".

172 Subsection 15(3)

Omit "the ADI's business" (wherever occurring), substitute "the body corporate's business".

173 Subsection 15(3)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

174 After subsection 15(3)

Insert:

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(3A) Subsections (1), (2) and (3) do not apply in relation to a body corporate that is a foreign ADI.

(3B) Subsection (3C) applies if:

(a) subsections (1), (2) and (3) do not apply in relation to a body corporate because of subsection (3A); and

(b) a Banking Act statutory manager takes control of the body corporate's business; and

(c) a director of the body corporate acts, or purports to act in relation to the body corporate's business while the Banking Act statutory manager has control of the body corporate's business.

(3C) Those acts are invalid and of no effect to the extent that they relate to:

(a) the Australian business assets and liabilities of the body corporate; or

(b) the management of the body corporate, to the extent that the management relates to the Australian business assets and liabilities of the body corporate.

175 Section 15A (heading)

Repeal the heading, substitute:

15A Effect on external administrator of Banking Act statutory manager taking control of a body corporate's business

176 Subsection 15A(1)

Omit "an ADI is", substitute "a body corporate is".

177 Subsection 15A(1)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

178 Subsection 15A(1)

Omit "the ADI's business", substitute "the body corporate's business".

179 Subsection 15A(1) (note)

Repeal the note.

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180 Subsection 15A(2)

Omit "an ADI must", substitute "a body corporate must".

181 Subsection 15A(2)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

182 Subsection 15A(2)

Omit "the ADI's business", substitute "the body corporate's business".

183 Subsection 15A(3)

Omit "an ADI under", substitute "a body corporate under".

184 Subsection 15A(3)

Omit "the ADI appointed", substitute "the body corporate appointed".

185 Subsection 15A(3)

Omit "the ADI's business" (wherever occurring), substitute "the body corporate's business".

186 Subsection 15A(3)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

187 Subsection 15A(4)

Omit "an ADI that", substitute "a body corporate that".

188 Subsection 15A(4)

Omit "an ADI statutory manager" (wherever occurring), substitute "a Banking Act statutory manager".

189 Subsection 15A(4)

Omit "the ADI's business" (wherever occurring), substitute "the body corporate's business".

190 Section 15B

Repeal the section, substitute:

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15B Moratorium—effect of Banking Act statutory management on court and tribunal proceedings

(1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (8) in respect of a body corporate if a Banking Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:
  (a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and
  (b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.

(3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).

(4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the court or tribunal decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:
  (a) APRA consents in writing to the proceedings beginning or continuing; or
  (b) the Banking Act statutory manager, after considering APRA's views, consents to the proceedings beginning or continuing.

(6) APRA (or the Banking Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

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(7) Neither APRA nor the Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

(8) A proceeding in a court or tribunal is covered by this subsection in respect of a body corporate if it is any of the following:
  (a) a proceeding against the body corporate (including a cross-claim or third party claim against the body corporate);
  (b) a proceeding in relation to property of the body corporate;
  (c) a proceeding to enforce any security (including a mortgage or charge) granted by the body corporate, or by a related body corporate of the body corporate, over any property that the body corporate owns, uses, possesses, occupies or in which the body corporate otherwise has an interest.

(9) Subsection (8) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.

(10) In this section, a reference to a tribunal includes a reference to the following:
  (a) an industrial tribunal;
  (b) an arbitral tribunal.

15BA Moratorium—effect of Banking Act statutory management on enforcement process regarding property

(1) No enforcement process in relation to property of a body corporate can be begun or proceeded with if a Banking Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:
  (a) the Federal Court of Australia grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or
  (b) the beginning or continuing of the process is in accordance with such terms (if any) as the Federal Court imposes.

(3) A person intending to apply for leave of the Federal Court of Australia under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Federal

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Court considers that exceptional circumstances make this necessary).

(4) APRA may apply to the Federal Court of Australia to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Federal Court must have regard to APRA's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the Federal Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the Federal Court decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:
  (a) APRA consents to the process beginning or continuing; or
  (b) the Banking Act statutory manager consents to the process beginning or continuing.

(6) APRA (or the Banking Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

(8) This section has effect subject to section 31B.

15BB Moratorium—effect of Banking Act statutory management on disposal of property

(1) A person must not dispose of property if:
  (a) the property is owned by another person; and
  (b) the other person is a body corporate; and
  (c) a Banking Act statutory manager is in control of the body corporate's business.

Note: The Federal Court of Australia may grant an injunction under section 65A in respect of a contravention of this subsection.

(2) Subsection (1) does not apply if:
  (a) APRA consents to the disposal; or
  (b) the Banking Act statutory manager consents to the disposal.

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(3) Neither APRA nor the Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

(4) This section has effect subject to section 31B.

15BC Moratorium—restrictions on exercise of third party property rights

(1) Section 440B of the *Corporations Act 2001* applies during a period in which a Banking Act statutory manager is in control of a body corporate's business in the same way it applies during the administration of a company.

(2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to:
  (a) the Banking Act statutory manager's written consent; or
  (b) APRA's written consent.

(3) Neither APRA nor a Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).

(4) This section applies despite sections 15B, 15BA and 15BB.

(5) This section has effect subject to section 31B.

15BD Moratorium—effect of Banking Act statutory management on supply of essential services

(1) If:
  (a) a Banking Act statutory manager is in control of a body corporate's business; and
  (b) the Banking Act statutory manager requests, or authorises someone else to request, a person or authority (the ***supplier***) to supply an essential service to the body corporate in Australia; and
  (c) the body corporate owes an amount to the supplier in respect of the supply of the essential service before the day on which

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the Banking Act statutory manager took control of the body corporate's business;

the supplier must not:

(d) refuse to comply with the request for the reason only that the amount is owing; or

(e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Federal Court of Australia may grant an injunction under section 65A in respect of a contravention of this subsection.

(2) In this section:

essential service has the same meaning as in section 600F of the *Corporations Act 2001*.

15BE Moratorium—effect of Banking Act statutory management on annual general meeting

(1) This section applies to a body corporate that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

(2) Despite section 250N and section 601BR of that Act, if a Banking Act statutory manager is in control of the body corporate's business at the end of that period, the body corporate need not hold that annual general meeting.

191 Section 15C

Repeal the section, substitute:

15C Certain circumstances not grounds for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allow the contract, or a party to the contract (other than the body corporate), to do any of the following:

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(a) deny any obligations under the contract;
(b) accelerate any debt under the contract;
(c) close out any transaction relating to the contract;
(d) enforce any security under the contract.

This subsection has effect subject to section 31B.

(3) The matters are as follows:
(a) a Banking Act statutory manager being in control, or being appointed to take control, of the business of the body corporate;
(b) if the body corporate is a member of a relevant group of bodies corporate—a Banking Act statutory manager being in control, or being appointed to take control, of the business of another member of the group.

192 Section 15D

Repeal the section, substitute:

15D Application of other provisions

(1) None of the matters mentioned in subsection (2) affect:
(a) the continued operation of other provisions of this Act or the operation of the *Financial Sector (Collection of Data) Act 2001* in relation to a body corporate; or
(b) the obligation of a body corporate to comply with those other provisions and that Act.

(2) The matters are as follows:
(a) the appointment of a Banking Act statutory manager of the body corporate's business under this Division;
(b) the fact that a Banking Act statutory manager is in control of the body corporate's business.

(3) The *Public Governance, Performance and Accountability Act 2013* does not apply to a body corporate that has a Banking Act statutory manager.

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193 Subsection 16(1)

Omit "an ADI's business" (wherever occurring), substitute "a body corporate's business".

194 Subsection 16(1)

Omit "the ADI's funds", substitute "the body corporate's funds".

195 Subsection 16(2)

Omit "an ADI", substitute "a body corporate".

196 Subsection 16(2)

Omit "the ADI", substitute "the body corporate".

197 At the end of subsection 16(2)

Add:

Note: Subsection 13A(3) applies if the body corporate is an ADI, and provides for priorities for the application of the ADI's assets in Australia.

198 Subsection 16A(1)

Omit "ADI statutory managers", substitute "Banking Act statutory managers".

199 Subsection 16A(1)

Omit "specified ADIs", substitute "specified bodies corporate".

200 Subsection 16A(2)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

201 Subsection 16A(2)

Omit "an ADI's business", substitute "a body corporate's business".

202 Subsection 16A(2)

Omit "ADI statutory managers", substitute "Banking Act statutory managers".

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203 Subsection 16A(3)

Omit "an ADI's business" (wherever occurring), substitute "a body corporate's business".

204 Paragraph 16AA(a)

Omit "an ADI under", substitute "a body corporate under".

205 Paragraph 16AA(a)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

206 Paragraph 16AA(a)

Omit "the ADI's business", substitute "the body corporate's business".

207 Paragraph 16AA(b)

Omit "an ADI as a direct result", substitute "a body corporate as a direct result".

208 Subparagraph 16AA(b)(i)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

209 Subparagraph 16AA(b)(i)

Omit "the ADI's business", substitute "the body corporate's business".

210 Subparagraph 16AA(b)(ii)

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

211 Subparagraph 16AA(b)(ii)

Omit "the ADI's business", substitute "the body corporate's business".

212 At the end of Division 2 of Part II

Add:

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Subdivision C—APRA's powers to apply for ADI to be wound up

16AAA APRA's powers to apply for ADI to be wound up

Power to apply for ADI to be wound up

(1) APRA may apply to the Federal Court of Australia for an order that an ADI be wound up if APRA considers that the ADI is insolvent and could not be restored to solvency within a reasonable period.

Note: This section does not apply in relation to a foreign ADI (see subsection 11E(1B)).

(2) To avoid doubt, subsection (1) applies whether or not an ADI statutory manager is in control of the ADI's business.

(3) The application is to be made under section 459P of the *Corporations Act 2001*.

(4) The winding up of the ADI is to be conducted in accordance with the *Corporations Act 2001*.

(5) If APRA makes an application under subsection (1), APRA must inform the Minister of the application as soon as possible.

Note: Once informed, the Minister may choose to apply Subdivision C of Division 2AA in relation to the ADI so some depositors can receive payments earlier than they would in the winding up of the ADI.

213 Paragraph 16AB(a)

Repeal the paragraph, substitute:

(a) allows the Minister to make a declaration about an ADI if:

(i) APRA has applied under section 16AAA for the ADI to be wound up; or

(ii) a Banking Act statutory manager is in control of the ADI's business; and

214 At the end of section 16AB

Add:

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; and (d) allows APRA to facilitate a transfer of business from the declared ADI to a receiving body under the *Financial Sector (Transfer and Restructure) Act 1999* by entitling the receiving body to amounts in respect of the protected accounts.

215 Subsection 16AD(1)

Repeal the subsection, substitute:

(1) The Minister may declare that Subdivision C applies in relation to a specified ADI if any of the following requirements are satisfied:

(a) APRA has applied under section 16AAA for the ADI to be wound up;

(b) a Banking Act statutory manager is in control of the ADI's business.

Note: The Minister cannot make a declaration under this subsection in relation to a foreign ADI (see section 11E).

216 Subsection 16AD(2)

Omit "14F", substitute "16AAA".

217 Subsection 16AHA(3)

Repeal the subsection.

218 At the end of Subdivision C of Division 2AA of Part II

Add:

16AIA APRA may make transferred liabilities determination where transfer of business

(1) APRA may make a determination (a ***transferred liabilities determination***) if:

(a) an ADI is a declared ADI as a result of the Minister having made a declaration under section 16AD; and

(b) APRA has made, or proposes to make, a determination under section 25 (compulsory transfer determination) of the *Financial Sector (Transfer and Restructure) Act 1999* that there is to be a total transfer or partial transfer of business

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from the declared ADI to a receiving body (within the meaning of that Act); and

(c) the transfer of business will transfer:

(i) the liabilities of the declared ADI in respect of every protected account kept by an account-holder with the ADI; or

(ii) the liabilities of the declared ADI in respect of every protected account kept by an account-holder with the ADI, to the extent of the amount to which each of those account-holders is entitled under this Subdivision in relation to those protected accounts; and

(d) APRA is satisfied that it will be able to identify those protected accounts; and

(e) APRA has worked out:

(i) APRA's reasonable estimate of the total amount (the ***FCS amount***) to which account-holders of those protected accounts will be entitled (disregarding the determination) under section 16AF as a result of the Minister's declaration mentioned in paragraph (a); and

(ii) APRA's reasonable estimate of the total amount (the ***administration amount***) of the costs that would be incurred by APRA in relation to the exercise of its powers and the performance of its functions under this Division relating to the declared ADI if it did not make the determination; and

(f) APRA has worked out a total payment amount in accordance with section 16AIB; and

(g) APRA considers that it is reasonable in the circumstances to make the determination.

(2) However, APRA cannot make the determination if APRA has already issued a certificate of transfer under section 33 of the *Financial Sector (Transfer and Restructure) Act 1999* stating that the transfer is to take effect.

(3) The determination must be in writing.

(4) The determination must specify the following:

(a) the declared ADI;

(b) the receiving body;

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(c) a description, in general or detailed terms, of all the protected accounts kept with the declared ADI;
(d) the FCS amount;
(e) the administration amount;
(f) the total payment amount;
(g) the FCS payment amount;
(h) the administration payment amount;
(i) any other information that APRA considers appropriate.

(5) A determination under subsection (1) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) A determination made under subsection (1) is not a legislative instrument.

16AIB Payment amounts under transferred liabilities determination

(1) For the purposes of paragraph 16AIA(1)(f), APRA may work out:
(a) an amount (the ***FCS payment amount***) that:
(i) is equal to or less than the FCS amount; and
(ii) APRA considers to be appropriate; and
(b) an amount (the ***administration payment amount***) that:
(i) is equal to or less than the administration amount; and
(ii) APRA considers to be appropriate; and
(c) the amount (the ***total payment amount***) that is the sum of the FCS payment amount and the administration payment amount.

(2) In working out the FCS payment amount and the administration payment amount, APRA must have regard to the following:
(a) the total value of the assets that will be transferred from the declared ADI to the receiving body in accordance with the transfer of business;
(b) the total value of the liabilities that will be transferred from the declared ADI to the receiving body in accordance with the transfer of business;
(c) any other matter that APRA considers appropriate.

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(3) The FCS payment amount or the administration payment amount may be a nil amount.

16AIC Consequences of transferred liabilities determination once certificate of transfer issued

Application of section

(1) This section applies if:
  (a) APRA has made a transferred liabilities determination; and
  (b) APRA has issued a certificate of transfer under section 33 of the *Financial Sector (Transfer and Restructure) Act 1999* stating that the transfer is to take effect.

Receiving body entitled to total payment amount

(2) The receiving body is entitled to be paid by APRA an amount equal to the total payment amount specified in the determination.

Reduction of rights and entitlements of account-holder

(3) An account-holder's entitlement under this Subdivision to be paid an amount in respect of a protected account kept with the declared ADI is reduced to nil.

Declared ADI liable to APRA for total payment amount

(4) The declared ADI is liable to pay to APRA an amount equal to the sum of the total payment amount specified in the determination.

(5) That liability is due and payable to APRA when the certificate of transfer comes into force.

(6) Despite paragraph 16AI(1)(b), APRA does not have the right mentioned in that paragraph.

219 Subsection 16AJ(9)

Repeal the subsection.

220 Paragraph 16AK(1)(c)

Omit "(including a provisional liquidator)".

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221 After paragraph 16AK(1)(c)

Insert:

or (d) any other person;

222 Subsection 16AK(1)

Omit "or liquidator", substitute ", liquidator or other person".

223 Paragraph 16AK(4)(ea)

Omit "or report".

224 Paragraph 16AK(4)(g)

Omit "(e) and (f)", substitute "(e), (ea), (eb) and (f)".

225 Subsection 16AL(5)

Omit "(including a provisional liquidator)".

226 Subsection 16AL(7)

Omit "(including a provisional liquidator)".

227 At the end of section 16AL

Add:

Requirement made of other person—civil penalty

(8) A person mentioned in paragraph 16AK(1)(d) must comply with a requirement made of the person under subsection 16AK(1).

Civil penalty: 200 penalty units.

228 Subsection 16AV(4)

After "The ADI or authorised NOHC", insert ", or subsidiary of an ADI or authorised NOHC,".

229 Subparagraphs 16BA(6)(a)(ii) and (iii)

After "an ADI or authorised NOHC", insert ", or a subsidiary of an ADI or authorised NOHC,".

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230 Subsection 29(9)

Repeal the subsection.

231 Subsection 31B(2)

Repeal the subsection, substitute:

Banking Act statutory manager in control

(2) The following provisions do not prevent the exercise of a contractual right in relation to an asset that secures liabilities to holders of covered bonds, or their representatives, if payments under the covered bonds to the holders or representatives are not made:

(a) section 15BA (moratorium—effect of Banking Act statutory management on enforcement process regarding property);

(b) section 15BB (moratorium—effect of Banking Act statutory management on disposal of property);

(c) section 15BC (moratorium—restrictions on exercise of third party property rights);

(d) section 15C (Banking Act statutory manager being in control not grounds for denial of obligations).

232 Section 31C (heading)

Repeal the heading, substitute:

31C Powers and obligations of Banking Act statutory manager or external administrator

233 Section 31C

Omit "an ADI statutory manager", substitute "a Banking Act statutory manager".

234 Subsection 31F(9)

Repeal the subsection.

235 Subsection 52A(2)

Omit "related body corporate" (wherever occurring), substitute "whistleblower related body corporate".

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236 Subsection 52A(3)

Omit "***related body corporate***", substitute "***whistleblower related body corporate***".

237 Paragraph 52E(1)(b)

Omit "related body corporate" (wherever occurring), substitute "whistleblower related body corporate".

238 Paragraph 52E(1)(c)

Omit "related body corporate" (wherever occurring), substitute "whistleblower related body corporate within the meaning of subsection 52A(3)".

239 Section 62B (heading)

Repeal the heading, substitute:

62B Involving APRA in proposed appointment of external administrators of ADIs and NOHCs

240 Subsection 62B(1)

Repeal the subsection, substitute:

(1) At least one week before a person other than APRA:

(a) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(b) makes another kind of application (whether or not to a court) for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(c) appoints an external administrator of an ADI or of an authorised NOHC of an ADI (otherwise than as the result of an application made by another person);

the person must give APRA written notice that the person proposes to make the application or appointment.

(1A) If there is an approved form for the notice, the person must give the notice in the approved form.

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(1B) Subsection (1) does not apply if APRA gives the person written notice, before the person makes the application or appointment, that APRA consents to the person making the application or appointment.

241 Subsection 62B(4)

Repeal the subsection, substitute:

Offence

(4) A person (other than APRA) commits an offence if:

(a) the person:

(i) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(ii) makes another kind of application (whether or not to a court) for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(iii) appoints an external administrator of an ADI or of an authorised NOHC of an ADI (otherwise than as the result of an application made by another person); and

(b) APRA did not give the person written notice, before the person made the application or appointment, of APRA's consent to the person making the application or appointment, in accordance with subsection (1B); and

(c) at least one week before making the application or appointment:

(i) if there is an approved form for the purposes of this paragraph—the person did not give APRA notice in the approved form indicating that the person proposed to make the application or appointment; or

(ii) otherwise—the person did not give APRA written notice indicating that the person proposed to make the application or appointment.

Penalty: 60 penalty units.

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242 Subsection 62C(1)

Omit "the winding-up of an ADI", substitute "the winding-up of an entity covered by subsection (4), or the proposed winding-up of an entity covered by subsection (4)".

243 At the end of section 62C

Add:

(4) This subsection covers the following entities:
  (a) an ADI;
  (b) an authorised NOHC;
  (c) a subsidiary of an ADI or authorised NOHC.

244 After section 62C

Insert:

62D Application by APRA for directions

(1) APRA may apply to the Federal Court of Australia for directions regarding any matter arising under:
  (a) the winding-up of an entity covered by subsection 62C(4) (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA); or
  (b) the proposed winding-up of an entity covered by subsection 62C(4) (whether the winding-up will occur as a result of an application made, or proposed to be made, under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA).

(2) APRA must give the liquidator written notice that APRA proposes to make the application.

(3) The notice must include details of the proposed application.

(4) The liquidator is entitled to be heard on the application.

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62E APRA may request information from liquidator

(1) APRA may request a liquidator of an entity covered by subsection 62C(4) in writing to give APRA, within a reasonable time specified in the request, specified information in writing about:

(a) the winding-up of the entity (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA) and the other affairs of the entity; or

(b) the proposed winding-up of the entity (whether the winding-up will occur as a result of an application made, or proposed to be made, under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA) and the other affairs of the entity.

(2) The liquidator must comply with the request.

Note: Action may be taken under the *Corporations Act 2001* against a liquidator who does not comply with such a request.

245 Section 65 (heading)

Repeal the heading, substitute:

65 ADIs etc. may be directed to comply with Act

246 Subsection 65(1)

Omit "Where an ADI or an authorised NOHC", substitute "Where an ADI, an authorised NOHC or a subsidiary of an ADI or of an authorised NOHC".

247 Section 65

Omit "the ADI or NOHC" (wherever occurring), substitute "the ADI, NOHC or subsidiary".

248 Subsection 65(3)

Omit "authorised NOHCs", substitute "authorised NOHCs and such subsidiaries".

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249 After section 69B

69BA Institution of offence proceedings no bar to winding up

The institution of proceedings against a body corporate for an offence against this Act or the *Financial Sector (Collection of Data) Act 2001* does not prevent the institution of proceedings for the winding-up of the body corporate on a ground that relates to the matter that constitutes the offence.

250 After subsection 69F(4)

Insert:

References to a holding company of an ADI

(4A) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a holding company of an ADI were expressly limited to a reference to a holding company of an ADI, being a holding company that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) the Act has effect as if a reference to a holding company of an ADI were expressly limited to a reference to a holding company of an ADI, being a holding company that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(c) the Act has effect as if a reference to a holding company of an ADI were expressly limited to a reference to a holding company of an ADI, being a holding company that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

251 Section 70A (heading)

Repeal the heading, substitute:

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70A Protection from liability—general

252 After section 70A

Insert:

70AA Protection from liability—directions and secrecy

(1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:

(a) the person does the thing, or omits to do the thing, for the purpose of any of the following:

(i) complying with a direction under this Act given by APRA to a body corporate;

(ii) complying with section 11CI (secrecy) in relation to a direction under this Act given by APRA to a body corporate; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is any of the following:

(i) an officer or senior manager of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(ii) an employee or agent of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(iii) the body corporate or a member of a relevant group of bodies corporate of which the body corporate is also a member.

(2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

(3) In this section:

employee of a body corporate includes a person engaged to provide advice or services to the body corporate.

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officer has the meaning given by section 9 of the *Corporations Act 2001*.

70AB Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

(a) section 14C;
(b) section 52A;
(c) section 52B;
(d) section 70A;
(e) section 70AA;
(f) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

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Part 2—Application provisions

253 Interpretation

In this Part:

commencement time means the time when this item commences.

new Banking Act means the *Banking Act 1959* as amended by this Schedule.

old Banking Act means the *Banking Act 1959* as in force immediately before the commencement time.

254 Application—amendments to directions powers

(1) The amendments made by this Schedule to section 11CA of the *Banking Act 1959* apply to directions given on and after the commencement time.

(2) The amendments made by this Schedule to Subdivision AA of Division 2 of Part II of the *Banking Act 1959* apply to directions given on and after the commencement time.

(3) The amendments made by this Schedule to section 65 of the *Banking Act 1959* apply to directions given on and after the commencement time.

255 Continuation of prudential standards

To avoid doubt, the amendments made by this Schedule do not affect the validity of a prudential standard made under section 11AF of the *Banking Act 1959* that was in force immediately before the commencement time.

256 Saving—conditions on section 9 authority

(1) A condition in effect under subsection 9(4) of the old Banking Act is taken to be in effect on and after the commencement time under section 9AA of the new Banking Act.

(2) To avoid doubt, this item does not prevent the variation or revocation of a condition on or after the commencement time.

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257 Application—conditions on section 9 authority

The amendments made by items 13 and 14 of this Schedule apply to:

(a) the imposition of new conditions on a body corporate's section 9 authority on or after the commencement time; and

(b) the variation or revocation of conditions on a body corporate's section 9 authority on or after the commencement time (even if the conditions were imposed before the commencement time); and

(c) the doing of an act on or after the commencement time, or the failure to do an act on or after the commencement time, resulting in a contravention of such a condition.

258 Application—revocation of section 9 authority

(1) The amendment made by item 16 of this Schedule applies to a body corporate's section 9 authority, whether the authority was granted before, on or after the commencement time.

(2) The amendment made by item 16 of this Schedule applies in relation to a matter mentioned in a paragraph of subsection 9A(2) of the new Banking Act that occurs on or after the commencement time (including such a matter that starts before the commencement time and continues on or after the commencement time).

259 Saving—conditions on NOHC authority

(1) A condition in effect under subsection 11AA(3) of the old Banking Act is taken to be in effect on and after the commencement time under section 11AAA of the new Banking Act.

(2) To avoid doubt, this item does not prevent the variation or revocation of a condition on or after the commencement time.

260 Application—conditions on NOHC authority

The amendments made by items 17 and 18 of this Schedule apply to:

(a) the imposition of new conditions on a body corporate's NOHC authority on or after the commencement time; and

(b) the variation or revocation of conditions on a body corporate's NOHC authority on or after the commencement

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time (even if the conditions were imposed before the commencement time); and

(c) the doing of an act on or after the commencement time, or the failure to do an act on or after the commencement time, resulting in a contravention of such a condition.

261 Application—revocation of NOHC authority

(1) The amendments made by items 19 and 20 of this Schedule apply to a body corporate's NOHC authority, whether the authority was granted before, on or after the commencement time.

(2) The amendments made by items 19 and 20 of this Schedule apply in relation to a matter mentioned in a paragraph of subsection 11AB(2) of the new Banking Act that occurs on or after the commencement time (including such a matter that starts before the commencement time and continues on or after the commencement time).

262 Application—conversion and write-off provisions

The amendment made by item 31 of this Schedule applies in relation to the conversion or writing-off of any instrument on or after the commencement time, whether the instrument was issued before, at or after that time.

263 Application—stay provisions

(1) The amendment made by item 43 of this Schedule applies in relation to a direction referred to in subsection 11CD(1B) of the new Banking Act that is given on or after the commencement time.

(2) The amendment made by item 102 of this Schedule applies in relation to a recapitalisation direction referred to in subsection 13N(3) of the new Banking Act that is given on or after the commencement time.

(3) The amendment made by item 143 of this Schedule applies in relation to an act referred to in subsection 14AC(3) of the new Banking Act that is done on or after the commencement time.

(4) The amendment made by item 191 of this Schedule applies in relation to a Banking Act statutory manager taking control, or being appointed to take control, of the business of a body corporate as referred to in

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subsection 15C(3) of the new Banking Act if the control is taken, or the appointment is made, on or after the commencement time.

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Schedule 2—Amendment of the Insurance Act 1973

Part 1—Main amendments

Insurance Act 1973

1 Subsection 3(1)

Insert:

administrator, of a body corporate's business, means an administrator appointed under subsection 62ZOA(1) to take control of the body corporate's business.

Australian business assets and liabilities, of a foreign general insurer, has the meaning given by subsection 62ZVA(3).

Australian financial sector statutory manager (or ***AFS statutory manager***) means:

(a) a Banking Act statutory manager (within the meaning of the *Banking Act 1959*); or

(b) an Insurance Act statutory manager; or

(c) a Life Insurance Act statutory manager (within the meaning of the *Life Insurance Act 1995*).

direction under this Act means a direction under any of the following provisions:

(a) section 17;

(b) section 27;

(c) section 49R;

(d) section 74;

(e) section 76;

(f) section 78;

(g) section 103B;

(h) section 104.

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2 Subsection 3(1) (paragraph (a) of the definition of *external administrator*)

Omit "or provisional liquidator".

3 Subsection 3(1) (paragraph (b) of the definition of *external administrator*)

Omit "a judicial manager", substitute "a judicial manager or an Insurance Act statutory manager".

4 Subsection 3(1)

Insert:

financial market has the meaning given by section 761A of the *Corporations Act 2001*.

holding company, of a body corporate, means another body corporate of which the first body corporate is a subsidiary.

Insurance Act statutory manager has the meaning given by subsection 62ZOA(8).

liquidator includes a provisional liquidator.

listing rules has the meaning given by section 761A of the *Corporations Act 2001*.

NOHC/NOHC subsidiary has the meaning given by subsection 103A(5).

5 Subsection 3(1) (definition of *prudential matters*)

Repeal the definition, substitute:

prudential matters means matters relating to:

(a) the conduct of any part of the affairs of, or the structuring or organising of, a general insurer, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, in such a way as:

(i) to keep the general insurer, NOHC, group or member or members of the group in a sound financial position; or

(ii) to facilitate resolution of the general insurer, NOHC, group or member or members of the group; or

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(iii) to protect the interests of policyholders of any general insurer; or

(iv) not to cause or promote instability in the Australian financial system; or

(b) the conduct of any part of the affairs of a general insurer, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, with integrity, prudence and professional skill.

6 Subsection 3(1) (definition of *recapitalisation direction*)

Omit "subsection 103B(1)", substitute "subsection 103B(1) or (1B)".

7 Subsection 3(1)

Insert:

related body corporate, in relation to a body corporate, means:

(a) in Part V—a body corporate that is related to the first-mentioned body, as determined in accordance with section 50; and

(b) otherwise—a body corporate that is related to the first-mentioned body, as determined in accordance with section 4B.

relevant group of bodies corporate has the meaning given by section 4A.

resolution means the process by which APRA or other relevant persons manage or respond to an entity:

(a) being unable to meet its obligations; or

(b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or

(c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

transferred liabilities determination means a determination under subsection 62ZZMA(1).

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8 Section 4

Repeal the section, substitute:

4 Meaning of subsidiary

For the purposes of this Act (except Part V), the question whether a body corporate is a ***subsidiary*** of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

4A Meaning of relevant group of bodies corporate

For the purposes of this Act:

(a) a general insurer and its subsidiaries together constitute a ***relevant group of bodies corporate***; and

(b) an authorised NOHC and its subsidiaries together also constitute a ***relevant group of bodies corporate***.

4B Determining whether bodies corporate are related to one another

For the purposes of this Act (except Part V), the question whether a body corporate is related to another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

9 Section 15 (heading)

Repeal the heading, substitute:

15 Revocation of authorisation etc.

10 Subparagraph 15(1)(a)(iii)

Repeal the subparagraph, substitute:

(iia) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or

(iii) a direction under this Act to the insurer; or

11 After paragraph 15(1)(f)

Insert:

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(fa) both of the following apply:

(i) the insurer is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;

(ii) an authorisation (however described) for the insurer to carry on insurance business in a foreign country has been revoked or otherwise withdrawn in that foreign country; or

12 Paragraph 15(1)(g)

Omit "authority", substitute "authorisation".

13 Subparagraph 21(1)(a)(iii)

Repeal the subparagraph, substitute:

(iia) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or

(iii) a direction under this Act to the authorised NOHC; or

14 At the end of Division 4 of Part III

Add:

23A APRA may give notice to ensure that general insurer has an authorised NOHC

(1) This section applies if:

(a) a body corporate is a holding company of a general insurer; and

(b) the general insurer is not a subsidiary of an authorised NOHC.

(2) APRA may, by notice in writing to the body corporate, require it to ensure, in accordance with the conditions (if any) specified in the notice, that either of the following occurs:

(a) the body corporate becomes an authorised NOHC of the general insurer;

(b) a subsidiary of the body corporate becomes an authorised NOHC of the general insurer.

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Note: See Part 4A of the *Financial Sector (Transfer and Restructure) Act 1999* for other provisions that deal with a restructure arrangement to make an operating body a subsidiary of a NOHC.

(3) The notice may deal with the time by which, or period during which, it is to be complied with.

(4) The body corporate has power to comply with the notice despite anything in its constitution or any contract or arrangement to which it is a party.

(5) APRA may, by notice in writing to the body corporate, vary the notice mentioned in subsection (2) if, at the time of the variation, it considers that the variation is necessary and appropriate.

(6) The notice mentioned in subsection (2) has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the notice mentioned in subsection (2) if, at the time of revocation, it considers that the notice is no longer necessary or appropriate.

(7) Part VI applies to a decision to give a notice under subsection (2).

(8) Section 108 applies in relation to a notice to a body corporate under subsection (2) in the same way in which it applies to a direction to a general insurer under section 104.

(9) However, section 108 does not apply to a contravention by a body corporate of a requirement in a notice under subsection (2) if:
  (a) the contravention happens merely because APRA refuses to authorise the body corporate (or its subsidiary) under section 18; and
  (b) APRA's reasons for that refusal do not include the reason that one or more conditions specified in the notice are not satisfied.

15 Subparagraph 32(3)(a)(iv)

Omit "NOHCs; or", substitute "NOHCs;".

16 At the end of paragraph 32(3)(a)

Add:

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(v) each subsidiary of a general insurer or of an authorised NOHC;

(vi) each subsidiary of a general insurer or of an authorised NOHC, included in a specified class of subsidiaries; or

17 After Division 1 of Part IIIA

Insert:

Division 2—Conversion and write-off provisions

36A Definitions

In this Division:

clearing and settlement facility has the meaning given by Division 6 of Part 7.1 of the *Corporations Act 2001*.

conversion and write-off provisions means the provisions of the prudential standards that relate to the conversion or writing off of:

(a) Additional Tier 1 and Tier 2 capital; or

(b) any other instrument.

conversion entity: an entity (the ***first entity***) is a ***conversion entity*** for an instrument if:

(a) the instrument is issued by another entity, or another entity is a party to the instrument; and

(b) the instrument converts, in accordance with the terms of the instrument, into one or more ordinary shares of the first entity.

converts: an instrument ***converts*** into one or more ordinary shares of an entity including by redeeming or cancelling the instrument or rights under the instrument, and replacing the instrument or rights with ordinary shares.

operating rules has the meaning given by section 761A of the *Corporations Act 2001*.

related subsidiary of a general insurer means a subsidiary of a holding company of the general insurer.

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specified law means any of the following:

(a) the *Financial Sector (Shareholdings) Act 1998*;

(b) the *Foreign Acquisitions and Takeovers Act 1975*;

(c) Chapter 6 of the *Corporations Act 2001* (takeovers);

(d) any other Australian law, or law of a foreign country or part of a foreign country, prescribed by the regulations for the purposes of this paragraph.

36B Conversion and write-off provisions

Application

(1) This section applies in relation to an instrument that contains terms that are for the purposes of the conversion and write-off provisions and that is issued by, or to which any of the following is a party:

(a) a general insurer;

(b) a holding company of a general insurer;

(c) a subsidiary or related subsidiary of a general insurer;

(d) an entity of a kind prescribed by the regulations for the purposes of this paragraph.

Conversion of instrument despite other laws etc.

(2) The instrument may be converted in accordance with the terms of the instrument despite:

(a) any Australian law or any law of a foreign country or a part of a foreign country, other than a specified law; and

(b) the constitution of any of the following entities (the ***relevant entity***):

(i) the entity issuing the instrument;

(ii) any entity that is a party to the instrument;

(iii) any conversion entity for the instrument; and

(c) any contract or arrangement to which a relevant entity is a party; and

(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and

(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

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Write-off of instrument despite other laws etc.

(3) The instrument may be written off in accordance with the terms of the instrument despite:

(a) any Australian law or any law of a foreign country or a part of a foreign country; and

(b) the constitution of either of the following entities (the ***relevant entity***):

(i) the entity issuing the instrument;

(ii) any entity that is a party to the instrument; and

(c) any contract or arrangement to which a relevant entity is a party; and

(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and

(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

36C Conversion or write-off etc. not grounds for denial of obligations

(1) This section applies if an entity (the ***first entity***) 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the first entity), 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;

(d) enforce any security under the contract.

(3) The matters are as follows:

(a) a relevant instrument being converted in accordance with the terms of the instrument;

(b) a relevant instrument being written off in accordance with the terms of the instrument;

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(c) the making of a determination (however described) by APRA that results in a relevant instrument being required to be converted or written off in accordance with the terms of the instrument.

(4) In this section:

relevant instrument means:

(a) an instrument to which section 36B applies:
  (i) that is issued by the first entity; or
  (ii) to which the first entity is a party; or
  (iii) for which the first entity is a conversion entity; or

(b) if the first entity is a body corporate that is a member of a relevant group of bodies corporate—an instrument to which section 36B applies:
  (i) that is issued by another member of the group; or
  (ii) to which another member of the group is a party; or
  (iii) for which another member of the group is a conversion entity.

18 Subsection 38A(2)

Omit "related body corporate" (wherever occurring), substitute "whistleblower related body corporate".

19 Subsection 38A(3)

Omit "***related body corporate***", substitute "***whistleblower related body corporate***".

20 Subparagraph 38E(1)(b)(i)

Omit "a related body corporate in within", substitute "a whistleblower related body corporate within".

21 Subparagraph 38E(1)(b)(ii)

Omit "related body corporate", substitute "whistleblower related body corporate within the meaning of subsection 38A(3)".

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22 Paragraph 38E(1)(c)

Omit "related body corporate" (wherever occurring), substitute "whistleblower related body corporate within the meaning of subsection 38A(3)".

23 Section 49C

Repeal the section.

24 At the end of section 50

Add:

(3) The question whether bodies corporate are related to each other for the purposes of this Part is to be determined in the same way as the question whether bodies corporate are related to each other would be determined under the *Corporations Act 2001* if, in section 46 of that Act:

(a) the reference to a body corporate that is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of another body corporate were a reference to a body corporate that is in a position to cast, or control the casting of, more than one-quarter of that number of votes; and

(b) the reference to a body corporate holding more than one-half of the issued share capital of another body corporate were a reference to a body corporate holding more than one-quarter of the issued share capital of another body corporate.

25 Part VB (heading)

Repeal the heading, substitute:

Part VB—Judicial management, statutory management, other external administration and winding up

26 Section 62L (note)

Repeal the note, substitute:

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Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

27 Section 62M

Before "On an application", insert "(1)".

28 Subparagraph 62M(a)(i)

Before "the general insurer", insert "in the absence of external support,".

29 Subparagraph 62M(a)(ii)

After "the general insurer is a foreign general insurer and", insert ", in the absence of external support,".

30 After subparagraph 62M(a)(iv)

Insert:

(iva) an external administrator has been appointed to a holding company of the general insurer (or a similar appointment has been made in a foreign country in respect of such a holding company), and the requirement in subsection (2) is satisfied; or

(ivb) if the general insurer is a foreign general insurer—an application for the appointment of an external administrator of the foreign general insurer, or for a similar procedure in respect of the foreign general insurer, has been made in a foreign country; or

(ivc) if the general insurer is a foreign general insurer—an external administrator has been appointed to the foreign general insurer, or a similar appointment has been made in respect of the foreign general insurer, in a foreign country; or

31 Section 62M (note 1)

Repeal the note, substitute:

Note 1: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

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32 At the end of section 62M

Add:

(2) For the purposes of subparagraph (1)(a)(iva), the requirement in this subsection is that the appointment mentioned in that subparagraph poses a significant threat to:

(a) the operation or soundness of the general insurer; or

(b) the interests of policyholders of the general insurer; or

(c) the stability of the financial system in Australia.

(3) The regulations may specify that a particular form of support for a general insurer is not to be considered external support for the purposes of subparagraphs (1)(a)(i) and (ii).

33 Section 62P

Repeal the section, substitute:

62P Moratorium—effect of judicial management on court and tribunal proceedings

(1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (9) in respect of a general insurer if the general insurer is under judicial management.

(2) Subsection (1) does not apply if:

(a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and

(b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.

(3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA and the judicial manager at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).

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(4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the court or tribunal decides to impose such terms—the nature of those terms.

(5) The judicial manager may apply to the court or tribunal to be joined as a party to the proceedings for leave. If the judicial manager is joined as a party, the court or tribunal must have regard to the judicial manager's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the court or tribunal decides to impose such terms—the nature of those terms.

(6) Subsection (1) also does not apply if the judicial manager, after considering APRA's views, consents to the proceedings beginning or continuing.

(7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).

(8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).

(9) A proceeding in a court or tribunal is covered by this subsection in respect of a general insurer if it is any of the following:
  (a) a proceeding against the general insurer (including a cross-claim or third party claim against the general insurer);
  (b) a proceeding in relation to property of the general insurer;
  (c) a proceeding to enforce any security (including a mortgage or charge) granted by the general insurer, or by a related body corporate of the general insurer, over any property that the general insurer owns, uses, possesses, occupies or in which the general insurer otherwise has an interest.

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(10) Subsection (9) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.

(11) In this section, a reference to a tribunal includes a reference to the following:
(a) an industrial tribunal;
(b) an arbitral tribunal.

62PA Moratorium—effect of judicial management on enforcement process regarding property

(1) No enforcement process in relation to property of a general insurer can be begun or proceeded with if the general insurer is under judicial management.

(2) Subsection (1) does not apply if:
(a) the Federal Court grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or
(b) the beginning or continuing of the process is in accordance with such terms (if any) as the Federal Court imposes.

(3) A person intending to apply for leave of the Federal Court under paragraph (2)(a) must give APRA and the judicial manager at least 10 days notice of the intention to apply (or a shorter period, if the Federal Court considers that exceptional circumstances make this necessary).

(4) APRA may apply to the Federal Court to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Federal Court must have regard to APRA's views in deciding:
(a) whether to grant leave under paragraph (2)(a); and
(b) if the Federal Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
(c) if the Federal Court decides to impose such terms—the nature of those terms.

(5) The judicial manager may apply to the Federal Court to be joined as a party to the proceedings for leave. If the judicial manager is

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joined as a party, the Federal Court must have regard to the judicial manager's views in deciding:

(a) whether to grant leave under paragraph (2)(a); and

(b) if the Federal Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and

(c) if the Federal Court decides to impose such terms—the nature of those terms.

(6) Subsection (1) also does not apply if the judicial manager consents to the process beginning or continuing.

(7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).

(8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).

62PB Moratorium—effect of judicial management on disposal of property

(1) A person must not dispose of property if:

(a) the property is owned by another person; and

(b) the other person is a general insurer; and

(c) the general insurer is under judicial management.

Note: The Federal Court may grant an injunction under section 129D in respect of a contravention of this subsection.

(2) Subsection (1) does not apply if the judicial manager consents to the disposal.

(3) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

62PC Moratorium—Restrictions on exercise of third party property rights

(1) Section 440B of the *Corporations Act 2001* applies during a period in which a general insurer is under judicial management in the same way it applies during the administration of a company.

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(2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to the judicial manager's written consent.

(3) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).

(4) This section applies despite sections 62P, 62PA and 62PB.

62PD Moratorium—effect of judicial management on supply of essential services

(1) If:

(a) a general insurer is under judicial management; and

(b) the judicial manager requests, or authorises someone else to request, a person or authority (the ***supplier***) to supply an essential service to the general insurer in Australia; and

(c) the general insurer owes an amount to the supplier in respect of the supply of the essential service before the day on which the judicial manager took control of the general insurer's business;

the supplier must not:

(d) refuse to comply with the request for the reason only that the amount is owing; or

(e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Federal Court may grant an injunction under section 129D in respect of a contravention of this subsection.

(2) In this section:

essential service has the same meaning as in section 600F of the *Corporations Act 2001*.

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62PE Moratorium—effect of judicial management on annual general meeting

(1) This section applies to a general insurer that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

(2) Despite section 250N and section 601BR of that Act, if the general insurer is under judicial management at the end of that period, the general insurer need not hold that annual general meeting.

34 Section 62Q

Repeal the section.

35 After subsection 62R(1)

Insert:

(1A) If, subsequent to that order, a situation arises where there is no judicial manager of the general insurer, or it appears to the Federal Court that it is likely that such a situation will arise, the Federal Court may appoint another judicial manager of the general insurer.

(1B) If the Federal Court appoints 2 or more judicial managers of a general insurer, or appoints one or more additional judicial managers of a general insurer:

(a) except to the extent (if any) specified in a declaration by the Federal Court under paragraph (b), the functions and powers under this Act of a judicial manager of the general insurer may be performed or exercised by:

(i) all of the judicial managers of the general insurer acting jointly; or

(ii) each of the judicial managers of the general insurer acting individually; and

(b) at the time of appointment, the Federal Court may make a declaration for the purposes of paragraph (a), specifying limits or conditions on the judicial managers' ability to perform functions and exercise powers jointly or individually; and

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(c) treat a reference in this Act to a judicial manager as being a reference to whichever one or more of those judicial managers the case requires.

36 Subsection 62R(2)

Repeal the subsection, substitute:

(2) The Federal Court may cancel the appointment of a judicial manager and appoint another person as judicial manager:
(a) on application by APRA; or
(b) of its own motion.

37 Subsection 62R(3)

Omit "However,".

38 Section 62T

Repeal the section, substitute:

62T Effect of judicial management on powers of officers etc.

(1) Subject to subsection (3), if the Federal Court has made an order placing a general insurer under judicial management:
(a) at the time the judicial management commences:
(i) a person with the powers and functions of an officer of the general insurer immediately before that time ceases to have those powers and functions; and
(ii) if the general insurer is a foreign general insurer and there is a person with the powers and functions of an agent of the general insurer for the purposes of section 118 immediately before that time—the person ceases to have those powers and functions; and
(iii) the judicial manager appointed by the Court starts to have the powers and functions mentioned in subparagraph (i) (and, if applicable, subparagraph (ii)); and
(b) while the general insurer is under judicial management:
(i) if a person mentioned in subparagraph (a)(i) or (ii) purports to act in relation to the general insurer's

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business, the purported act is invalid and of no effect; and

(ii) 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.

(2) Subsection (1) does not remove an officer or agent of the general insurer from office.

(3) A general insurer may not issue policies without the leave of the Federal Court if the company is under judicial management.

Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

(4) In this section, ***officer*** has the same meaning as it has in the *Corporations Act 2001*.

39 Subsection 62U(1)

Omit "when the management of the general insurer vests in the judicial manager appointed by the Federal Court", substitute "when the judicial management of the general insurer commences".

40 Subsection 62U(2)

Omit "while the management of the general insurer is vested in the judicial manager appointed by the Federal Court", substitute "while the general insurer is under judicial management".

41 Subsection 62U(3)

Omit "while the management of the general insurer is vested in a judicial manager", substitute "while the general insurer is under judicial management".

42 Subsection 62U(4)

Omit "that the management of the general insurer vests in the judicial manager when the judicial management commences", substitute "that the general insurer is under judicial management".

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43 Section 62V

Repeal the section, substitute:

62V Judicial management not ground for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
  (a) deny any obligations under the contract;
  (b) accelerate any debt under the contract;
  (c) close out any transaction relating to the contract;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) the making by the Federal Court of an order that the body corporate be placed under judicial management;
  (b) the commencement of the judicial management of the body corporate;
  (c) if the body corporate is a member of a relevant group of bodies corporate:
    (i) the making by the Federal Court of an order that another member of the group be placed under judicial management; or
    (ii) the commencement of the judicial management of another member of the group.

44 Section 62W

Before "The appointment of", insert "(1)".

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45 Section 62W

Omit "The appointment of a judicial manager under this Part does not affect", substitute "None of the matters mentioned in subsection (2) affect".

46 At the end of section 62W

Add:

(2) The matters are as follows:
  (a) the making by the Federal Court of an order that the general insurer be placed under judicial management;
  (b) the commencement of the judicial management of the general insurer.

47 Paragraph 62Z(4)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 127B of this Act)".

48 Paragraph 62Z(4)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

49 Section 62ZB

Repeal the section, substitute:

62ZB Act under section 62Z not ground for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
  (a) deny any obligations under the contract;
  (b) accelerate any debt under the contract;

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(c) close out any transaction relating to the contract;
(d) enforce any security under the contract.

(3) The matters are as follows:
(a) a judicial manager doing an act under subsection 62Z(1) relating to the body corporate;
(b) if the body corporate is a member of a relevant group of bodies corporate—a judicial manager doing an act under subsection 62Z(1) relating to another member of the group.

50 Subsection 62ZF(5)

Repeal the subsection, substitute:

(5) At the time when an order cancelling the judicial management of the general insurer comes into force:
(a) the judicial manager ceases to have the powers and functions of an officer of the general insurer; and
(b) the board of directors or other governing body of the general insurer starts to have those powers; and
(c) if the general insurer is a foreign general insurer and there is a person appointed as an agent of the general insurer for the purposes of section 118—the person starts to have the powers and functions of such an agent.

51 Paragraph 62ZI(2)(aa)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

52 After paragraph 62ZI(2)(aa)

Insert:

(ab) to transfer shares in the company to another company under section 25AA of the *Financial Sector (Transfer and Restructure) Act 1999*;

53 Subparagraph 62ZJ(3)(b)(i)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 127B of this Act)".

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54 Subparagraph 62ZJ(3)(b)(iv)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

55 Subsection 62ZK(2)

Omit "the management of the general insurer continues to be vested in the judicial manager", substitute "the general insurer continues to be under judicial management".

56 Section 62ZM

Repeal the section, substitute:

62ZM Immunity

(1) A judicial manager, or a person acting on behalf of a judicial manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the judicial manager by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) A judicial manager is not liable under section 588G of the *Corporations Act 2001*. This subsection does not limit the scope of subsection (1).

Signpost to secrecy obligations

(4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by judicial managers under this Act.

57 Section 62ZO

Repeal the section.

58 After Division 1 of Part VB

Insert:

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Division 1A—Statutory management of general insurers

Subdivision A—General provisions relating to statutory management

62ZOA Consequences of inability or failure of general insurer etc. to meet certain requirements

Appointment of administrator or control by APRA

(1) APRA may take control of a general insurer's business or appoint an administrator to take control of the general insurer's business if both of the following requirements are met:
  (a) APRA is satisfied of the matters of which the Federal Court is required to be satisfied for the purposes of section 62L or 62M;
  (b) subsection (2) applies.

(2) This subsection applies if APRA is satisfied that at least one of the following situations exists:
  (a) both:
    (i) an AFS statutory manager has taken control of a body corporate under this Act, the *Banking Act 1959* or the *Life Insurance Act 1995* (or APRA intends for that to occur); and
    (ii) the general insurer and the body corporate are related bodies corporate;
  (b) both:
    (i) the general insurer's financial position is deteriorating rapidly, or is likely to deteriorate rapidly; and
    (ii) failure to respond quickly to the deterioration would be likely to prejudice the interests of policyholders of the insurer;
  (c) 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;
  (d) an external administrator has been appointed to a holding company of the general insurer (or a similar appointment has

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been made in a foreign country in respect of such a holding company), and the appointment poses a significant threat to:

(i) the operation or soundness of the general insurer; or

(ii) the interests of policyholders of the general insurer; or

(iii) the stability of the financial system in Australia;

(e) if the general insurer is a foreign general insurer:

(i) an application for the appointment of an external administrator of the foreign general insurer, or for a similar procedure in respect of the foreign general insurer, has been made in a foreign country; or

(ii) an external administrator has been appointed to the foreign general insurer, or a similar appointment has been made in respect of the foreign general insurer, in a foreign country.

(3) APRA may take any of the actions mentioned in subsection (4) in relation to a body corporate (the ***target body corporate***) if:

(a) the target body corporate is a body corporate that is any of the following:

(i) an authorised NOHC of a general insurer (the ***relevant general insurer***);

(ii) a subsidiary of an authorised NOHC of a general insurer (also the ***relevant general insurer***);

(iii) a subsidiary of a general insurer (also the ***relevant general insurer***); and

(b) the condition in subsection (5), (6) or (7) is satisfied; and

(c) the target body corporate is incorporated in Australia; and

(d) the target body corporate is not a body corporate of a kind specified in regulations (if any) made for the purposes of this paragraph.

(4) The actions are as follows:

(a) taking control of the business of the target body corporate;

(b) appointing an administrator to take control of the business of the target body corporate.

(5) The condition in this subsection is satisfied if:

(a) either:

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(i) an Insurance Act statutory manager has taken control of the relevant general insurer; or

(ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant general insurer, and APRA intends that an Insurance Act statutory manager will take control of the relevant general insurer; and

(b) APRA considers that the target body corporate provides services that are, or conducts business that is, essential to the capacity of the relevant general insurer to maintain its operations.

(6) The condition in this subsection is satisfied if:

(a) either:

(i) an Insurance Act statutory manager has taken control of the relevant general insurer; or

(ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant general insurer, and APRA intends that an Insurance Act statutory manager will take control of the relevant general insurer; and

(b) APRA considers that it is necessary for an Insurance Act statutory manager to take control of the target body corporate, in order to facilitate the resolution of any of the following:

(i) the relevant general insurer;

(ii) an authorised NOHC of the relevant general insurer;

(iii) a relevant group of bodies corporate of which the relevant general insurer is a member;

(iv) a particular member or particular members of such a group.

(7) The condition in this subsection is satisfied if:

(a) there is an external administrator of the target body corporate, or APRA considers that, in the absence of external support:

(i) the target body corporate may become unable to meet its obligations; or

(ii) the target body corporate may suspend payment; and

(b) APRA considers that it is necessary to take an action mentioned in subsection (4) in respect of the target body

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corporate in order to enable the relevant general insurer to maintain its operations, or in order to facilitate the resolution of any of the following:

(i) the relevant general insurer;

(ii) an authorised NOHC of the relevant general insurer;

(iii) a relevant group of bodies corporate of which the relevant general insurer is a member;

(iv) a particular member or particular members of such a group.

(8) If:

(a) APRA is in control of a body corporate's business under this Subdivision—APRA is the ***Insurance Act statutory manager*** of the body corporate; or

(b) an administrator appointed by APRA is in control of a body corporate's business under this Subdivision—the administrator is the ***Insurance Act statutory manager*** of the body corporate.

Note: This section and other provisions relating to statutory management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

(9) If APRA appoints 2 or more Insurance Act statutory managers of a body corporate, or appoints one or more additional Insurance Act statutory managers of a body corporate:

(a) the functions and powers under this Act of an Insurance Act statutory manager of the body corporate may be performed or exercised by:

(i) all of the Insurance Act statutory managers of the body corporate acting jointly; or

(ii) each of the Insurance Act statutory managers of the body corporate acting individually (except to the extent (if any) specified in a notice given by APRA under paragraph (b)); and

(b) at the time of appointment, APRA may give all of the Insurance Act statutory managers of the body corporate a notice in writing for the purposes of subparagraph (a)(ii), specifying limits or conditions on their ability to perform functions and exercise powers individually; and

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(c) treat a reference in this Act to an Insurance Act statutory manager as being a reference to whichever one or more of those Insurance Act statutory managers the case requires.

62ZOB Start of control of body corporate's business by Insurance Act statutory manager

(1) After the decision that an Insurance Act statutory manager will take control of a body corporate's business is made, APRA must give the body corporate written notice that the Insurance Act statutory manager will take, or is taking, control of the business.

Note: Subsections 62ZOQ(4) and 62ZOZA(3) also require APRA to give notice of the taking of control.

(2) An Insurance Act statutory manager takes control of a body corporate's business:

(a) at the time specified in a notice under this section as the time when the Insurance Act statutory manager takes control of the business (which must not be earlier than the notice is given); or

(b) if a notice under this section does not specify a time as the time when the Insurance Act statutory manager takes control of the business—at the time the notice is given.

(3) A notice under subsection (1) is not a legislative instrument.

62ZOC Insurance Act statutory managers—termination of control

Conditions necessary for termination of control

(1) If APRA assumes control of a body corporate's business or appoints an administrator of a body corporate's business, APRA must ensure that either it or an administrator of the body corporate's business has control of the body corporate's business until:

(a) APRA considers that it is no longer necessary for it or an administrator to remain in control of the body corporate's business; or

(b) APRA has applied for the body corporate to be wound up.

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A termination of control that is permitted under this section is called an ***ultimate termination of control***.

Note: This provision does not prevent a change, or changes, between control of a body corporate's business by APRA and an administrator or between administrators.

Events to precede termination

(2) Before making an ultimate termination of control by an Insurance Act statutory manager of a body corporate's business, APRA must:

(a) do both of the following:

(i) ensure that directors of the body corporate have been appointed or elected under the body corporate's constitution at a meeting called by the statutory manager in accordance with the body corporate's constitution;

(ii) if the body corporate is a foreign general insurer—appoint an agent in Australia for the purpose of section 118 by instrument in writing; or

(b) do both of the following:

(i) appoint directors of the body corporate by instrument in writing;

(ii) if the body corporate is a foreign general insurer—appoint an agent in Australia for the purpose of section 118 by instrument in writing; or

(c) ensure that a liquidator has been appointed:

(i) unless subparagraph (ii) applies—for the body corporate; or

(ii) if the body corporate is a foreign general insurer—for the body corporate in relation to its Australian business assets and liabilities.

Power to terminate control

(3) If the requirements in subsections (1) and (2) are satisfied, APRA may by instrument in writing make an ultimate termination of control of a body corporate's business by an Insurance Act statutory manager.

(4) If the Insurance Act statutory manager at the time of the termination is an administrator, the instrument of termination also

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operates as a termination of the appointment of the administrator. A copy of the instrument must be given to the administrator. However, mere failure to give the copy to the administrator does not affect the termination of the appointment.

Period of director's appointment

(5) If a director is elected or appointed under subsection (2), the director takes office on the termination of the Insurance Act statutory manager's control of the body corporate's business. If the director was appointed by APRA, the director holds office until the body corporate's next annual general meeting, subject to any terms and conditions imposed by APRA on the director's appointment. If the director was appointed or elected under the body corporate's constitution, the constitution governs the appointment.

Note: For further information about what happens when an Insurance Act statutory manager is in control of a body corporate's business, see Subdivision B.

Subdivision B—Provisions dealing with control of a body corporate's business by an Insurance Act statutory manager

62ZOD Insurance Act statutory manager's powers and functions

Insurance Act statutory manager's powers and functions include powers and functions of board

(1) An Insurance Act statutory manager has the powers and functions of the members of the board of directors of the body corporate (collectively and individually), including the board's powers of delegation.

Note: When an Insurance Act statutory manager takes control of the business of a body corporate, the directors of the body corporate cease to hold office (see section 62ZOP).

Insurance Act statutory manager's power to obtain information

(2) An Insurance Act statutory manager may, for the purposes of this Division, require a person who has, at any time, been an officer of the body corporate to give the Insurance Act statutory manager any

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information relating to the business of the body corporate that the Insurance Act statutory manager requires. A requirement to give information may include a requirement to produce books, accounts or documents.

(3) A person who is or has been an officer of a body corporate commits an offence if:

(a) there is an Insurance Act statutory manager in relation to the body corporate; and

(b) under subsection (2), the Insurance Act statutory manager requires the person to give information or to produce books, accounts or documents; and

(c) the person fails to comply with the requirement.

Penalty: Imprisonment for 12 months.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

(4) An individual is not excused from complying with a requirement under subsection (2) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(5) If:

(a) before giving information in compliance with a requirement under subsection (2), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual so liable;

the information given in compliance with the requirement is 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.

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(6) Subsections (4) and (5) apply to the production of books, accounts or documents in a corresponding way to the way in which they apply to the giving of information.

Insurance Act statutory manager's power to sell whole or part of body corporate's business

(7) An Insurance Act statutory manager may sell or otherwise dispose of the whole or any part of the body corporate's business. The sale or disposal may occur on any terms and conditions that the Insurance Act statutory manager considers appropriate.

Insurance Act statutory manager's powers to alter body corporate's constitution etc.

(8) An Insurance Act statutory manager may, if the body corporate concerned is registered under the *Corporations Act 2001*, alter the body corporate's constitution, rules or other arrangements for governance if the alteration:

(a) is necessary or convenient for enabling or facilitating the performance of the Insurance Act statutory manager's functions and duties, or the exercise of the Insurance Act statutory manager's other powers, under this Division in relation to the body corporate; and

(b) promotes:

(i) the protection of the policyholders of the body corporate; and

(ii) financial system stability in Australia.

(9) An Insurance Act statutory manager may do an act under subsection (7) or (8) despite:

(a) the *Corporations Act 2001*; and

(b) the body corporate's constitution; and

(c) any contract or arrangement to which the body corporate is party; and

(d) any listing rules of a financial market in whose official list the body corporate is included.

Interpretation

(10) In this section:

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officer has the meaning given by section 9 of the *Corporations Act 2001*.

62ZOE Safeguards on exercise of Insurance Act statutory manager's powers and functions

(1) Despite anything else in this Subdivision, an Insurance Act statutory manager of a body corporate (the ***body corporate under management***) may not perform a function or exercise a power under section 62ZOD if:

(a) either or both of subsections (2) and (3) apply; and

(b) the performance of the function or the exercise of the power is not for the purposes of:

(i) an act of the Insurance Act statutory manager under subsection 62ZOF(1); or

(ii) Part 3 or 4 of the *Financial Sector (Transfer and Restructure) Act 1999*.

(2) This subsection applies if:

(a) the body corporate under management is not a general insurer; and

(b) the performance or the exercise would result in:

(i) the provision of services by the body corporate under management to a related body corporate of the body corporate under management; or

(ii) the provision of services by a related body corporate of the body corporate under management to the body corporate under management; or

(iii) subject to subsection (4), the transfer of assets between the body corporate under management and another body corporate (otherwise than in the ordinary course of business); and

(c) the performance or the exercise is not required or permitted by a binding arrangement that was in existence immediately before the Insurance Act statutory manager started to be in control of the business of the body corporate under management; and

(d) the provision or transfer is not for fair value.

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(3) This subsection applies if:
(a) the body corporate under management is an authorised NOHC of a general insurer; and
(b) the performance or the exercise requires using funds of the body corporate or a subsidiary of the body corporate to increase the level of capital of the general insurer to a specified level; and
(c) the shareholders of the body corporate have not agreed, by ordinary resolution, to that use of the funds.

(4) Treat the requirement in subparagraph (2)(b)(iii) as not being met if:
(a) the body corporate under management is an authorised NOHC of a general insurer; and
(b) the transfer of assets mentioned in that subparagraph is a transfer of funds to increase the level of capital of the general insurer to a specified level; and
(c) the shareholders of the body corporate have agreed, by ordinary resolution, to that use of the funds.

62ZOF Insurance Act statutory manager's additional powers to facilitate recapitalisation

Powers

(1) An Insurance Act statutory manager of a body corporate that is a company that has a share capital and is registered under the *Corporations Act 2001* may do one or more of the following acts on terms determined by the Insurance Act statutory manager:
(a) issue shares, or rights to acquire shares, in the company;
(b) cancel shares, or rights to acquire shares, in the company;
(c) reduce the company's share capital by cancelling any paid-up share capital that is not represented by available assets;
(d) sell shares, or rights to acquire shares, in the company;
(e) vary or cancel rights or restrictions attached to shares in a class of shares in the company.

Note: Before doing such an act, the Insurance Act statutory manager will usually need to get and consider a report on the fair value of each share or right concerned: see section 62ZOG.

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Giving company members notice of exercise of powers

(2) As soon as practicable after doing an act described in paragraph (1)(a), (b), (c) or (e) or subsection (3), the Insurance Act statutory manager must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the company just before the act, identifying the act and explaining its effect on their interests as members.

(3) One of the acts to which subsection (2) relates is the offering of shares, or rights to acquire shares, in the company for sale under paragraph (1)(d).

Exercise of powers despite other laws etc.

(4) An Insurance Act statutory manager may do an act under subsection (1) despite:
  (a) the *Corporations Act 2001*; and
  (b) the company's constitution; and
  (c) any contract or arrangement to which the company is party; and
  (d) any listing rules of a financial market in whose official list the company is included.

Section does not apply to foreign general insurers etc.

(5) This section does not apply in relation to a body corporate that is:
  (a) a foreign general insurer; or
  (b) a subsidiary of a foreign general insurer; or
  (c) an authorised NOHC of a foreign general insurer.

62ZOG Considering report before acting under section 62ZOF

Getting and considering report on fair value of shares or rights

(1) Before determining terms for an act under subsection 62ZOF(1), the Insurance Act statutory manager must:
  (a) obtain a report meeting the requirements in subsection (2) of this section on the fair value of the shares or rights concerned from an expert who is not an associate of the statutory

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manager, or of the company, under Division 2 of Part 1.2 of the *Corporations Act 2001*; and

(b) consider the report;

unless APRA determines under subsection (8) that this subsection does not apply in relation to that act relating to those shares or rights.

Content of report

(2) The report must set out:

(a) the amount that is, in the expert's opinion, the fair value for each share or right concerned; and

(b) the reasons for forming the opinion; and

(c) any relationship between the expert and any of the following persons:

(i) the Insurance Act statutory manager;

(ii) a person who is an associate of the Insurance Act statutory manager under Division 2 of Part 1.2 of the *Corporations Act 2001*;

(iii) the body corporate;

(iv) a person who is an associate of the body corporate under Division 2 of Part 1.2 of the *Corporations Act 2001*;

including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; 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.

Determining fair value of shares

(3) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each share concerned, 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

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(b) then allocate that value among the classes of shares in the company that either have been issued or that the Insurance Act statutory manager proposes to issue (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 either have been issued or that the Insurance Act statutory manager proposes to issue (without allowing a premium or applying a discount for particular shares in that class).

Assumptions for valuation of company

(4) The Minister may give the expert written notice of assumptions for the valuation of the company. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Determining fair value of rights

(5) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each right concerned, the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the right.

Assumptions for valuation of rights

(6) The Minister may give the expert written notice of assumptions for the valuation of the rights concerned. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Contravention does not invalidate act

(7) A contravention of subsection (1), (2), (3), (5) or (9) does not affect the validity of anything done under section 62ZOF.

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Exemption from subsection (1)

(8) APRA may determine in writing that subsection (1) does not apply in relation to an act relating to shares or rights if APRA is satisfied that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:

(a) policyholders with:

(i) if the company is a general insurer—the general insurer; or

(ii) if the company is not a general insurer—the relevant general insurer mentioned in subsection 62ZOA(3); and

(b) financial system stability in Australia.

(9) APRA must:

(a) publish a copy of a determination under subsection (8) in the *Gazette*; and

(b) give a copy of a determination under subsection (8) to the Insurance Act statutory manager concerned (unless that manager is APRA).

(10) A determination made under subsection (8) is not a legislative instrument.

62ZOH Act under section 62ZOF not ground for denying obligation

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), 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;

(d) enforce any security under the contract.

(3) The matters are as follows:

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(a) an Insurance Act statutory manager of the body corporate doing an act under subsection 62ZOF(1) relating to the body corporate;

(b) if the body corporate is a member of a relevant group of bodies corporate—an Insurance Act statutory manager of another member of the group doing an act under subsection 62ZOF(1) in relation that other member.

62ZOI 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 a body corporate that has an Insurance Act statutory manager if:

(a) in a case where the Insurance Act 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 Insurance Act statutory manager is not APRA:

(i) the Insurance Act 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 Insurance Act 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.

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(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 62ZOD not limited

(7) This section does not limit section 62ZOD.

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62ZOJ Administrator in control—additional powers to recommend action by APRA

Types of recommendation

(1) An administrator of a body corporate's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:

(a) that APRA make a particular direction under subsection 62ZOM(3) or Division 2 of Part IX in respect of the body corporate;

(b) that APRA apply for the body corporate to be wound up;

(c) if the body corporate is a general insurer—that APRA revoke the general insurer's authorisation under section 12;

(d) if the body corporate is an authorised NOHC—that APRA revoke the authorised NOHC's authorisation under section 18.

Effect of recommendation

(2) If an administrator of a body corporate's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

62ZOK Insurance Act statutory manager's liabilities and duties

Immunity

(1) An Insurance Act statutory manager, or a person acting on behalf of an Insurance Act statutory manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Insurance Act statutory manager by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) To avoid doubt, an Insurance Act statutory manager is not liable under section 588G of the *Corporations Act 2001* in respect of anything done, or omitted to be done, in the exercise or

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performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Insurance Act statutory manager by or under this Act. This subsection does not limit the scope of subsection (1).

Signpost to secrecy obligations

(4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by Insurance Act statutory managers under this Act.

62ZOL Transaction by Insurance Act statutory manager not voidable under section 588FE of the *Corporations Act 2001*

A transaction of a body corporate is not voidable under section 588FE of the *Corporations Act 2001* merely because:

(a) the transaction was entered into at a time when an Insurance Act statutory manager was in control of the body corporate's business; and

(b) the transaction is:

(i) an uncommercial transaction (within the meaning of that Act) of the body corporate; or

(ii) an unfair preference (within the meaning of that Act) given by the body corporate to a creditor of the company; or

(iii) an insolvent transaction (within the meaning of that Act) of the body corporate.

62ZOM Administrator in control—additional duties

Duty to report to APRA on request

(1) A person who is an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business is being carried out if APRA requests that such a report be provided to it. The report must be given to APRA within a reasonable time after the request.

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Duty to report to APRA on termination of appointment

(2) A person who was an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business was carried out over the period of the administrator's appointment if the administrator's appointment has been terminated. The report must be given to APRA within a reasonable time of the termination.

Duty to follow directions by APRA

(3) APRA may give an administrator of a body corporate's business a direction relating to the control of the body corporate's business, and may alter such a direction. If a direction (including an altered direction) is given to an administrator by APRA, the administrator must:

(a) act in accordance with the direction; or

(b) immediately provide to APRA information relating to the control of the body corporate's business and request APRA to alter the direction.

(4) If an administrator of a body corporate's business requests APRA to alter a direction and APRA considers the request then confirms the direction, the administrator must act in accordance with the direction.

62ZON Administrator in control—additional duties where action may affect financial system stability in Australia

(1) If an administrator of a body corporate's business has reasonable cause to believe that an action that the administrator proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia, the administrator must:

(a) notify APRA as soon as practicable; and

(b) obtain APRA's written consent before taking the action.

(2) The administrator is not required to comply with subsection (1) if the administrator is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.

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(3) The performance of a function or the exercise of a power by an administrator is not invalid merely because of a failure by the administrator to comply with this section.

62ZOO Termination of Insurance Act statutory manager's appointment

(1) APRA may terminate the appointment of an administrator of a body corporate's business and either appoint another person as administrator of the body corporate's business or itself take control of the body corporate's business if:

(a) the administrator contravenes a requirement of this Division; or

(b) APRA considers such action necessary to:

(i) facilitate the resolution of the body corporate, a relevant group of bodies corporate of which the body corporate is a member, or another member of such a group; or

(ii) if the body corporate is a general insurer—protect the interests of policyholders of the general insurer; or

(iii) promote financial system stability in Australia.

(2) If:

(a) APRA is the statutory manager of a body corporate; and

(b) the requirement in paragraph (1)(b) is satisfied;

it may cease to be the statutory manager of the body corporate and appoint a person as administrator of the body corporate's business.

(3) This section has effect subject to section 62ZOC.

62ZOP Effect on directors of Insurance Act statutory manager taking control of a body corporate's business

(1) The directors of a body corporate cease to hold office when an Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of ***director***, see subsection (10).

(2) A director of a body corporate must not be appointed or elected while an Insurance Act statutory manager is in control of the body

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corporate's business unless the appointment is made under subsection 62ZOC(2).

(3) The appointment of an agent of a body corporate under section 118 ceases to have effect when an Insurance Act statutory manager takes control of the body corporate's business.

(4) A person must not be appointed as an agent of a body corporate under section 118 while an Insurance Act statutory manager is in control of the body corporate's business unless the appointment is made under subsection 62ZOC(2).

(5) If a person who ceased to hold office as a director of a body corporate under subsection (1), or a purported director of a body corporate appointed or elected in contravention of subsection (2), purports to act in relation to the body corporate's business while an Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(6) If a person whose appointment as an agent of a body corporate under section 118 ceased to have effect under subsection (3) purports to act in relation to the body corporate's business while an Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(7) Subsections (1), (2) and (5) do not apply in relation to a body corporate that is a foreign general insurer.

(8) Subsection (9) applies if:
  (a) subsections (1), (2) and (5) do not apply in relation to a body corporate because of subsection (7); and
  (b) an Insurance Act statutory manager takes control of the body corporate's business; and
  (c) a director of the body corporate acts, or purports to act in relation to the body corporate's business while the Insurance Act statutory manager has control of the body corporate's business.

(9) Those acts are invalid and of no effect to the extent that they relate to:
  (a) the Australian business assets and liabilities of the body corporate; or

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(b) the management of the body corporate, to the extent that the management relates to the Australian business assets and liabilities of the body corporate.

(10) For the purposes of this section, ***director*** has the same meaning as it has in the *Corporations Act 2001*.

62ZOQ Effect on external administrator of Insurance Act statutory manager taking control of a body corporate's business

(1) The appointment of an external administrator of a body corporate is terminated when an Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of ***external administrator***, see subsection 3(1).

(2) An external administrator of a body corporate must not be appointed while an Insurance Act statutory manager is in control of the body corporate's business unless APRA approves the appointment.

(3) If a person who ceased to be the external administrator of a body corporate under subsection (1), or a purported external administrator of the body corporate appointed in contravention of subsection (2), purports to act in relation to the body corporate's business while an Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(4) APRA must inform the external administrator of a body corporate that an Insurance Act statutory manager will take control of the body corporate's business as soon as possible after the decision that an Insurance Act statutory manager will take control of the body corporate's business is made. However, failure to inform the external administrator does not affect the operation of this section.

62ZOR Moratorium—effect of Insurance Act statutory management on court and tribunal proceedings

(1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (8) in respect of a body corporate if

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an Insurance Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:

(a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and

(b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.

(3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).

(4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:

(a) whether to grant leave under paragraph (2)(a); and

(b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and

(c) if the court or tribunal decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:

(a) APRA consents in writing to the proceedings beginning or continuing; or

(b) the Insurance Act statutory manager, after considering APRA's views, consents to the proceedings beginning or continuing.

(6) APRA (or the Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

(8) A proceeding in a court or tribunal is covered by this subsection in respect of a body corporate if it is any of the following:

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(a) a proceeding against the body corporate (including a cross-claim or third party claim against the body corporate);
(b) a proceeding in relation to property of the body corporate;
(c) a proceeding to enforce any security (including a mortgage or charge) granted by the body corporate, or by a related body corporate of the body corporate, over any property that the body corporate owns, uses, possesses, occupies or in which the body corporate otherwise has an interest.

(9) Subsection (8) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.

(10) In this section, a reference to a tribunal includes a reference to the following:
(a) an industrial tribunal;
(b) an arbitral tribunal.

62ZOS Moratorium—effect of Insurance Act statutory management on enforcement process regarding property

(1) No enforcement process in relation to property of a body corporate can be begun or proceeded with if an Insurance Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:
(a) the Federal Court grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or
(b) the beginning or continuing of the process is in accordance with such terms (if any) as the Court imposes.

(3) A person intending to apply for leave of the Federal Court under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Court considers that exceptional circumstances make this necessary).

(4) APRA may apply to the Federal Court to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Federal Court must have regard to APRA's views in deciding:
(a) whether to grant leave under paragraph (2)(a); and

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(b) if the Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
(c) if the Court decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:
(a) APRA consents to the process beginning or continuing; or
(b) the Insurance Act statutory manager consents to the process beginning or continuing.

(6) APRA (or the Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

62ZOT Moratorium—effect of Insurance Act statutory management on disposal of property

(1) A person must not dispose of property if:
(a) the property is owned by another person; and
(b) the other person is a body corporate; and
(c) an Insurance Act statutory manager is in control of the body corporate's business.

Note: The Federal Court may grant an injunction under section 129D in respect of a contravention of this subsection.

(2) Subsection (1) does not apply if:
(a) APRA consents to the disposal; or
(b) the Insurance Act statutory manager consents to the disposal.

(3) Neither APRA nor the Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

62ZOU Moratorium—Restrictions on exercise of third party property rights

(1) Section 440B of the *Corporations Act 2001* applies during a period in which an Insurance Act statutory manager is in control of a body

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corporate's business in the same way it applies during the administration of a company.

(2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to:

(a) the Insurance Act statutory manager's written consent; or

(b) APRA's written consent.

(3) Neither APRA nor an Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).

(4) This section applies despite sections 62ZOR, 62ZOS and 62ZOT.

62ZOV Moratorium—effect of Insurance Act statutory management on supply of essential services

(1) If:

(a) an Insurance Act statutory manager is in control of a body corporate's business; and

(b) the Insurance Act statutory manager requests, or authorises someone else to request, a person or authority (the ***supplier***) to supply an essential service to the body corporate in Australia; and

(c) the body corporate owes an amount to the supplier in respect of the supply of the essential service before the day on which the Insurance Act statutory manager took control of the body corporate's business;

the supplier must not:

(d) refuse to comply with the request for the reason only that the amount is owing; or

(e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Federal Court may grant an injunction under section 129D in respect of a contravention of this subsection.

(2) In this section:

essential service has the same meaning as in section 600F of the *Corporations Act 2001*.

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62ZOW Moratorium—effect of Insurance Act statutory management on annual general meeting

(1) This section applies to a body corporate that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

(2) Despite section 250N and section 601BR of that Act, if an Insurance Act statutory manager is in control of the body corporate's business at the end of that period, the body corporate need not hold that annual general meeting.

62ZOX Insurance Act statutory manager being in control not grounds for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), 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;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) an Insurance Act statutory manager being in control, or being appointed to take control, of the business of the body corporate;
  (b) if the body corporate is a member of a relevant group of bodies corporate—an Insurance Act statutory manager being in control, or being appointed to take control, of the business of another member of the group.

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62ZOY Application of other provisions

(1) None of the matters mentioned in subsection (2) affect:
  (a) the continued operation of other provisions of this Act or the operation of the *Financial Sector (Collection of Data) Act 2001* in relation to a body corporate; or
  (b) the obligation of a body corporate to comply with those other provisions and that Act.

(2) The matters are as follows:
  (a) the appointment of an Insurance Act statutory manager of the body corporate's business under this Division;
  (b) the fact that an Insurance Act statutory manager is in control of the body corporate's business.

(3) The *Public Governance, Performance and Accountability Act 2013* does not apply to a body corporate that has an Insurance Act statutory manager.

62ZOZ Costs of statutory management

(1) APRA's costs (including costs in the nature of remuneration and expenses) of being in control of a body corporate's business, or of having an administrator in control of a body corporate's business, are payable from the body corporate's funds and are a debt due to APRA.

(2) Despite anything contained in any law relating to the winding-up of companies, debts due to APRA by a body corporate under subsection (1) have priority in a winding-up of the body corporate over all other unsecured debts.

62ZOZA APRA must report to Treasurer and publish information about statutory management

Reports to the Treasurer

(1) If the Treasurer requests APRA to give him or her a written report concerning the activities of Insurance Act statutory managers in respect of specified body corporates or in respect of a specified

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period, APRA must give the Treasurer such a written report within a reasonable time after the Treasurer requests it.

(2) If an Insurance Act statutory manager takes control of a body corporate's business during a financial year, or if there is an ultimate termination of control during a financial year, APRA must give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all Insurance Act statutory managers and each ultimate termination of control that occurred during that financial year.

Requirement to publish notices in Gazette

(3) If APRA:
  (a) takes control of a body corporate's business; or
  (b) appoints an administrator of a body corporate's business; or
  (c) makes an ultimate termination of control in respect of a body corporate's business;

APRA must publish notice of that fact in the *Gazette*. However, mere failure to publish such a notice does not affect the validity of the act.

62ZOZB Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

(a) the acquisition of assets in:
  (i) a sale or disposal of the whole or part of the business of a body corporate under this Division by an Insurance Act statutory manager in control of the body corporate's business; or
  (ii) a transfer of insurance business of a general insurer under a scheme prepared by an Insurance Act statutory manager in control of the general insurer's business and confirmed (with or without modifications) by the Federal Court under Division 3A of Part III;

(whether the assets are shares in another body corporate or other assets);

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(b) the acquisition of shares in a body corporate as a direct result of:

(i) the issue or sale of the shares under this Division by an Insurance Act statutory manager in control of the body corporate's business; or

(ii) the exercise of a right to acquire shares that was issued or sold under this Division by an Insurance Act statutory manager in control of the body corporate's business.

59 Section 62ZQ

Repeal the section, substitute:

62ZQ Involving APRA in proposed appointment of external administrators of general insurers and NOHCs

(1) At least one week before a person other than APRA:

(a) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a general insurer or of an authorised NOHC of a general insurer; or

(b) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a general insurer or of an authorised NOHC of a general insurer; or

(c) appoints an external administrator of a general insurer or of an authorised NOHC of a general insurer (otherwise than as the result of an application made by another person);

the person must give APRA written notice that the person proposes to make the application or appointment.

(2) If there is an approved form for the notice, the person must give the notice in the approved form.

(3) Subsection (1) does not apply if APRA gives the person written notice, before the person makes the application or appointment, that APRA consents to the person making the application or appointment.

(4) APRA is entitled to be heard on the application.

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(5) After receiving the notice, APRA may request the person to provide details of the proposed application.

Offence

(6) A person (other than APRA) commits an offence if:

(a) the person:

(i) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a general insurer or of an authorised NOHC of a general insurer; or

(ii) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a general insurer or of an authorised NOHC of a general insurer; or

(iii) appoints an external administrator of a general insurer or of an authorised NOHC of a general insurer (otherwise than as the result of an application made by another person); and

(b) APRA did not give the person written notice, before the person made the application or appointment, of APRA's consent to the person making the application or appointment, in accordance with subsection (3); and

(c) at least one week before making the application or appointment:

(i) if there is an approved form for the purposes of this paragraph—the person did not give APRA notice in the approved form indicating that the person proposed to make the application or appointment; or

(ii) otherwise—the person did not give APRA written notice indicating that the person proposed to make the application or appointment.

Penalty: 60 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

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

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60 Subsection 62ZR(1)

Omit "the winding-up of a general insurer", substitute "the winding-up of an entity covered by subsection (4), or the proposed winding-up of an entity covered by subsection (4)".

61 At the end of section 62ZR

Add:

(4) This subsection covers the following entities:
  (a) a general insurer;
  (b) an authorised NOHC;
  (c) a subsidiary of a general insurer or authorised NOHC.

62 Subsection 62ZS(1)

Repeal the subsection, substitute:

(1) APRA may apply to the Federal Court for directions regarding any matter arising under:
  (a) the winding-up of an entity covered by subsection 62ZR(4) (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under Division 3 of this Part); or
  (b) the proposed winding-up of an entity covered by subsection 62ZR(4) (whether the winding-up will occur as a result of an application made, or proposed to be made, under the *Corporations Act 2001* or by APRA under Division 3 of this Part).

63 Subsection 62ZT(1)

Repeal the subsection, substitute:

(1) APRA may request a liquidator of an entity covered by subsection 62ZR(4) in writing to give APRA, within a reasonable time specified in the request, specified information in writing about:
  (a) the winding-up of the entity (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under Division 3 of this Part) and the other affairs of the general insurer; or

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(b) the proposed winding-up of the entity (whether the winding-up will occur as a result of an application made, or proposed to be made, under the *Corporations Act 2001* or by APRA under Division 3 of this Part) and the other affairs of the general insurer.

64 At the end of section 62ZU

Add:

(3) To avoid doubt, subsection (1) applies whether or not an Insurance Act statutory manager is in control of:

(a) unless paragraph (b) applies—the general insurer's business; or

(b) if the general insurer is a foreign general insurer—the Australian business assets and liabilities of the foreign general insurer.

65 At the end of section 62ZV

Note: APRA may choose to apply under section 62ZU for an order that a general insurer be wound up. Alternatively, APRA may choose to apply under the *Corporations Act 2001* for an order that the general insurer be wound up (for example, under section 459P or 462 of that Act).

66 At the end of Part VB

Add:

Division 4—Special provisions relating to foreign general insurers

62ZVA Limited application of Divisions 1, 1A and 2 to foreign general insurers

(1) Divisions 1, 1A and 2 do not apply in relation to:

(a) business of a foreign general insurer (other than Australian business assets and liabilities); or

(b) the management of a foreign general insurer, to the extent that the management relates to such business of the foreign general insurer.

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(2) Subsection 62T(3) does not apply to the issue of policies by a foreign general insurer in the course of insurance business carried on outside Australia by the foreign general insurer.

(3) In this section:

asset has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

Australian business assets and liabilities, of a foreign general insurer, means the following:

(a) the assets and liabilities of the foreign general insurer in Australia;

(b) any other assets and liabilities of the foreign general insurer that:

(i) are related to its operations in Australia; and

(ii) if regulations are made for the purposes of this subparagraph—are of a kind specified in those regulations.

liability has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

67 After subparagraph 62ZW(a)(i)

Insert:

(ia) that is under statutory management under Division 1A of Part VB; or

68 At the end of section 62ZW

Add:

; and (d) allows APRA to facilitate a transfer of business from the declared general insurer to a receiving body under the *Financial Sector (Transfer and Restructure) Act 1999* by entitling the receiving body to amounts in respect of the protected policies.

69 Paragraph 62ZZC(1)(a)

Repeal the paragraph, substitute:

(a) any of the following requirements are satisfied:

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(i) the general insurer is under judicial management under Division 1 of Part VB;

(ii) the general insurer is under statutory management under Division 1A of Part VB;

(iii) an external administrator for the general insurer has been appointed under Chapter 5 of the *Corporations Act 2001*; and

70 Subsection 62ZZC(1) (note 2)

After "the judicial management" insert "or statutory management".

71 After section 62ZZF

Insert:

62ZZFA Interim claims and payments for section 62ZZF entitlements

(1) This section applies if:

(a) a person makes a claim under insurance cover provided under a protected policy, in the approved form (if any), within the period mentioned in paragraph 62ZZF(1)(b); and

(b) the person is not covered by a determination under section 62ZZ; and

(c) APRA becomes aware that the person has made an interim claim for payment of part or parts of the person's entitlement under section 62ZZF (whether or not the person has made a previous interim claim for such a payment); and

(d) APRA determines, under subsection (2), the amount of the interim claim mentioned in paragraph (c) that ought to be recognised as valid; and

(e) if the regulations prescribe conditions for the purposes of this paragraph—those conditions are met.

(2) For the purposes of paragraph (1)(d), APRA may determine, in writing, the amount of the interim claim mentioned in subsection (1)(c), to the extent that it ought to be recognised as valid.

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(3) If the regulations prescribe conditions according to which APRA can make a determination under subsection (2), APRA can only make such a determination in accordance with those conditions.

(4) The person is entitled to be paid by APRA an amount equal to:
  (a) unless paragraph (b) applies—the amount mentioned in paragraph (1)(d); or
  (b) if the regulations prescribe limits, or methods for determining limits, for entitlements under this subsection—the lesser of:
    (i) the amount mentioned in paragraph (1)(d); or
    (ii) the applicable limit specified in or worked out in accordance with the regulations.

(5) If the person is entitled under subsection 62ZZF(2) or (3) to be paid an amount by APRA in respect of the claim mentioned in paragraph (1)(a), the person's entitlement under subsection (4) to be paid an amount discharges, to the extent of that amount, the person's entitlement under subsection 62ZZF(2) or (3).

72 Subsection 62ZZG(2) (note)

Omit "under section 51 of the *Insurance Contracts Act 1984*", substitute "under various provisions".

73 Subsection 62ZZG(3) (note 1)

Omit "under section 51 of the *Insurance Contracts Act 1984*", substitute "under various provisions".

74 Subsection 62ZZG(3) (note 2)

Omit "also".

75 After section 62ZZG

Insert:

62ZZGA Interim claims and payments for section 62ZZG entitlements

(1) This section applies if:

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(a) a person makes a claim under insurance cover provided under a protected policy, in the approved form (if any), within the period mentioned in paragraph 62ZZG(1)(aa); and
(b) the person is not covered by a determination under section 62ZZ; and
(c) APRA becomes aware that the person has made an interim claim for payment of part or parts of the person's entitlement under section 62ZZG (whether or not the person has made a previous interim claim for such a payment); and
(d) APRA determines, under subsection (2), the amount of the interim claim mentioned in paragraph (c) that ought to be recognised as valid; and
(e) if the regulations prescribe conditions for the purposes of this paragraph—those conditions are met.

(2) For the purposes of paragraph (1)(d), APRA may determine, in writing, the amount of the interim claim mentioned in subsection (1)(c), to the extent that it ought to be recognised as valid.

(3) If the regulations prescribe conditions according to which APRA can make a determination under subsection (2), APRA can only make such a determination in accordance with those conditions.

(4) The person is entitled to be paid by APRA an amount equal to:
(a) unless paragraph (b) applies—the amount mentioned in paragraph (1)(d); or
(b) if the regulations prescribe limits, or methods for determining limits, for entitlements under this subsection—the lesser of:
(i) the amount mentioned in paragraph (1)(d); or
(ii) the applicable limit specified in or worked out in accordance with the regulations.

(5) If the person is entitled under subsection 62ZZG(2) or (3) to be paid an amount by APRA in respect of the claim mentioned in paragraph (1)(a), the person's entitlement under subsection (4) to be paid an amount discharges, to the extent of that amount, the person's entitlement under subsection 62ZZG(2) or (3).

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76 Subsection 62ZZH(1)

Omit "62ZZF, 62ZZG,", substitute "62ZZF, 62ZZFA, 62ZZG, 62ZZGA,".

77 Subsection 62ZZH(1) (note)

Omit "62ZZF and 62ZZG", substitute "62ZZF, 62ZZFA, 62ZZG and 62ZZGA".

78 Subsection 62ZZJ(3)

Omit "section 51 of the *Insurance Contracts Act 1984*, or section 601AG of the *Corporations Act 2001*,", substitute "any provision mentioned in subsection (4B)".

79 Paragraph 62ZZJ(4)(a)

Omit "section 51 of the *Insurance Contracts Act 1984*, or section 601AG of the *Corporations Act 2001*,", substitute "any provision mentioned in subsection (4B)".

80 After subsection 62ZZJ(4A)

Insert:

(4B) The provisions are as follows:

(a) section 51 of the *Insurance Contracts Act 1984*;

(b) section 601AG of the *Corporations Act 2001*;

(c) any provision of any law specified in the regulations for the purposes of this paragraph.

81 After subsection 62ZZK(1)

Insert:

(1A) For the purposes of this section, treat the application of an amount, or part of an amount, in satisfaction of a liability of the person as being an application of the amount, or the part of the amount, for the person's benefit.

82 Subsection 62ZZKA(3)

Repeal the subsection.

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83 After subsection 62ZZM(1)

Insert:

(1A) To avoid doubt, for the purposes of subsection 562(1) of the *Corporations Act 2001*, the amount taken to have been paid by the general insurer to the person under subsection (1) is taken to have been received by the person from the general insurer.

84 At the end of Division 3 of Part VC

Add:

62ZZMA APRA may make transferred liabilities determination where transfer of business

(1) APRA may make a determination (a ***transferred liabilities determination***) if:

(a) a general insurer is a declared general insurer as a result of the Minister having made a declaration under section 62ZZC; and

(b) APRA has made, or proposes to make, a determination under section 25 of the *Financial Sector (Transfer and Restructure) Act 1999* (compulsory transfer determination) that there is to be a total transfer or partial transfer of business from the declared general insurer to a receiving body (within the meaning of that Act); and

(c) the transfer of business will transfer the liabilities of the declared general insurer in respect of one or more protected policies issued by the declared general insurer; and

(d) APRA is satisfied that it will be able to identify each of those protected policies; and

(e) APRA has worked out:

(i) APRA's reasonable estimate of the total amount (the ***FCS amount***) to which policyholders of those protected policies will be entitled (disregarding the determination) under sections 62ZZF and 62ZZG as a result of the Minister's declaration mentioned in paragraph (a); and

(ii) APRA's reasonable estimate of the total amount (the ***administration amount***) of the costs that would be incurred by APRA in relation to the exercise of its

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powers and the performance of its functions under this Part relating to the declared general insurer if it did not make the determination; and

(f) APRA has worked out a total payment amount in accordance with section 62ZZMB; and

(g) APRA considers that it is reasonable in the circumstances to make the determination.

(2) However, APRA cannot make the determination if APRA has already issued a certificate of transfer under section 33 of the *Financial Sector (Transfer and Restructure) Act 1999* stating that the transfer is to take effect.

(3) The determination must be in writing.

(4) The determination must specify the following:

(a) the declared general insurer;

(b) the receiving body;

(c) a description, in general or detailed terms, of all the protected policies of the declared general insurer;

(d) the FCS amount;

(e) the administration amount;

(f) the total payment amount;

(g) the FCS payment amount;

(h) the administration payment amount;

(i) any other information that APRA considers appropriate.

(5) A determination under subsection (1) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) A determination made under subsection (1) is not a legislative instrument.

62ZZMB Payment amounts under transferred liabilities determination

(1) For the purposes of paragraph 62ZZMA(1)(f), APRA may work out:

(a) an amount (the ***FCS payment amount***) that:

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(i) is equal to or less than the FCS amount; and
(ii) APRA considers to be appropriate; and

(b) an amount (the ***administration payment amount***) that:
(i) is equal to or less than the administration amount; and
(ii) APRA considers to be appropriate; and

(c) the amount (the ***total payment amount***) that is the sum of the FCS payment amount and the administration payment amount.

(2) In working out the FCS payment amount and the administration payment amount, APRA must have regard to the following:
(a) the total value of the assets that will be transferred to the receiving body in accordance with the transfer of business;
(b) the total value of the liabilities that will be transferred from the declared general insurer to the receiving body in accordance with the transfer of business;
(c) any other matter that APRA considers appropriate.

(3) The FCS payment amount or the administration payment amount may be a nil amount.

62ZZMC Consequences of transferred liabilities determination once certificate of transfer issued

Application of section

(1) This section applies if:
(a) APRA has made a transferred liabilities determination; and
(b) APRA has issued a certificate of transfer under section 33 of the *Financial Sector (Transfer and Restructure) Act 1999* stating that the transfer is to take effect.

Receiving body entitled to total payment amount

(2) The receiving body is entitled to be paid by APRA an amount equal to the total payment amount specified in the determination.

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Reduction of rights and entitlements of policyholder

(3) A policyholder's entitlement under this Division to be paid an amount in respect of a protected policy with the declared general insurer is reduced to nil, if the transfer of business will transfer the liability of the declared general insurer in respect of that protected policy.

Declared general insurer liable to APRA for total payment amount

(4) The declared general insurer is liable to pay to APRA an amount equal to the sum of the total payment amount specified in the determination.

(5) That liability is due and payable to APRA when the certificate of transfer comes into force.

(6) Despite subsection 62ZZL(1), APRA does not have the rights mentioned in that subsection.

62ZZMD Certain provisions do not apply in relation to entitlement of receiving body as a result of transferred liabilities determination

To avoid doubt, sections 62ZZK, 62ZZKA, 62ZZL and 62ZZM do not apply in relation to an entitlement under subsection 62ZZMC(2).

85 Paragraph 62ZZO(b)

Omit "(including a provisional liquidator)".

86 After paragraph 62ZZO(c)

Insert:

; (d) an administrator appointed under subsection 62ZOA(1) to take control of a general insurer's business.

87 Paragraph 62ZZP(1)(b)

Omit "(including a provisional liquidator)".

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88 After paragraph 62ZZP(1)(c)

Insert:

or (d) an administrator appointed under subsection 62ZOA(1) to take control of a general insurer's business; or

(e) any other person;

89 Subsection 62ZZP(1)

Omit "or judicial manager", substitute ", judicial manager, administrator or other person".

90 Paragraph 62ZZP(4)(da)

Omit "or report".

91 Paragraph 62ZZP(4)(e)

Omit "(c) and (d)", substitute "(c), (da), (db) and (d)".

92 Subsection 62ZZQ(5)

Omit "(including a provisional liquidator)".

93 Subsection 62ZZQ(7)

Omit "(including a provisional liquidator)".

94 At the end of section 62ZZQ

Add:

Requirement made of other person—civil penalty

(11) A person mentioned in paragraph 62ZZP(1)(e) must comply with a requirement made of the person under subsection 62ZZP(1).

Civil penalty: 200 penalty units.

95 Section 103A

Before "This Division", insert "(1)".

96 At the end of section 103A

Add:

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(2) Subsections (3) and (4) apply if:
(a) APRA has given a recapitalisation direction to the general insurer under subsection 103B(1) (the ***primary recapitalisation direction***); and
(b) the general insurer is a subsidiary of a NOHC/NOHC subsidiary; and
(c) the NOHC/NOHC subsidiary is a company that:
(i) is registered under the *Corporations Act 2001*; and
(ii) has a share capital; and
(d) the NOHC/NOHC subsidiary does not have an Insurance Act statutory manager.

(3) This Division applies to the NOHC/NOHC subsidiary in the same way that it does to a general insurer.

(4) However, disregard the following provisions in applying this Division to the NOHC/NOHC subsidiary:
(a) subsection 103B(1);
(b) subsection 103C(1).

(5) In this section:

NOHC/NOHC subsidiary means a body corporate that is any of the following:
(a) an authorised NOHC;
(b) a subsidiary of an authorised NOHC.

97 Paragraph 103B(1)(b)

After "APRA considers that", insert ", in the absence of external support".

98 After subsection 103B(1)

Insert:

(1A) Subsection (1B) applies if subsections 103A(3) and (4) apply to a NOHC/NOHC subsidiary because of a primary recapitalisation direction given to a general insurer (as mentioned in subsection 103A(2)).

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(1B) For the purposes of facilitating compliance with the primary recapitalisation direction, APRA may give the NOHC/NOHC subsidiary a direction (also a ***recapitalisation direction***) that requires the NOHC/NOHC subsidiary to do anything that is specified in the direction.

99 After subsection 103B(2)

Insert:

(2A) The regulations may specify that a particular form of support is not external support for the purposes of paragraph (1)(b).

100 At the end of section 103B

Add:

(4) A recapitalisation direction may deal with the time by which, or period during which, it is to be complied with.

(5) APRA may, by notice in writing to the general insurer, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(6) The direction has effect until APRA revokes it by notice in writing to the general insurer. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

101 After subsection 103C(1)

Insert:

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 103B(1B), the direction may direct the NOHC/NOHC subsidiary to do any of the following:

(a) issue:

(i) shares, or rights to acquire shares, in the NOHC/NOHC subsidiary; or

(ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;

(b) acquire:

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(i) shares, or rights to acquire shares, in the general insurer mentioned in subsection 103B(1A); or

(ii) other capital instruments in the general insurer mentioned in subsection 103B(1A) of a kind specified in the direction;

(c) acquire:

(i) shares, or rights to acquire shares, in a specified body corporate covered by subsection (1B); or

(ii) other capital instruments in a specified body corporate covered by subsection (1B), of a kind specified in the direction.

(1B) This subsection covers a body corporate if:

(a) the body corporate is a subsidiary of the NOHC/NOHC subsidiary; and

(b) the general insurer is a subsidiary of the body corporate.

(1C) Without limiting the generality of subsections (1), (1A) and (2), but subject to subsection (3), a direction referred to in those subsections may:

(a) deal with some only of the matters referred to in those subsections; or

(b) deal with a particular class or particular classes of those matters; or

(c) make different provision with respect to different matters or different classes of matters.

102 Subsection 103C(2)

Omit "paragraph (1)(a)", substitute "paragraph (1)(a) or subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i)".

103 Subsection 103C(3)

Omit "paragraph (1)(b)", substitute "paragraph (1)(b) or subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii)".

104 Subsection 103D(3) (heading)

Repeal the heading, substitute:

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Issue or acquisition of shares etc. despite other laws etc.

105 Subsection 103D(3)

After "issue", insert "or acquire".

106 Paragraph 103D(3)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 127B of this Act)".

107 Paragraph 103D(3)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

108 After subsection 103E(1)

Insert:

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 103B(1B), treat the reference in paragraph (1)(a) to "the policyholders of the insurer" as being a reference to "the policyholders of the general insurer mentioned in subsection 103B(1A)".

109 At the end of section 103E

Add:

(4) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 103B(1B), treat the references in paragraph (3)(c) to "the insurer" as being a reference to "the NOHC/NOHC subsidiary mentioned in subsection 103B(1B)".

110 Section 103K

Repeal the section, substitute:

103K Recapitalisation direction not grounds for denial of obligations

(1) This section applies if a body corporate 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

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(b) law of a foreign country (including the law of part of a foreign country).

(2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:

(a) deny any obligations under the contract;

(b) accelerate any debt under the contract;

(c) close out any transaction relating to the contract;

(d) enforce any security under the contract.

(3) The matters are as follows:

(a) the body corporate being subject to a recapitalisation direction;

(b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a recapitalisation direction.

111 Subsection 103L(9)

Repeal the subsection.

112 Subsection 104(1)

Omit "Without limiting subsection (1A), APRA may", substitute "APRA may".

113 Paragraph 104(1)(b)

Omit "and such a contravention is likely to give rise to a prudential risk", substitute "and the direction is reasonably necessary for one or more prudential matters relating to the body corporate".

114 Subsection 104(1A)

Repeal the subsection, substitute:

(1A) 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 APRA has reason to believe that:

(a) a subsidiary of the body corporate has contravened a provision of this Act, regulations made under this Act,

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prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or

(b) a subsidiary of the body corporate is likely to contravene this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or

(c) the direction is in respect of a subsidiary of the body corporate and is necessary in the interests of:

(i) if the body corporate is a general insurer—policyholders of the general insurer; or

(ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or

(d) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary's liabilities; or

(e) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or

(f) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or

(g) a subsidiary of the body corporate is conducting the subsidiary's affairs in an improper or financially unsound way; or

(h) 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; or

(j) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause it to be unable to continue to supply services to:

(i) if the body corporate is a general insurer—the general insurer; or

(ii) if the body corporate is an authorised NOHC—any general insurer that is a subsidiary of the NOHC; or

(k) the direction is in respect of a subsidiary of the body corporate and the failure to issue a direction would materially prejudice the interests of:

(i) if the body corporate is a general insurer—policyholders of the general insurer; or

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(ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC.

(1B) However, APRA can only make a direction as a result of a ground referred to in paragraph (1A)(a), (b), (d), (e), (f), (g) or (j) if APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.

(1C) APRA may give a body corporate that is a subsidiary of a general insurer or of an authorised NOHC a direction of a kind specified in subsection (3) if:

(a) APRA has given the general insurer or authorised NOHC a direction under subsection (1A) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary; or

(b) APRA may give the general insurer or authorised NOHC a direction under subsection (1A) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary.

(1D) APRA cannot give a direction under subsection (1C) to a body corporate of a kind specified in regulations (if any) made for the purposes of this subsection.

(1E) Subsections (1), (1A) and (1C) do not limit each other.

115 Paragraph 104(2)(b)

Repeal the paragraph, substitute:

(b) specify:

(i) in the case of a direction under subsection (1C)—the ground referred to in subsection (1A) as a result of which the direction is given; or

(ii) otherwise—the ground referred to in subsection (1) or (1A) as a result of which the direction is given.

116 After subsection 104(2)

Insert:

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APRA may disregard external support

(2A) In deciding whether to give a direction under subsection (1), (1A) or (1C) to a body corporate, APRA may disregard any external support for the body corporate.

(2B) The regulations may specify that a particular form of support is not external support for the purposes of subsection (2A).

117 Paragraph 104(3)(u)

Repeal the paragraph, substitute:

(u) to make changes to the body corporate's systems, business practices or operations;

(v) to reconstruct, amalgamate or otherwise alter all or part of any of the following:

(i) the business, structure or organisation of the body corporate;

(ii) the business, structure or organisation of the group constituted by the body corporate and its subsidiaries;

(w) to do, or to refrain from doing, anything else in relation to the affairs of the body corporate.

118 After subsection 104(4)

Insert:

(4A) Without limiting the generality of paragraph (3)(w), a direction under that paragraph to a foreign general insurer may be any one or more of the following:

(a) a direction that the foreign general insurer act in a way so as to ensure that:

(i) a particular asset, or a particular class of assets, of the foreign general insurer is returned to the control (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia; or

(ii) a particular liability, or a particular class of liabilities, of the foreign general insurer ceases to be the responsibility (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia;

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(b) a direction that the foreign general insurer not act in a way that has the result that:

(i) a particular asset, or a particular class of assets, of the foreign general insurer ceases to be under the control (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia; or

(ii) a particular liability, or a particular class of liabilities, of the foreign general insurer becomes the responsibility (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia.

(4B) The kinds of direction that may be given as mentioned in subsection (3) are not limited by any other provision in this Part.

(4C) The kinds of direction that may be given as mentioned in a particular paragraph of subsection (3) are not limited by any other paragraph of that subsection.

119 Subsection 104(10)

Repeal the subsection, substitute:

(10) Part VI applies to a decision to give a direction:

(a) under subsection (1) as a result of the ground referred to in paragraph (1)(a), (b), (c) or (d); or

(b) under subsection (1A) as a result of the ground referred to in paragraph (1A)(a), (b) or (c); or

(c) under subsection (1C) as a result of the ground referred to in paragraph (1C)(a) or (b), to the extent that the paragraph relates to a ground referred to in paragraph (1A)(a), (b) or (c).

120 Subsections 105(1) to (2)

Repeal the subsections, substitute:

(1) This section applies if a body corporate 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).

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(1A) None of the matters mentioned in subsection (1B) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:

(a) deny any obligations under the contract;

(b) accelerate any debt under the contract;

(c) close out any transaction relating to the contract;

(d) enforce any security under the contract.

This subsection has effect subject to subsections (2) and (3).

(1B) The matters are as follows:

(a) the body corporate being subject to a direction by APRA under section 104;

(b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a direction by APRA under section 104.

(2) If the body corporate is prevented from fulfilling its obligations under the contract because of a direction under section 104, other than a direction under paragraph 104(3)(t), the other party or parties to the contract are, subject to any orders made under subsection (3) of this section, relieved from obligations owed to the body corporate under the contract.

121 Subsection 106(1)

Omit "general insurer or authorised NOHC", substitute "general insurer, authorised NOHC or other body corporate".

122 Paragraph 106(3)(a)

Omit "a particular general insurer or authorised NOHC", substitute "a particular general insurer, authorised NOHC or other body corporate".

123 Paragraph 106(3)(b)

Omit "any general insurers or authorised NOHCs", substitute "any general insurers, authorised NOHCs or other bodies corporate".

124 Paragraph 106(4)(a)

Omit "any general insurer or authorised NOHC", substitute "any general insurer, authorised NOHC or other body corporate".

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125 Section 107

Repeal the section.

126 Subsection 108(1)

Omit "A general insurer or an authorised NOHC", substitute "A general insurer, an authorised NOHC or another body corporate".

127 Paragraph 108(1)(c)

Omit "general insurer or authorised NOHC", substitute "general insurer, authorised NOHC or other body corporate".

128 Subsection 108(3)

Omit "a general insurer or authorised NOHC", substitute "a general insurer, an authorised NOHC or another body corporate".

129 Subsection 108(3)

Omit "insurer or NOHC" (wherever occurring), substitute "insurer, NOHC or other body corporate".

130 Subsection 108(4)

Omit "a general insurer or an authorised NOHC", substitute "a general insurer, an authorised NOHC or another body corporate".

131 Subsection 108(4)

Omit "insurer or NOHC" (wherever occurring), substitute "insurer, NOHC or other body corporate".

132 Paragraph 108(4)(c)

Omit "the general insurer or authorised NOHC", substitute "the insurer, authorised NOHC or other body corporate".

133 Subsection 108(6)

Omit "a general insurer or authorised NOHC", substitute "a general insurer, an authorised NOHC or another body corporate".

134 Subsection 108(6)

Omit "insurer or NOHC", substitute "insurer, NOHC or other body corporate".

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135 At the end of Part IX

Add:

Division 3—Secrecy and disclosure provisions relating to all directions

109 APRA may determine that a direction is covered by secrecy provision

(1) This section applies if APRA has given an entity (the ***directed entity***) a direction under this Act.

(2) APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the policyholders of any general insurer or to promote financial system stability in Australia.

Note: For repeal of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) APRA must give the directed entity a copy of the determination as soon as practicable after making it.

(4) An instrument under subsection (2) is not a legislative instrument.

(5) If APRA makes a determination under subsection (2), APRA must consider whether it is appropriate in the circumstances to also make a determination under either or both of subsections 109C(2) and 109C(5).

109A Secrecy relating to directions

(1) A person commits an offence if:

(a) APRA has given an entity (the ***directed entity***) a direction under this Act; and

(b) the direction is covered by a determination under subsection 109(2); and

(c) the person is, or has been, covered by subsection (2) of this section in relation to the direction; and

(d) the person discloses information; and

(e) the information reveals the fact that the direction was made.

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Penalty: Imprisonment for 2 years.

(2) A person is covered by this subsection in relation to the direction if the person is:

(a) the directed entity; or

(b) an officer, employee or contractor of the directed entity at a time on or after APRA gave the directed entity the direction; or

(c) any other person who, because of his or her employment, or in the course of that employment, has acquired information that reveals the fact that the direction was made.

Exception

(3) Subsection (1) does not apply if:

(a) the disclosure is authorised by section 109B, 109C, 109D, 109E, 109F or 109G; or

(b) the disclosure is required by an order or direction of a court or tribunal.

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

109B Disclosure of publicly available information

A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, to the extent that the information has already been lawfully made available to the public.

109C Disclosure allowed by APRA

(1) A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) a determination under subsection (2) allows the disclosure by the person; and

(b) if APRA has included conditions in the determination—those conditions are satisfied.

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Determinations relating to specified person

(2) APRA may, in writing, make a determination allowing:
  (a) a specified person covered by subsection 109A(2) in relation to a specified direction; or
  (b) a specified person covered by subsection 109A(2) in relation to a direction that is in a specified class of directions;
to disclose specified information in relation to the direction.

(3) An instrument under subsection (2) is not a legislative instrument.

(4) APRA must give a copy of the determination as soon as practicable after making it to:
  (a) the directed entity; and
  (b) the person specified, or each person specified, in the determination.

Determinations relating to specified class of persons

(5) APRA may, by legislative instrument, make a determination allowing a specified class of persons covered by subsection 109A(2) in relation to a direction that is in a specified class of directions to disclose:
  (a) specified kinds of information in relation to the direction; or
  (b) any kind of information in relation to the direction.

Conditions in determinations

(6) APRA may include conditions in a determination under subsection (2) or (5) that relate to any of the following:
  (a) the kind of entities to which the disclosure may be made;
  (b) the way in which the disclosure is to be made;
  (c) any other matter that APRA considers appropriate.

109D Disclosure to legal representative for purpose of seeking legal advice

A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

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(a) the disclosure is to the person's legal representative; and
(b) the purpose of the person making the disclosure is for the legal representative to provide legal advice, or another legal service, in relation to the direction.

109E Disclosure allowed by APRA Act secrecy provision

(1) A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:
(a) the person is:
(i) an APRA member (within the meaning of subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*); or
(ii) an APRA staff member (within the meaning of that subsection); or
(iii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who is covered by paragraph (c) of the definition of ***officer*** in subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*; and
(b) the information is protected information (within the meaning of subsection 56(1) of that Act), or is contained in a protected document (within the meaning of that subsection); and
(c) the disclosure is in accordance with subsection 56(3), (4), (5), (5AA), (6), (6A), (7), (7A), (7B) or (7C) of that Act.

Relationship to APRA Act secrecy provision

(2) Disclosure of information in relation to a direction is not an offence under section 56 of the *Australian Prudential Regulation Authority Act 1998* if the disclosure is authorised by section 109B, 109C, 109D, 109F or 109G.

109F Disclosure in circumstances set out in the regulations

A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, if the disclosure is made in circumstances (if any) set out in the regulations.

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109G Disclosure for purpose

A person covered by subsection 109A(2) (the ***relevant person***) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) another person covered by subsection 109A(2) in relation to the direction disclosed that information to the relevant person for a particular purpose in accordance with section 109C, 109D, 109E or 109F, or in accordance with a previous operation of this section; and

(b) the disclosure by the relevant person is for the same purpose.

109H Exceptions operate independently

Sections 109B, 109C, 109D, 109E, 109F and 109G do not limit each other.

136 At the end of section 127

Add:

(5) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a holding company of a general insurer were expressly limited to a reference to such a holding company that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) this Act has effect as if a reference to a holding company of a general insurer were expressly limited to a reference to such a holding company that carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.

137 After section 127A

Insert:

127B Protection from liability—general

(1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without

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negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.

(2) To avoid doubt, any information provided by a person to APRA under section 49B is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.

(3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

127C Protection from liability—directions and secrecy

(1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:

(a) the person does the thing, or omits to do the thing, for the purpose of any of the following:

(i) complying with a direction under this Act given by APRA to a body corporate;

(ii) complying with section 109A (secrecy) in relation to a direction under this Act given by APRA to a body corporate; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is any of the following:

(i) an officer or senior manager of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(ii) an employee or agent of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(iii) the body corporate or a member of a relevant group of bodies corporate of which the body corporate is also a member.

(2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a

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purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

(3) In this section:

employee of a body corporate includes a person engaged to provide advice or services to the body corporate.

officer has the meaning given by section 9 of the *Corporations Act 2001*.

127D Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

(a) section 62ZOK;
(b) section 38A;
(c) section 38B;
(d) section 127B;
(e) section 127C;
(f) section 62ZM;
(g) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

127E Act has effect despite the Corporations Act

This Act has effect despite any provision of the *Corporations Act 2001*.

138 After section 129

Insert:

129AA Institution of offence proceedings no bar to judicial management or winding up

The institution of proceedings against a body corporate for an offence against this Act or the *Financial Sector (Collection of Data) Act 2001* does not prevent the institution of proceedings for:

(a) the judicial management; or
(b) the winding-up;

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of the body corporate on a ground that relates to the matter that constitutes the offence.

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Part 2—Application provisions

139 Interpretation

In this Part:

commencement time means the time when this item commences.

new Insurance Act means the *Insurance Act 1973* as amended by this Schedule.

140 Application—amendments to directions powers

(1) The amendments made by this Schedule to section 104 of the *Insurance Act 1973* apply to directions given on and after the commencement time.

(2) The amendments made by this Schedule to Division 1 of Part IX of the *Insurance Act 1973* apply to directions given on and after the commencement time.

141 Continuation of prudential standards

To avoid doubt, the amendments made by this Schedule do not affect the validity of a prudential standard made under section 32 of the *Insurance Act 1973* that was in force immediately before the commencement time.

142 Application—revocation of authorisation under section 12

(1) The amendments made by items 9 to 12 of this Schedule apply to a general insurer's authorisation under section 12 of the *Insurance Act 1973*, whether the authorisation was granted before, on or after the commencement time.

(2) The amendments made by items 9 to 12 of this Schedule apply in relation to a matter mentioned in a paragraph of subsection 15(1) of the new Insurance Act that occurs on or after the commencement time (including such a matter that starts before the commencement time and continues on or after the commencement time).

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143 Application—revocation of NOHC authorisation

(1) The amendment made by item 13 of this Schedule applies to a NOHC authorisation, whether the authorisation was granted before, on or after the commencement time.

(2) The amendment made by item 13 of this Schedule applies in relation to a matter mentioned in a paragraph of subsection 21(1) of the new Insurance Act that occurs on or after the commencement time (including such a matter that starts before the commencement time and continues on or after the commencement time).

144 Application—conversion and write-off provisions

The amendment made by item 17 of this Schedule applies in relation to the conversion or writing-off of any instrument at or after the commencement time, whether the instrument was issued before, at or after that time.

145 Application—stay provisions

(1) The amendment made by item 43 of this Schedule applies in relation to a matter referred to in subsection 62V(3) of the new Insurance Act that occurs on or after the commencement time.

(2) The amendment made by item 49 of this Schedule applies in relation to an act referred to in subsection 62ZB(3) of the new Insurance Act that is done on or after the commencement time.

(3) The amendment made by item 110 of this Schedule applies in relation to a recapitalisation direction referred to in subsection 103K(3) of the new Insurance Act that is given on or after the commencement time.

(4) The amendment made by item 120 of this Schedule applies in relation to a direction referred to in subsection 105(1B) of the new Insurance Act that is given on or after the commencement time.

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Schedule 3—Amendment of the Life Insurance Act 1995

Part 1—Main amendments

Life Insurance Act 1995

1 At the end of section 4

Add:

(4) Without prejudice to its effect apart from this subsection, this Act also has the effect it would have if each reference to a holding company of a life company were, by express provision, confined to such a holding company that:

(a) is a corporation to which paragraph 51(xx) of the Constitution applies; or

(b) carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.

2 After subparagraph 7(1)(a)(iii)

Insert:

(iiia) Part 10A; and

3 At the end of subsection 7A(1)

Add:

; (j) section 230AAA.

4 After section 15

Insert:

15A Relevant group of bodies corporate

For the purposes of this Act:

(a) a life company and its subsidiaries together constitute a ***relevant group of bodies corporate***; and

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(b) a registered NOHC and its subsidiaries together also constitute a ***relevant group of bodies corporate***.

5 Section 16 (heading)

Repeal the heading, substitute:

16 Related bodies corporate and subsidiaries

6 Section 16ZE

Repeal the section, substitute:

16ZE Limited application of Act to eligible foreign life insurance companies

(1) Subject to this section, this Act does not apply in relation to life insurance business carried on outside Australia by an eligible foreign life insurance company.

(2) Subsection (1) does not apply to sections 180, 181 and 182.

(3) Subsection (1) also does not apply to the provisions listed in subsection (4), however those provisions do not apply in relation to:

(a) business of an eligible foreign life insurance company (other than Australian business assets and liabilities); or

(b) the management of an eligible foreign life insurance company, to the extent that the management relates to such business of the eligible foreign life insurance company.

(4) The provisions are as follows:

(a) Divisions 1, 1AA and 1A of Part 8;

(b) sections 183, 183A, 183B, 183, 184, 185, 186, 187 and 188.

(5) Subsection 165(4) does not apply to the issue of policies by an eligible foreign life insurance company in the course of carrying on life insurance business carried on outside Australia by the company.

(6) In this section:

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asset has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

Australian business assets and liabilities, of an eligible foreign life insurance company, means the following:

(a) the assets and liabilities of the eligible foreign life insurance company in Australia;

(b) any other assets and liabilities of the eligible foreign life insurance company that:

(i) are related to its operations in Australia; and

(ii) if regulations are made for the purposes of this subparagraph—are of a kind specified in those regulations.

liability has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

7 Section 22

Repeal the section, substitute:

22 Conditions on registration

(1) APRA may, at any time, by giving written notice to a company:

(a) impose conditions, or additional conditions, on the company's registration under section 21; or

(b) vary or revoke conditions imposed on the company's registration under section 21.

The conditions must relate to prudential matters.

(2) A condition may be expressed to have effect despite anything in the prudential standards.

(3) Without limiting the conditions that APRA may impose on a registration, APRA may make the registration conditional on a body corporate, of which the company is a subsidiary, being a registered NOHC.

(4) If APRA imposes, varies or revokes the conditions on a company's registration, APRA must:

(a) give written notice to the company; and

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(b) ensure that notice that the action has been taken is published in the *Gazette*.

(5) The taking of an action is not invalid merely because of a failure to comply with subsection (4).

23 Breach of registration conditions

(1) A company commits an offence if:
(a) the company does an act or fails to do an act; and
(b) doing the act or failing to do the act results in a contravention of a condition of the company's registration under section 21; and
(c) there is no determination in force under section 7A that this subsection does not apply to the company.

Penalty: 300 penalty units.

(2) If an individual:
(a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);
he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

(3) An offence against this section is an offence of strict liability.

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

8 Section 26

Repeal the section, substitute:

26 When APRA may revoke registration

(1) APRA may revoke (in writing) a company's registration under section 21 if APRA is satisfied that the company has no liabilities in respect of life insurance business carried on by it in Australia and that:
(a) the company has failed to comply with:

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(i) a requirement of this Act or of an instrument made for the purposes of this Act; or

(ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or

(iii) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or

(iv) a direction under this Act; or

(v) a condition of the company's registration; or

(b) it would be contrary to the public interest for the registration to remain in force; or

(c) the company has failed to pay:

(i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or

(ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or

(d) the company is insolvent and is unlikely to return to solvency within a reasonable period of time; or

(e) the company has inadequate capital and is unlikely to have adequate capital within a reasonable period of time; or

(f) the company has ceased to carry on life insurance business in Australia; or

(g) the company has not, within the period of 12 months after it was granted a registration, carried on life insurance business in Australia; or

(h) both of the following apply:

(i) the company is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;

(ii) an authorisation (however described) for the company to carry on life insurance business in a foreign country has been revoked or otherwise withdrawn in that foreign country.

(2) Before revoking a company's registration, APRA must give written notice to the company advising it that:

(a) APRA is considering revoking the registration for the reasons specified; and

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(b) the company may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).

(3) To avoid doubt, APRA may give a notice under subsection (2) to a company even if, at the time the notice is given, APRA is not satisfied that the company has no liabilities in respect of life insurance business carried on by it in Australia.

(4) If APRA gives a notice under subsection (2) to a company, APRA must not revoke the company's registration until after the date specified in the notice, and after consideration of any submission, as mentioned in paragraph (2)(b).

(5) APRA may decide that subsection (2) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be contrary to the public interest.

(6) If APRA revokes a company's registration, APRA must:
(a) give written notice to the company; and
(b) ensure that notice of the revocation is published in the *Gazette*.

(7) A revocation is not invalid merely because of a failure to comply with subsection (6).

9 Subsection 27(1)

Omit "APRA may cancel (under this section) the registration under section 21 of the company by giving the company written notice of cancellation", substitute "APRA may revoke (under this section) the registration under section 21 of the company by giving the company written notice of revocation".

10 Subsection 27(2)

Repeal the subsection, substitute:

(2) Revocation under this section of the registration of a company takes effect when APRA gives the company written notice of revocation.

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11 At the end of Division 1 of Part 3

Add:

27A Assignment of liabilities to enable revocation

(1) If APRA considers that it would, under section 26, revoke a company's registration if the company had no liabilities in respect of life insurance business carried on by it in Australia, APRA may direct the company to arrange, subject to APRA's approval, to assign those liabilities to one or more other companies that are registered under section 21. The company must effect the assignment of the liabilities within the period specified in the direction and comply with such conditions relating to the assignment as are specified by APRA in the direction.

(2) Subsection (1) has effect despite subsection 190(1).

Note: A company that has asked APRA for a revocation under section 27 may, for the purpose of obtaining the revocation, make an application to the Court under Part 9 for an order transferring the company's life insurance business to another company.

(3) A company must not assign its liabilities under this section, and a purported assignment under this section is of no effect, unless the assignment is approved by APRA under subsection (4).

(4) APRA may only approve a proposed assignment of a company's liabilities under this section if APRA is satisfied that the assignment is appropriate, having regard to:

(a) the interests of the company's policy owners; and

(b) the interests of the policy owners of the company or companies to which the liabilities are to be assigned; and

(c) the public interest; and

(d) any other matter APRA considers relevant.

The approval must be in writing and may be made subject to specified conditions.

(5) If a company (the ***first company***) accepts an assignment of liabilities from another company (the ***second company***) approved by APRA under subsection (4), the following are taken to have occurred:

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(a) policies in respect of which liability is accepted by the first company (the ***transferring policies***) are to be treated for all purposes as if each policy had been transferred by novation from the second company to the first company;

(b) a policy owner of a transferring policy is taken to have the same rights against the first company as the person would have against that company had the person's policy been transferred by novation to the first company;

(c) the rights of the first company against policy owners of transferring policies are the same as they would be had the transferring policies been transferred by novation to the first company from the second company.

(6) If APRA approves an assignment, the company must:

(a) comply with the conditions on the approval; and

(b) give reasonable notice (in writing) of the assignment to the company's policy owners; and

(c) give APRA such written evidence of the assignment as APRA reasonably requires.

(7) An assignment of liabilities under this section may include the assignment of any rights or benefits in connection with life policies in respect of the life insurance business carried on in Australia by the company concerned.

(8) A direction under subsection (1) has effect despite anything in the *Insurance Acquisitions and Takeovers Act 1991*.

(9) A company commits an offence if:

(a) the company does, or fails to do, an act; and

(b) by doing or failing to do the act, the company fails to comply with a direction under this section.

Penalty: 300 penalty units.

(10) If an individual:

(a) commits an offence against subsection (9) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (9);

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he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

(11) An offence against this section is an offence of strict liability.

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

12 At the end of subsection 28B(1)

Add:

The conditions must relate to prudential matters.

13 Subsection 28B(3)

Repeal the subsection, substitute:

(3) If APRA imposes, varies or revokes the conditions on a NOHC registration, APRA must:

(a) give written notice to the registered NOHC; and

(b) ensure that notice that the action has been taken is published in the *Gazette*.

14 After section 28B

Insert:

28BA Breach of conditions on a NOHC registration

(1) A body corporate commits an offence if:

(a) the body corporate does an act or fails to do an act; and

(b) doing the act or failing to do the act results in a contravention of a condition of the body corporate's NOHC registration; and

(c) there is no determination in force under section 7A that this subsection does not apply to the body corporate.

Penalty: 300 penalty units.

(2) If an individual:

(a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

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he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

(3) An offence against this section is an offence of strict liability.

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

15 Subparagraph 28C(1)(a)(iii)

Repeal the subparagraph, substitute:

(iia) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or

(iii) a direction under this Act to the registered NOHC; or

16 Section 28

Omit "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", substitute "revokes a company's registration by a notice under subsection 26(1) 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 revocation".

17 At the end of Division 2 of Part 3

Add:

28AA APRA may give notice to ensure that life company has a registered NOHC

(1) This section applies if:

(a) a body corporate is a holding company of a life company; and

(b) the life company is not a subsidiary of a registered NOHC.

(2) APRA may, by notice in writing to the body corporate, require it to ensure, in accordance with the conditions (if any) specified in the notice, that either of the following occurs:

(a) the body corporate becomes a registered NOHC of the life company;

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(b) a subsidiary of the body corporate becomes a registered NOHC of the life company.

Note: See Part 4A of the *Financial Sector (Transfer and Restructure) Act 1999* for other provisions that deal with a restructure arrangement to make an operating body a subsidiary of a NOHC.

(3) The notice may deal with the time by which, or period during which, it is to be complied with.

(4) The body corporate has power to comply with the notice despite anything in its constitution or any contract or arrangement to which it is a party.

(5) APRA may, by notice in writing to the body corporate, vary the notice mentioned in subsection (2) if, at the time of the variation, it considers that the variation is necessary and appropriate.

(6) The notice mentioned in subsection (2) has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the notice mentioned in subsection (2) if, at the time of revocation, it considers that the notice is no longer necessary or appropriate.

(7) Section 230F applies in relation to a notice to a body corporate under subsection (2) in the same way in which it applies to a direction to a life company under section 230B.

(8) However, section 230F does not apply to a contravention by a body corporate of a requirement in a notice under subsection (2) if:

(a) the contravention happens merely because APRA refuses to register the body corporate (or its subsidiary) under Division 2 of Part 3; and

(b) APRA's reasons for that refusal do not include the reason that one or more conditions specified in the notice are not satisfied.

18 Paragraph 43(3)(c)

Omit "a statutory fund in a related company that is not a subsidiary of the life company", substitute "a statutory fund in a company that is related to the life company but is not a subsidiary of the life company".

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19 Subsection 88A(1)

Omit "(1)".

20 Subsection 88A(2)

Repeal the subsection.

21 Subsection 98A(1)

Omit "(1)".

22 Subsection 98A(2)

Repeal the subsection.

23 At the end of section 158

Add:

Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 16ZE(3) of the business and management of an eligible foreign life insurance company.

24 Section 159

Before "On an application", insert "(1)".

25 Subparagraph 159(a)(i)

Before "the company", insert "in the absence of external support,".

26 After subparagraph 159(a)(iii)

Insert:

(iiia) an external administrator has been appointed to a holding company of the company (or a similar appointment has been made in a foreign country in respect of such a holding company), and the requirement in subsection (2) is satisfied; or

(iiib) if the company is an eligible foreign life insurance company—an application for the appointment of an external administrator of the eligible foreign life insurance company, or for a similar procedure in respect of the eligible foreign life insurance company, has been made in a foreign country; or

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(iiic) if the company is an eligible foreign life insurance company—an external administrator has been appointed to the eligible foreign life insurance company, or a similar appointment has been made in respect of the eligible foreign life insurance company, in a foreign country; or

27 At the end of section 159

Add:

(2) For the purposes of subparagraph (1)(a)(iiia), the requirement in this subsection is that the appointment mentioned in that subparagraph poses a significant threat to:

(a) the operation or soundness of the life company; or

(b) the interests of owners of policies issued by the life company; or

(c) the stability of the financial system in Australia.

(3) The regulations may specify that a particular form of support for a company is not to be considered external support for the purposes of subparagraph (1)(a)(i).

28 Section 161

Repeal the section, substitute:

161 Moratorium—effect of judicial management on court and tribunal proceedings

(1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (9) in respect of a life company if the life company is under judicial management.

(2) Subsection (1) does not apply if:

(a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and

(b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.

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(3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA and the judicial manager at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).

(4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the court or tribunal decides to impose such terms—the nature of those terms.

(5) The judicial manager may apply to the court or tribunal to be joined as a party to the proceedings for leave. If the judicial manager is joined as a party, the court or tribunal must have regard to the judicial manager's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the court or tribunal decides to impose such terms—the nature of those terms.

(6) Subsection (1) also does not apply if the judicial manager, after considering APRA's views, consents to the proceedings beginning or continuing.

(7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).

(8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).

(9) A proceeding in a court or tribunal is covered by this subsection in respect of a life company if it is any of the following:
  (a) a proceeding against the life company (including a cross-claim or third party claim against the life company);
  (b) a proceeding in relation to property of the life company;

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(c) a proceeding to enforce any security (including a mortgage or charge) granted by the life company, or by a related body corporate of the life company, over any property that the life company owns, uses, possesses, occupies or in which the life company otherwise has an interest.

(10) Subsection (9) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.

(11) In this section, a reference to a tribunal includes a reference to the following:
(a) an industrial tribunal;
(b) an arbitral tribunal.

161A Moratorium—effect of judicial management on enforcement process regarding property

(1) No enforcement process in relation to property of a life company can be begun or proceeded with if the life company is under judicial management.

(2) Subsection (1) does not apply if:
(a) the Court grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or
(b) the beginning or continuing of the process is in accordance with such terms (if any) as the Court imposes.

(3) A person intending to apply for leave of the Court under paragraph (2)(a) must give APRA and the judicial manager at least 10 days notice of the intention to apply (or a shorter period, if the Court considers that exceptional circumstances make this necessary).

(4) APRA may apply to the Court to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Court must have regard to APRA's views in deciding:
(a) whether to grant leave under paragraph (2)(a); and
(b) if the Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and

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(c) if the Court decides to impose such terms—the nature of those terms.

(5) The judicial manager may apply to the Court to be joined as a party to the proceedings for leave. If the judicial manager is joined as a party, the Court must have regard to the judicial manager's views in deciding:
(a) whether to grant leave under paragraph (2)(a); and
(b) if the Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
(c) if the Court decides to impose such terms—the nature of those terms.

(6) Subsection (1) also does not apply if the judicial manager consents to the process beginning or continuing.

(7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).

(8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).

161B Moratorium—effect of judicial management on disposal of property

(1) A person must not dispose of property if:
(a) the property is owned by another person; and
(b) the other person is a life company; and
(c) the life company is under judicial management.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

(2) Subsection (1) does not apply if the judicial manager consents to the disposal.

(3) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

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161C Moratorium—Restrictions on exercise of third party property rights

(1) Section 440B of the *Corporations Act 2001* applies during a period in which a life company is under judicial management in the same way it applies during the administration of a company.

(2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to the judicial manager's written consent.

(3) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).

(4) This section applies despite sections 161, 161A and 161B.

161D Moratorium—effect of judicial management on supply of essential services

(1) If:

(a) a life company is under judicial management; and

(b) the judicial manager requests, or authorises someone else to request, a person or authority (the ***supplier***) to supply an essential service to the life company in Australia; and

(c) the life company owes an amount to the supplier in respect of the supply of the essential service before the day on which the judicial manager took control of the life company's business;

the supplier must not:

(d) refuse to comply with the request for the reason only that the amount is owing; or

(e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

(2) In this section:

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essential service has the same meaning as in section 600F of the *Corporations Act 2001*.

161E Moratorium—effect of judicial management on annual general meeting

(1) This section applies to a life company that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

(2) Despite section 250N and section 601BR of that Act, if the life company is under judicial management at the end of that period, the life company need not hold that annual general meeting.

(3) To avoid doubt, subsection (2) does not apply if only part of the business of the life company is under judicial management.

29 Section 162

Repeal the section.

30 After subsection 163(1)

Insert:

(1A) If, subsequent to that order, a situation arises where there is no judicial manager of the company, or it appears to the Court that it is likely that such a situation will arise, the Court may appoint another judicial manager of the company.

(1B) If the Court appoints 2 or more judicial managers of a company, or appoints one or more additional judicial managers of a company:

(a) except to the extent (if any) specified in a declaration by the Court under paragraph (b), the functions and powers under this Act of a judicial manager of the company may be performed or exercised by:

(i) all of the judicial managers of the company acting jointly; or

(ii) each of the judicial managers of the company acting individually; and

(b) at the time of appointment, the Court may make a declaration for the purposes of paragraph (a), specifying limits or

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conditions on the judicial managers' ability to perform functions and exercise powers jointly or individually; and

(c) treat a reference in this Act to a judicial manager as being a reference to whichever one or more of those judicial managers the case requires.

31 Subsection 163(2)

Repeal the subsection, substitute:

(2) The Court may cancel the appointment of a judicial manager and appoint another person as judicial manager:

(a) on application by APRA; or

(b) of its own motion.

32 Subsection 163(3)

Omit "However,".

33 Section 165

Repeal the section, substitute:

165 Effect of judicial management on powers of officers etc.

(1) Subject to subsection (4), if the Court has made an order placing a company under judicial management:

(a) at the time the judicial management commences:

(i) a person with the powers and functions of an officer of the company immediately before that time ceases to have those powers and functions; and

(ii) if the company is an eligible foreign life insurance company and there is a person with the powers and functions of a member of the Compliance Committee of the company immediately before that time—the person ceases to have those powers and functions; and

(iii) the judicial manager appointed by the Court starts to have the powers and functions mentioned in subparagraph (i) (and, if applicable, subparagraph (ii)); and

(b) while the company is under judicial management:

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(i) if a person mentioned in subparagraph (a)(i) or (ii) purports to act in relation to the company's business, the purported act is invalid and of no effect; and

(ii) 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.

(2) Subject to subsection (4), if the Court has made an order placing part of the business of a company under judicial management:

(a) at the time the judicial management commences:

(i) a person with the powers and functions of an officer of the company in relation to that part of the business immediately before that time ceases to have those powers and functions in relation to that part of the business; and

(ii) if the company is an eligible foreign life insurance company and there is a person with the powers and functions of a member of the Compliance Committee of the company immediately before that time in relation to that part of the business—the person ceases to have those powers and functions in relation to that part of the business; and

(iii) the judicial manager appointed by the Court starts to have the powers and functions mentioned in subparagraph (i) (and, if applicable, subparagraph (ii)) in relation to that part of the business; and

(b) while the company is under judicial management:

(i) if a person mentioned in subparagraph (a)(i) or (ii) purports to act in relation to that part of the business, the purported act is invalid and of no effect; and

(ii) 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, in relation to that part of the business.

(3) Subsections (1) and (2) do not remove an officer or member of the Compliance Committee of the company from office.

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(4) A life company may not issue policies without the leave of the Court if the company, or any part of the business of the company, is under judicial management.

(5) Subsection (4) does not prevent the variation of a policy under section 209.

(6) In this section, ***officer*** has the same meaning as it has in the *Corporations Act 2001*.

Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 16ZE(3) of the business and management of an eligible foreign life insurance company.

34 Subsection 165A(1)

Omit "when the management of the company vests in the judicial manager appointed by the Court", substitute "when the judicial management of the company commences".

35 Subsection 165A(2)

Omit "while the management of the company is vested in the judicial manager appointed by the Court", substitute "while the company is under judicial management".

36 Subsection 165A(3)

Omit "while the management of the company is vested in a judicial manager", substitute "while the company is under judicial management".

37 Subsection 165A(4)

Omit "that the management of the company vests in the judicial manager when the judicial management commences", substitute "that the company is under judicial management".

38 Section 165B

Repeal the section, substitute:

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165B Judicial management not ground for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
  (a) deny any obligations under the contract;
  (b) accelerate any debt under the contract;
  (c) close out any transaction relating to the contract;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) the making by the Court of an order that the body corporate, or part of the business of the body corporate, be placed under judicial management;
  (b) the commencement of the judicial management of the body corporate, or of part of the business of the body corporate;
  (c) if the body corporate is a member of a relevant group of bodies corporate:
    (i) the making by the Court of an order that another member of the group, or part of the business of another member of the group, be placed under judicial management; or
    (ii) the commencement of the judicial management of another member of the group.

39 Section 166

Before "The appointment of", insert "(1)".

40 Section 166

Omit "The appointment of a judicial manager under this Part does not affect", substitute "None of the matters mentioned in subsection (2) affect".

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41 At the end of section 166

Add:

(2) The matters are as follows:

(a) the making by the Court of an order that the life company be placed under judicial management;

(b) the commencement of the judicial management of the life company.

42 Paragraph 168A(4)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 251AA of this Act)".

43 Paragraph 168A(4)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

44 Section 168C

Repeal the section, substitute:

168C Act under section 168A not ground for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:

(a) deny any obligations under the contract;

(b) accelerate any debt under the contract;

(c) close out any transaction relating to the contract;

(d) enforce any security under the contract.

(3) The matters are as follows:

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(a) a judicial manager doing an act under subsection 168A(1) relating to the body corporate;

(b) if the body corporate is a member of a relevant group of bodies corporate—a judicial manager of another member of the group doing an act under subsection 168A(1) relating to that other member.

45 Subsection 172(5)

Repeal the subsection, substitute:

(5) At the time when an order cancelling the judicial management of the life company comes into force:

(a) the judicial manager ceases to have the powers and functions of an officer of the life company; and

(b) the board of directors or other governing body of the life company starts to have those powers; and

(c) if the company is an eligible foreign life insurance company and there is a committee of the company that satisfies the requirements mentioned in subsections 16ZF(1) and (2)—the members of the committee start to have the powers mentioned in that section.

46 Paragraph 175(2)(aa)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

47 After paragraph 175(2)(aa)

Insert:

(ab) to transfer shares in the company to another company under section 25AA of the *Financial Sector (Transfer and Restructure) Act 1999*;

48 Subparagraph 176(3)(b)(i)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 251AA of this Act)".

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49 Subparagraph 176(3)(b)(iv)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

50 Subsection 177(2)

Omit "the management of the company, or of that part of the business of the company, as the case may be, continues to be vested in the judicial manager", substitute "the company continues to be under judicial management".

51 Section 179

Repeal the section, substitute:

179 Immunity

(1) A judicial manager, or a person acting on behalf of a judicial manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the judicial manager by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) A judicial manager is not liable under section 588G of the *Corporations Act 2001*. This subsection does not limit the scope of subsection (1).

Signpost to secrecy obligations

(4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by judicial managers under this Act.

52 After Division 1 of Part 8

Insert:

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Division 1AA—Statutory management of life company

Subdivision A—General provisions relating to statutory management

179AA Consequences of inability or failure of life company etc. to meet certain requirements

Appointment of administrator or control by APRA

(1) APRA may take control of a life company's business or appoint an administrator to take control of the life company's business if both of the following requirements are met:

(a) APRA is satisfied of the matters of which the Court is required to be satisfied for the purposes of section 158 or 159;

(b) subsection (2) applies.

(2) This subsection applies if APRA is satisfied that at least one of the following situations exists:

(a) both:

(i) an AFS statutory manager has taken control of a body corporate under this Act, the *Banking Act 1959* or the *Insurance Act 1973* (or APRA intends for that to occur); and

(ii) the life company and the body corporate are related bodies corporate;

(b) both:

(i) the life company's financial position is deteriorating rapidly, or is likely to deteriorate rapidly; and

(ii) failure to respond quickly to the deterioration would be likely to prejudice the interests of policy owners of the life company;

(c) it is likely that the life company will be unable to carry on life insurance business in Australia consistently with the stability of the financial system in Australia;

(d) an external administrator has been appointed to a holding company of the life company (or a similar appointment has

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been made in a foreign country in respect of such a holding company), and the appointment poses a significant threat to:

(i) the operation or soundness of the life company; or

(ii) the interests of policy owners of the life company; or

(iii) the stability of the financial system in Australia;

(e) if the life company is an eligible foreign life insurance company:

(i) an application for the appointment of an external administrator of the eligible foreign life insurance company, or for a similar procedure in respect of the eligible foreign life insurance company, has been made in a foreign country; or

(ii) an external administrator has been appointed to the eligible foreign life insurance company, or a similar appointment has been made in respect of the eligible foreign life insurance company, in a foreign country.

(3) APRA may take any of the actions mentioned in subsection (4) in relation to a body corporate (the ***target body corporate***) if:

(a) the target body corporate is a body corporate that is any of the following:

(i) a registered NOHC of a life company (the ***relevant life company***);

(ii) a subsidiary of a registered NOHC of a life company (also the ***relevant life company***);

(iii) a subsidiary of a life company (also the ***relevant life company***); and

(b) the condition in subsection (5), (6) or (7) is satisfied; and

(c) the target body corporate is incorporated in Australia; and

(d) the target body corporate is not a body corporate of a kind specified in regulations (if any) made for the purposes of this paragraph.

(4) The actions are as follows:

(a) taking control of the business of the target body corporate;

(b) appointing an administrator to take control of the business of the target body corporate.

(5) The condition in this subsection is satisfied if:

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(a) either:
(i) a Life Insurance Act statutory manager has taken control of the relevant life company; or
(ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant life company, and APRA intends that a Life Insurance Act statutory manager will take control of the relevant life company; and
(b) APRA considers that the target body corporate provides services that are, or conducts business that is, essential to the capacity of the relevant life company to maintain its operations.

(6) The condition in this subsection is satisfied if:
(a) either:
(i) a Life Insurance Act statutory manager has taken control of the relevant life company; or
(ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant life company, and APRA intends that a Life Insurance Act statutory manager will take control of the relevant life company; and
(b) APRA considers that it is necessary for a Life Insurance Act statutory manager to take control of the target body corporate, in order to facilitate the resolution of any of the following:
(i) the relevant life company;
(ii) a registered NOHC of the relevant life company;
(iii) a relevant group of bodies corporate of which the relevant life company is a member;
(iv) a particular member or particular members of such a group.

(7) The condition in this subsection is satisfied if:
(a) there is an external administrator of the target body corporate, or APRA considers that, in the absence of external support:
(i) the target body corporate may become unable to meet its obligations; or
(ii) the target body corporate may suspend payment; and

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(b) APRA considers that it is necessary to take an action mentioned in subsection (4) in respect of the target body corporate in order to enable the relevant life company to maintain its operations, or in order to facilitate the resolution of any of the following:

(i) the relevant life company;

(ii) a registered NOHC of the relevant life company;

(iii) a relevant group of bodies corporate of which the relevant life company is a member;

(iv) a particular member or particular members of such a group.

(8) If:

(a) APRA is in control of a body corporate's business under this Subdivision—APRA is the ***Life Insurance Act statutory manager*** of the body corporate; or

(b) an administrator appointed by APRA is in control of a body corporate's business under this Subdivision—the administrator is the ***Life Insurance Act statutory manager*** of the body corporate.

Note: This section and other provisions relating to statutory management do not apply to the aspects described in subsection 16ZE(3) of the business and management of an eligible foreign life insurance company.

(9) If APRA appoints 2 or more Life Insurance Act statutory managers of a body corporate, or appoints one or more additional Life Insurance Act statutory managers of a body corporate:

(a) the functions and powers under this Act of a Life Insurance Act statutory manager of the body corporate may be performed or exercised by:

(i) all of the Life Insurance Act statutory managers of the body corporate acting jointly; or

(ii) each of the Life Insurance Act statutory managers of the body corporate acting individually (except to the extent (if any) specified in a notice given by APRA under paragraph (b)); and

(b) at the time of appointment, APRA may give all of the Life Insurance Act statutory managers of the body corporate a notice in writing for the purposes of subparagraph (a)(ii),

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specifying limits or conditions on their ability to perform functions and exercise powers individually; and

(c) treat a reference in this Act to a Life Insurance Act statutory manager as being a reference to whichever one or more of those Life Insurance Act statutory managers the case requires.

179AB Start of control of body corporate's business by Life Insurance Act statutory manager

(1) After the decision that a Life Insurance Act statutory manager will take control of a body corporate's business is made, APRA must give the body corporate written notice that the Life Insurance Act statutory manager will take, or is taking, control of the business.

Note: Subsections 179AQ(4) and 179AZA(3) also require APRA to give notice of the taking of control.

(2) A Life Insurance Act statutory manager takes control of a body corporate's business:

(a) at the time specified in a notice under this section as the time when the Life Insurance Act statutory manager takes control of the business (which must not be earlier than the notice is given); or

(b) if a notice under this section does not specify a time as the time when the Life Insurance Act statutory manager takes control of the business—at the time the notice is given.

(3) A notice under subsection (1) is not a legislative instrument.

179AC Life Insurance Act statutory managers—termination of control

Conditions necessary for termination of control

(1) If APRA assumes control of a body corporate's business or appoints an administrator of a body corporate's business, APRA must ensure that either it or an administrator of the body corporate's business has control of the body corporate's business until:

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(a) APRA considers that it is no longer necessary for it or an administrator to remain in control of the body corporate's business; or

(b) APRA has applied for the body corporate to be wound up.

A termination of control that is permitted under this section is called an ***ultimate termination of control***.

Note: This provision does not prevent a change, or changes, between control of a body corporate's business by APRA and an administrator or between administrators.

Events to precede termination

(2) Before making an ultimate termination of control by a Life Insurance Act statutory manager of a body corporate's business, APRA must:

(a) do both of the following:

(i) ensure that directors of the body corporate have been appointed or elected under the body corporate's constitution at a meeting called by the statutory manager in accordance with the body corporate's constitution;

(ii) if the body corporate is an eligible foreign life insurance company—ensure that a Compliance Committee of the body corporate is established and operating for the purpose of section 16ZF; or

(b) do both of the following:

(i) appoint directors of the body corporate by instrument in writing;

(ii) if the body corporate is an eligible foreign life insurance company—ensure that a Compliance Committee of the body corporate is established and operating for the purpose of section 16ZF; or

(c) ensure that a liquidator has been appointed:

(i) unless subparagraph (ii) applies—for the body corporate; or

(ii) if the body corporate is an eligible foreign life insurance company—for the body corporate in relation to its Australian business assets and liabilities.

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Power to terminate control

(3) If the requirements in subsections (1) and (2) are satisfied, APRA may by instrument in writing make an ultimate termination of control of a body corporate's business by a Life Insurance Act statutory manager.

(4) If the Life Insurance Act statutory manager at the time of the termination is an administrator, the instrument of termination also operates as a termination of the appointment of the administrator. A copy of the instrument must be given to the administrator. However, mere failure to give the copy to the administrator does not affect the termination of the appointment.

Period of director's appointment

(5) If a director is elected or appointed under subsection (2), the director takes office on the termination of the Life Insurance Act statutory manager's control of the body corporate's business. If the director was appointed by APRA, the director holds office until the body corporate's next annual general meeting, subject to any terms and conditions imposed by APRA on the director's appointment. If the director was appointed or elected under the body corporate's constitution, the constitution governs the appointment.

Note: For further information about what happens when a Life Insurance Act statutory manager is in control of a body corporate's business, see Subdivision B.

Subdivision B—Provisions dealing with control of a body corporate's business by a Life Insurance Act statutory manager

179AD Life Insurance Act statutory manager's powers and functions

Life Insurance Act statutory manager's powers and functions include powers and functions of board

(1) A Life Insurance Act statutory manager has the powers and functions of the members of the board of directors of the body

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corporate (collectively and individually), including the board's powers of delegation.

Note: When a Life Insurance Act statutory manager takes control of the business of a body corporate, the directors of the body corporate cease to hold office (see section 179AP).

Life Insurance Act statutory manager's power to obtain information

(2) A Life Insurance Act statutory manager may, for the purposes of this Division, require a person who has, at any time, been an officer of the body corporate to give the Life Insurance Act statutory manager any information relating to the business of the body corporate that the Life Insurance Act statutory manager requires. A requirement to give information may include a requirement to produce books, accounts or documents.

(3) A person who is or has been an officer of a body corporate commits an offence if:

(a) there is a Life Insurance Act statutory manager in relation to the body corporate; and

(b) under subsection (2), the Life Insurance Act statutory manager requires the person to give information or to produce books, accounts or documents; and

(c) the person fails to comply with the requirement.

Penalty: Imprisonment for 12 months.

Note 1: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

(4) An individual is not excused from complying with a requirement under subsection (2) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(5) If:

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(a) before giving information in compliance with a requirement under subsection (2), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual so liable;

the information given in compliance with the requirement is 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.

(6) Subsections (4) and (5) apply to the production of books, accounts or documents in a corresponding way to the way in which they apply to the giving of information.

Life Insurance Act statutory manager's power to sell whole or part of body corporate's business

(7) A Life Insurance Act statutory manager may sell or otherwise dispose of the whole or any part of the body corporate's business. The sale or disposal may occur on any terms and conditions that the Life Insurance Act statutory manager considers appropriate.

Life Insurance Act statutory manager's powers to alter body corporate's constitution etc.

(8) A Life Insurance Act statutory manager may, if the body corporate concerned is registered under the *Corporations Act 2001*, alter the body corporate's constitution, rules or other arrangements for governance if the alteration:

(a) is necessary or convenient for enabling or facilitating the performance of the Life Insurance Act statutory manager's functions and duties, or the exercise of the Life Insurance Act statutory manager's other powers, under this Division in relation to the body corporate; and

(b) promotes:

(i) the protection of the policy owners of the body corporate; and

(ii) financial system stability in Australia.

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(9) A Life Insurance Act statutory manager may do an act under subsection (7) or (8) despite:
  (a) the *Corporations Act 2001*; and
  (b) the body corporate's constitution; and
  (c) any contract or arrangement to which the body corporate is party; and
  (d) any listing rules of a financial market in whose official list the body corporate is included.

Interpretation

(10) In this section:

officer has the meaning given by section 9 of the *Corporations Act 2001*.

179AE Safeguards on exercise of Life Insurance Act statutory manager's powers and functions

(1) Despite anything else in this Subdivision, a Life Insurance Act statutory manager of a body corporate (the ***body corporate under management***) may not perform a function or exercise a power under section 179AD if:
  (a) either or both of subsections (2) and (3) apply; and
  (b) the performance of the function or the exercise of the power is not for the purposes of:
    (i) an act of the Life Insurance Act statutory manager under subsection 179AF(1); or
    (ii) Part 3 or 4 of the *Financial Sector (Transfer and Restructure) Act 1999*.

(2) This subsection applies if:
  (a) the body corporate under management is not a life company; and
  (b) the performance or the exercise would result in:
    (i) the provision of services by the body corporate under management to a related body corporate of the body corporate under management; or

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(ii) the provision of services by a related body corporate of the body corporate under management to the body corporate under management; or

(iii) subject to subsection (4), the transfer of assets between the body corporate under management and another body corporate (otherwise than in the ordinary course of business); and

(c) the performance or the exercise is not required or permitted by a binding arrangement that was in existence immediately before the Life Insurance Act statutory manager started to be in control of the business of the body corporate under management; and

(d) the provision or transfer is not for fair value.

(3) This subsection applies if:

(a) the body corporate under management is a registered NOHC of a life company; and

(b) the performance or the exercise requires using funds of the body corporate or a subsidiary of the body corporate to increase the level of capital of the life company to a specified level; and

(c) the shareholders of the body corporate have not agreed, by ordinary resolution, to that use of the funds.

(4) Treat the requirement in subparagraph (2)(b)(iii) as not being met if:

(a) the body corporate under management is a registered NOHC of a life company; and

(b) the transfer of assets mentioned in that subparagraph is a transfer of funds to increase the level of capital of the life company to a specified level; and

(c) the shareholders of the body corporate have agreed, by ordinary resolution, to that use of the funds.

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179AF Life Insurance Act statutory manager's additional powers to facilitate recapitalisation

Powers

(1) A Life Insurance Act statutory manager of a body corporate that is a company that has a share capital and is registered under the *Corporations Act 2001* may do one or more of the following acts on terms determined by the Life Insurance Act statutory manager:

(a) issue shares, or rights to acquire shares, in the company;

(b) cancel shares, or rights to acquire shares, in the company;

(c) reduce the company's share capital by cancelling any paid-up share capital that is not represented by available assets;

(d) sell shares, or rights to acquire shares, in the company;

(e) vary or cancel rights or restrictions attached to shares in a class of shares in the company.

Note: Before doing such an act, the Life Insurance Act statutory manager will usually need to get and consider a report on the fair value of each share or right concerned: see section 179AG.

Giving company members notice of exercise of powers

(2) As soon as practicable after doing an act described in paragraph (1)(a), (b), (c) or (e) or subsection (3), the Life Insurance Act statutory manager must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the company just before the act, identifying the act and explaining its effect on their interests as members.

(3) One of the acts to which subsection (2) relates is the offering of shares, or rights to acquire shares, in the company for sale under paragraph (1)(d).

Exercise of powers despite other laws etc.

(4) A Life Insurance Act statutory manager may do an act under subsection (1) despite:

(a) the *Corporations Act 2001*; and

(b) the company's constitution; and

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(c) any contract or arrangement to which the company is party; and
(d) any listing rules of a financial market in whose official list the company is included.

Section does not apply to EFLICs etc.

(5) This section does not apply in relation to a body corporate that is:
(a) an eligible foreign life insurance company; or
(b) a subsidiary of an eligible foreign life insurance company; or
(c) a registered NOHC of an eligible foreign life insurance company.

179AG Considering report before acting under section 179AF

Getting and considering report on fair value of shares or rights

(1) Before determining terms for an act under subsection 179AF(1), the Life Insurance Act statutory manager must:
(a) obtain a report meeting the requirements in subsection (2) of this section on the fair value of the shares or rights concerned from an expert who is not an associate of the statutory manager, or of the company, under Division 2 of Part 1.2 of the *Corporations Act 2001*; and
(b) consider the report;
unless APRA determines under subsection (8) that this subsection does not apply in relation to that act relating to those shares or rights.

Content of report

(2) The report must set out:
(a) the amount that is, in the expert's opinion, the fair value for each share or right concerned; and
(b) the reasons for forming the opinion; and
(c) any relationship between the expert and any of the following persons:
(i) the Life Insurance Act statutory manager;

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(ii) a person who is an associate of the Life Insurance Act statutory manager under Division 2 of Part 1.2 of the *Corporations Act 2001*;

(iii) the body corporate;

(iv) a person who is an associate of the body corporate under Division 2 of Part 1.2 of the *Corporations Act 2001*;

including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; 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.

Determining fair value of shares

(3) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each share concerned, 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 either have been issued or that the Life Insurance Act statutory manager proposes to issue (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 either have been issued or that the Life Insurance Act statutory manager proposes to issue (without allowing a premium or applying a discount for particular shares in that class).

Assumptions for valuation of company

(4) The Minister may give the expert written notice of assumptions for the valuation of the company. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the

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assumptions. A notice under this subsection is not a legislative instrument.

Determining fair value of rights

(5) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each right concerned, the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the right.

Assumptions for valuation of rights

(6) The Minister may give the expert written notice of assumptions for the valuation of the rights concerned. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Contravention does not invalidate act

(7) A contravention of subsection (1), (2), (3), (5) or (9) does not affect the validity of anything done under section 179AF.

Exemption from subsection (1)

(8) APRA may determine in writing that subsection (1) does not apply in relation to an act relating to shares or rights if APRA is satisfied that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:
  (a) policy owners with:
    (i) if the company is a life company—the life company; or
    (ii) if the company is not a life company—the relevant life company mentioned in subsection 179AA(3); and
  (b) financial system stability in Australia.

(9) APRA must:
  (a) publish a copy of a determination under subsection (8) in the *Gazette*; and
  (b) give a copy of a determination under subsection (8) to the Life Insurance Act statutory manager concerned (unless that manager is APRA).

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(10) A determination made under subsection (8) is not a legislative instrument.

179AH Act under section 179AF not ground for denying obligation

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), 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;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) a Life Insurance Act statutory manager of the body corporate doing an act under subsection 179AF(1) relating to the body corporate;
  (b) if the body corporate is a member of a relevant group of bodies corporate—a Life Insurance Act statutory manager of another member of the group doing an act under subsection 179AF(1) in relation that other member.

179AI 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 a body corporate that has a Life Insurance Act statutory manager if:
  (a) in a case where the Life Insurance Act statutory manager is APRA:

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(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 Life Insurance Act statutory manager is not APRA:

(i) the Life Insurance Act 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 Life Insurance Act 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.

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(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 179AD not limited

(7) This section does not limit section 179AD.

179AJ Administrator in control—additional powers to recommend action by APRA

Types of recommendation

(1) An administrator of a body corporate's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:

(a) that APRA make a particular direction under subsection 179AM(3) or Subdivision B of Division 2 of Part 10A in respect of the body corporate;

(b) that APRA apply for the body corporate to be wound up;

(c) if the body corporate is a life company—that APRA revoke the life company's registration under section 21;

(d) if the body corporate is a registered NOHC—that APRA revoke the registered NOHC's registration under section 28A.

Effect of recommendation

(2) If an administrator of a body corporate's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

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179AK Life Insurance Act statutory manager's liabilities and duties

Immunity

(1) A Life Insurance Act statutory manager, or a person acting on behalf of a Life Insurance Act statutory manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Life Insurance Act statutory manager by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) To avoid doubt, a Life Insurance Act statutory manager is not liable under section 588G of the *Corporations Act 2001* in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Life Insurance Act statutory manager by or under this Act. This subsection does not limit the scope of subsection (1).

Signpost to secrecy obligations

(4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by Life Insurance Act statutory managers under this Act.

179AL Transaction by Life Insurance Act statutory manager not voidable under section 588FE of the *Corporations Act 2001*

A transaction of a body corporate is not voidable under section 588FE of the *Corporations Act 2001* merely because:

(a) the transaction was entered into at a time when a Life Insurance Act statutory manager was in control of the body corporate's business; and

(b) the transaction is:

(i) an uncommercial transaction (within the meaning of that Act) of the body corporate; or

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(ii) an unfair preference (within the meaning of that Act) given by the body corporate to a creditor of the company; or

(iii) an insolvent transaction (within the meaning of that Act) of the body corporate.

179AM Administrator in control—additional duties

Duty to report to APRA on request

(1) A person who is an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business is being carried out if APRA requests that such a report be provided to it. The report must be given to APRA within a reasonable time after the request.

Duty to report to APRA on termination of appointment

(2) A person who was an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business was carried out over the period of the administrator's appointment if the administrator's appointment has been terminated. The report must be given to APRA within a reasonable time of the termination.

Duty to follow directions by APRA

(3) APRA may give an administrator of a body corporate's business a direction relating to the control of the body corporate's business, and may alter such a direction. If a direction (including an altered direction) is given to an administrator by APRA, the administrator must:

(a) act in accordance with the direction; or

(b) immediately provide to APRA information relating to the control of the body corporate's business and request APRA to alter the direction.

(4) If an administrator of a body corporate's business requests APRA to alter a direction and APRA considers the request then confirms the direction, the administrator must act in accordance with the direction.

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179AN Administrator in control—additional duties where action may affect financial system stability in Australia

(1) If an administrator of a body corporate's business has reasonable cause to believe that an action that the administrator proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia, the administrator must:
  (a) notify APRA as soon as practicable; and
  (b) obtain APRA's written consent before taking the action.

(2) The administrator is not required to comply with subsection (1) if the administrator is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.

(3) The performance of a function or the exercise of a power by an administrator is not invalid merely because of a failure by the administrator to comply with this section.

179AO Termination of Life Insurance Act statutory manager's appointment

(1) APRA may terminate the appointment of an administrator of a body corporate's business and either appoint another person as administrator of the body corporate's business or itself take control of the body corporate's business if:
  (a) the administrator contravenes a requirement of this Division; or
  (b) APRA considers such action necessary to:
    (i) facilitate the resolution of the body corporate, a relevant group of bodies corporate of which the body corporate is a member, or another member of such a group; or
    (ii) if the body corporate is a life company—protect the interests of policy owners of the life company; or
    (iii) promote financial system stability in Australia.

(2) If:
  (a) APRA is the statutory manager of a body corporate; and
  (b) the requirement in paragraph (1)(b) is satisfied;

it may cease to be the statutory manager of the body corporate and appoint a person as administrator of the body corporate's business.

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(3) This section has effect subject to section 179AC.

179AP Effect on directors of Life Insurance Act statutory manager taking control of a body corporate's business

(1) The directors of a body corporate cease to hold office when a Life Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of ***director***, see subsection (4).

(2) A director of a body corporate must not be appointed or elected while a Life Insurance Act statutory manager is in control of the body corporate's business unless the appointment is made under subsection 179AC(2).

(3) The appointment of a person as a member of the Compliance Committee of an eligible foreign life insurance company under section 16ZF ceases to have effect when a Life Insurance Act statutory manager takes control of the eligible foreign life insurance company's business.

(4) A person must not be appointed as a member of the Compliance Committee of an eligible foreign life insurance company under section 16ZF while a Life Insurance Act statutory manager is in control of the eligible foreign life insurance company's business unless the appointment is made under subsection 179AC(2).

(5) If a person who ceased to hold office as a director of a body corporate under subsection (1), or a purported director of a body corporate appointed or elected in contravention of subsection (2), purports to act in relation to the body corporate's business while a Life Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(6) If a person whose appointment as a member of the Compliance Committee of a body corporate under section 16ZF ceased to have effect under subsection (3) purports to act in relation to the body corporate's business while a Life Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

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(7) Subsections (1), (2) and (5) do not apply in relation to a body corporate that is an eligible foreign life insurance company.

(8) Subsection (9) applies if:
  (a) subsections (1), (2) and (5) do not apply in relation to a body corporate because of subsection (7); and
  (b) a Life Insurance Act statutory manager takes control of the body corporate's business; and
  (c) a director of the body corporate acts, or purports to act in relation to the body corporate's business while the Life Insurance Act statutory manager has control of the body corporate's business.

(9) Those acts are invalid and of no effect to the extent that they relate to:
  (a) the Australian business assets and liabilities of the body corporate; or
  (b) the management of the body corporate, to the extent that the management relates to the Australian business assets and liabilities of the body corporate.

(10) For the purposes of this section, ***director*** has the same meaning as it has in the *Corporations Act 2001*.

179AQ Effect on external administrator of Life Insurance Act statutory manager taking control of a body corporate's business

(1) The appointment of an external administrator of a body corporate is terminated when a Life Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of ***external administrator***, see the Schedule.

(2) An external administrator of a body corporate must not be appointed while a Life Insurance Act statutory manager is in control of the body corporate's business unless APRA approves the appointment.

(3) If a person who ceased to be the external administrator of a body corporate under subsection (1), or a purported external administrator of the body corporate appointed in contravention of

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subsection (2), purports to act in relation to the body corporate's business while a Life Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(4) APRA must inform the external administrator of a body corporate that a Life Insurance Act statutory manager will take control of the body corporate's business as soon as possible after the decision that a Life Insurance Act statutory manager will take control of the body corporate's business is made. However, failure to inform the external administrator does not affect the operation of this section.

179AR Moratorium—effect of Life Insurance Act statutory management on court and tribunal proceedings

(1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (8) in respect of a body corporate if a Life Insurance Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:
  (a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and
  (b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.

(3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).

(4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the court or tribunal decides to impose such terms—the nature of those terms.

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(5) Subsection (1) also does not apply if:
(a) APRA consents in writing to the proceedings beginning or continuing; or
(b) the Life Insurance Act statutory manager, after considering APRA's views, consents to the proceedings beginning or continuing.

(6) APRA (or the Life Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

(8) A proceeding in a court or tribunal is covered by this subsection in respect of a body corporate if it is any of the following:
(a) a proceeding against the body corporate (including a cross-claim or third party claim against the body corporate);
(b) a proceeding in relation to property of the body corporate;
(c) a proceeding to enforce any security (including a mortgage or charge) granted by the body corporate, or by a related body corporate of the body corporate, over any property that the body corporate owns, uses, possesses, occupies or in which the body corporate otherwise has an interest.

(9) Subsection (8) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.

(10) In this section, a reference to a tribunal includes a reference to the following:
(a) an industrial tribunal;
(b) an arbitral tribunal.

179AS Moratorium—effect of Life Insurance Act statutory management on enforcement process regarding property

(1) No enforcement process in relation to property of a body corporate can be begun or proceeded with if a Life Insurance Act statutory manager is in control of the body corporate's business.

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(2) Subsection (1) does not apply if:
  (a) the Court grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or
  (b) the beginning or continuing of the process is in accordance with such terms (if any) as the Court imposes.

(3) A person intending to apply for leave of the Court under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Court considers that exceptional circumstances make this necessary).

(4) APRA may apply to the Court to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Court must have regard to APRA's views in deciding:
  (a) whether to grant leave under paragraph (2)(a); and
  (b) if the Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  (c) if the Court decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:
  (a) APRA consents to the process beginning or continuing; or
  (b) the Life Insurance Act statutory manager consents to the process beginning or continuing.

(6) APRA (or the Life Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

179AT Moratorium—effect of Life Insurance Act statutory management on disposal of property

(1) A person must not dispose of property if:
  (a) the property is owned by another person; and
  (b) the other person is a body corporate; and

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(c) a Life Insurance Act statutory manager is in control of the body corporate's business.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

(2) Subsection (1) does not apply if:

(a) APRA consents to the disposal; or

(b) the Life Insurance Act statutory manager consents to the disposal.

(3) Neither APRA nor the Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

179AU Moratorium—Restrictions on exercise of third party property rights

(1) Section 440B of the *Corporations Act 2001* applies during a period in which a Life Insurance Act statutory manager is in control of a body corporate's business in the same way it applies during the administration of a company.

(2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to:

(a) the Life Insurance Act statutory manager's written consent; or

(b) APRA's written consent.

(3) Neither APRA nor a Life Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).

(4) This section applies despite sections 179AR, 179AS and 179AT.

179AV Moratorium—effect of Life Insurance Act statutory management on supply of essential services

(1) If:

(a) a Life Insurance Act statutory manager is in control of a body corporate's business; and

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(b) the Life Insurance Act statutory manager requests, or authorises someone else to request, a person or authority (the ***supplier***) to supply an essential service to the body corporate in Australia; and

(c) the body corporate owes an amount to the supplier in respect of the supply of the essential service before the day on which the Life Insurance Act statutory manager took control of the body corporate's business;

the supplier must not:

(d) refuse to comply with the request for the reason only that the amount is owing; or

(e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Court may grant an injunction under section 235 in respect of a contravention of this subsection.

(2) In this section:

essential service has the same meaning as in section 600F of the *Corporations Act 2001*.

179AW Moratorium—effect of Life Insurance Act statutory management on annual general meeting

(1) This section applies to a body corporate that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

(2) Despite section 250N and section 601BR of that Act, if a Life Insurance Act statutory manager is in control of the body corporate's business at the end of that period, the body corporate need not hold that annual general meeting.

179AX Life Insurance Act statutory manager being in control not grounds for denial of obligations

(1) This section applies if a body corporate 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

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(b) law of a foreign country (including the law of part of a foreign country).

(2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), 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;

(d) enforce any security under the contract.

(3) The matters are as follows:

(a) a Life Insurance Act statutory manager being in control, or being appointed to take control, of the business of the body corporate;

(b) if the body corporate is a member of a relevant group of bodies corporate—a Life Insurance Act statutory manager being in control, or being appointed to take control, of the business of another member of the group.

179AY Application of other provisions

(1) None of the matters mentioned in subsection (2) affect:

(a) the continued operation of other provisions of this Act or the operation of the *Financial Sector (Collection of Data) Act 2001* in relation to a body corporate; or

(b) the obligation of a body corporate to comply with those other provisions and that Act.

(2) The matters are as follows:

(a) the appointment of a Life Insurance Act statutory manager of the body corporate's business under this Division;

(b) the fact that a Life Insurance Act statutory manager is in control of the body corporate's business.

(3) The *Public Governance, Performance and Accountability Act 2013* does not apply to a body corporate that has a Life Insurance Act statutory manager.

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179AZ Costs of statutory management

(1) APRA's costs (including costs in the nature of remuneration and expenses) of being in control of a body corporate's business, or of having an administrator in control of a body corporate's business, are payable from the body corporate's funds and are a debt due to APRA.

(2) Despite anything contained in any law relating to the winding-up of companies, debts due to APRA by a body corporate under subsection (1) have priority in a winding-up of the body corporate over all other unsecured debts.

(3) If the body corporate is a life company, subsection (2) does not apply the extent that a debt due to APRA by the life company is referable to the business of a statutory fund of the life company.

Note: APRA may be able to recover a debt that is referable to the business of a statutory fund of the life company that is being wound up, in accordance with paragraph 187(3)(c).

179AZA APRA must report to Treasurer and publish information about statutory management

Reports to the Treasurer

(1) If the Treasurer requests APRA to give him or her a written report concerning the activities of Life Insurance Act statutory managers in respect of specified body corporates or in respect of a specified period, APRA must give the Treasurer such a written report within a reasonable time after the Treasurer requests it.

(2) If a Life Insurance Act statutory manager takes control of a body corporate's business during a financial year, or if there is an ultimate termination of control during a financial year, APRA must give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all Life Insurance Act statutory managers and each ultimate termination of control that occurred during that financial year.

Requirement to publish notices in Gazette

(3) If APRA:

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(a) takes control of a body corporate's business; or
(b) appoints an administrator of a body corporate's business; or
(c) makes an ultimate termination of control in respect of a body corporate's business;

APRA must publish notice of that fact in the *Gazette*. However, mere failure to publish such a notice does not affect the validity of the act.

179AZB Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

(a) the acquisition of assets in:
  (i) a sale or disposal of the whole or part of the business of a body corporate under this Division by a Life Insurance Act statutory manager in control of the body corporate's business; or
  (ii) a transfer of life insurance business of a life company under a scheme prepared by a Life Insurance Act statutory manager in control of the life company's business and confirmed (with or without modifications) by the Court under Part 9;

  (whether the assets are shares in another body corporate or other assets);
(b) the acquisition of shares in a body corporate as a direct result of:
  (i) the issue or sale of the shares under this Division by a Life Insurance Act statutory manager in control of the body corporate's business; or
  (ii) the exercise of a right to acquire shares that was issued or sold under this Division by a Life Insurance Act statutory manager in control of the body corporate's business.

53 Section 179C

Repeal the section, substitute:

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179C Involving APRA in proposed appointment of external administrators of life companies and NOHCs

(1) At least one week before a person other than APRA:

(a) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or

(b) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or

(c) appoints an external administrator of a life company or of a registered NOHC of a life company (otherwise than as the result of an application made by another person);

the person must give APRA written notice that the person proposes to make the application or appointment.

(2) If there is an approved form for the notice, the person must give the notice in the approved form.

(3) Subsection (1) does not apply if APRA gives the person written notice, before the person makes the application or appointment, that APRA consents to the person making the application or appointment.

(4) APRA is entitled to be heard on the application.

(5) After receiving the notice, APRA may request the person to provide details of the proposed application.

Offence

(6) A person (other than APRA) commits an offence if:

(a) the person:

(i) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of a life company or of a registered NOHC of a life company; or

(ii) makes another kind of application (whether or not to a court) for the appointment of an external administrator

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of a life company or of a registered NOHC of a life company; or

(iii) appoints an external administrator of a life company or of a registered NOHC of a life company (otherwise than as the result of an application made by another person); and

(b) APRA did not give the person written notice, before the person made the application or appointment, of APRA's consent to the person making the application or appointment, in accordance with subsection (3); and

(c) at least one week before making the application or appointment:

(i) if there is an approved form for the purposes of this paragraph—the person did not give APRA notice in the approved form indicating that the person proposed to make the application or appointment; or

(ii) otherwise—the person did not give APRA written notice indicating that the person proposed to make the application or appointment.

Penalty: 60 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

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

54 Subsection 181(2)

Repeal the subsection, substitute:

(2) APRA may only make an application if any of the following requirements are met:

(a) APRA is satisfied that it is necessary or proper that the application be made, having regard to the conclusions reached by APRA as a result of any of the following situations:

(i) APRA investigating the business of the life company under Division 3 of Part 7;

(ii) APRA taking control of the life company's business under subsection 179AA(1);

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(iii) an administrator of the life company's business recommending to APRA under section 179AJ that APRA apply for the life company to be wound up;

(b) if the life company is an eligible foreign life insurance company—APRA considers that any of the following requirements are met:

(i) an application for the appointment of an external administrator of the eligible foreign life insurance company, or for a similar procedure in respect of the eligible foreign life insurance company, has been made in one or more foreign countries;

(ii) an external administrator has been appointed to the eligible foreign life insurance company, or a similar appointment has been made in respect of the eligible foreign life insurance company, in a foreign country.

55 At the end of section 181

Add:

(4) To avoid doubt, subsection (1) applies whether or not a Life Insurance Act statutory manager is in control of:

(a) unless paragraph (b) applies—the life company's business; or

(b) if the life company is an eligible foreign life insurance company—the Australian business assets and liabilities of the eligible foreign life insurance company.

56 Subsection 183(1)

Omit "a life company", substitute "an entity covered by subsection (4), or the proposed winding-up of an entity covered by subsection (4)".

57 At the end of section 183

Add:

(4) This subsection covers the following entities:

(a) a life company;

(b) a registered NOHC;

(c) a subsidiary of a life company or registered NOHC.

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58 Paragraph 183B(2)(a)

After "the winding up of the friendly society", insert ", or the proposed winding up of the friendly society".

59 Subsection 184(1)

Repeal the subsection, substitute:

(1) APRA may apply to the Court for directions regarding any matter arising under:
  (a) the winding-up of an entity covered by subsection 183(4); or
  (b) the proposed winding-up of an entity covered by subsection 183(4).

60 Subsection 185(1)

Repeal the subsection, substitute:

(1) APRA may ask a liquidator for specified information in writing about:
  (a) the winding-up of an entity covered by subsection 183(4) and the other affairs of the entity; or
  (b) the proposed winding-up of an entity covered by subsection 183(4) and the other affairs of the entity.

61 Subsection 190(5)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

62 After paragraph 230A(3A)(d)

Insert:

or (e) each subsidiary of a life company or of a registered NOHC; or
  (f) each subsidiary of a life company or of a registered NOHC, included in a specified class of subsidiaries;

63 At the end of Division 1 of Part 10A

Add:

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230AAA Obligation to comply with the prudential standards

A life company, registered NOHC or a subsidiary of a life company or registered NOHC to which a prudential standard applies must comply with the standard.

64 After Division 1 of Part 10A

Insert:

Division 1A—Conversion and write-off provisions

230AAB Definitions

In this Division:

clearing and settlement facility has the meaning given by Division 6 of Part 7.1 of the *Corporations Act 2001*.

conversion and write-off provisions means the provisions of the prudential standards that relate to the conversion or writing off of:

(a) Additional Tier 1 and Tier 2 capital; or

(b) any other instrument.

conversion entity: an entity (the ***first entity***) is a ***conversion entity*** for an instrument if:

(a) the instrument is issued by another entity, or another entity is a party to the instrument; and

(b) the instrument converts, in accordance with the terms of the instrument, into one or more ordinary shares of the first entity.

converts: an instrument ***converts*** into one or more ordinary shares of an entity including by redeeming or cancelling the instrument or rights under the instrument, and replacing the instrument or rights with ordinary shares.

operating rules has the meaning given by section 761A of the *Corporations Act 2001*.

related subsidiary of a life company means a subsidiary of a holding company of the life company.

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specified law means any of the following:

(a) the *Financial Sector (Shareholdings) Act 1998*;

(b) the *Foreign Acquisitions and Takeovers Act 1975*;

(c) Chapter 6 of the *Corporations Act 2001* (takeovers);

(d) any other Australian law, or law of a foreign country or part of a foreign country, prescribed by the regulations for the purposes of this paragraph.

230AAC Conversion and write-off provisions

Application

(1) This section applies in relation to an instrument that contains terms that are for the purposes of the conversion and write-off provisions and is issued by, or to which any of the following is a party:

(a) a life company;

(b) a holding company of a life company;

(c) a subsidiary or related subsidiary of a life company;

(d) an entity of a kind prescribed by the regulations for the purposes of this paragraph.

Conversion of instrument despite other laws etc.

(2) The instrument may be converted in accordance with the terms of the instrument despite:

(a) any Australian law or any law of a foreign country or a part of a foreign country, other than a specified law; and

(b) the constitution of any of the following entities (the ***relevant entity***):

(i) the entity issuing the instrument;

(ii) any entity that is a party to the instrument;

(iii) any conversion entity for the instrument; and

(c) any contract or arrangement to which a relevant entity is a party; and

(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and

(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

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Write-off of instrument despite other laws etc.

(3) The instrument may be written off in accordance with the terms of the instrument despite:

(a) any Australian law or any law of a foreign country or a part of a foreign country; and

(b) the constitution of either of the following entities (the ***relevant entity***):

(i) the entity issuing the instrument;

(ii) any entity that is a party to the instrument; and

(c) any contract or arrangement to which a relevant entity is a party; and

(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and

(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

230AAD Conversion or write-off etc. not grounds for denial of obligations

(1) This section applies if an entity (the ***first entity***) 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the first entity), 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;

(d) enforce any security under the contract.

(3) The matters are as follows:

(a) a relevant instrument being converted in accordance with the terms of the instrument;

(b) a relevant instrument being written off in accordance with the terms of the instrument;

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(c) the making of a determination (however described) by APRA that results in a relevant instrument being required to be converted or written off in accordance with the terms of the instrument.

(4) In this section:

relevant instrument means:

(a) an instrument to which section 230AAC applies:
  (i) that is issued by the first entity; or
  (ii) to which the first entity is a party; or
  (iii) for which the first entity is a conversion entity; or

(b) if the first entity is a body corporate that is a member of a relevant group of bodies corporate—an instrument to which section 230AAC applies:
  (i) that is issued by another member of the group; or
  (ii) to which another member of the group is a party; or
  (iii) for which another member of the group is a conversion entity.

65 Section 230AA

Before "This Subdivision", insert "(1)".

66 At the end of section 230AA

Add:

(2) Subsections (3) and (4) apply if:

(a) APRA has given a recapitalisation direction to the life company under subsection 230AB(1) (the ***primary recapitalisation direction***); and

(b) the life company is a subsidiary of a NOHC/NOHC subsidiary; and

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

(d) the NOHC/NOHC subsidiary does not have a Life Insurance Act statutory manager.

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(3) This Subdivision applies to the NOHC/NOHC subsidiary in the same way that it does to a life company.

(4) However, disregard the following provisions in applying this Subdivision to the NOHC/NOHC subsidiary:
  (a) subsection 230AB(1);
  (b) subsection 230AC(1).

(5) In this section:

NOHC/NOHC subsidiary means a body corporate that is any of the following:
  (a) a registered NOHC;
  (b) a subsidiary of a registered NOHC.

67 Paragraph 230AB(1)(b)

After "APRA considers that", insert ", in the absence of external support".

68 After subsection 230AB(1)

Insert:

(1A) Subsection (1B) applies if subsections 230AA(3) and (4) apply to a NOHC/NOHC subsidiary because of a primary recapitalisation direction given to a life company (as mentioned in subsection 230AA(2)).

(1B) For the purposes of facilitating compliance with the primary recapitalisation direction, APRA may give the NOHC/NOHC subsidiary a direction (also a ***recapitalisation direction***) that requires the NOHC/NOHC subsidiary to do anything that is specified in the direction.

69 After subsection 230AB(2)

Insert:

(2A) The regulations may specify that a particular form of support is not external support for the purposes of paragraph (1)(b).

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70 At the end of section 230AB

Add:

(4) A recapitalisation direction may deal with the time by which, or period during which, it is to be complied with.

(5) APRA may, by notice in writing to the life company, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(6) The direction has effect until APRA revokes it by notice in writing to the life company. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

71 After subsection 230AC(1)

Insert:

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 230AB(1B), the direction may direct the NOHC/NOHC subsidiary to do any of the following:

(a) issue:

(i) shares, or rights to acquire shares, in the NOHC/NOHC subsidiary; or

(ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;

(b) acquire:

(i) shares, or rights to acquire shares, in the life company mentioned in subsection 230AB(1A); or

(ii) other capital instruments in the life company mentioned in subsection 230AB(1A) of a kind specified in the direction;

(c) acquire:

(i) shares, or rights to acquire shares, in a specified body corporate covered by subsection (1B); or

(ii) other capital instruments in a specified body corporate covered by subsection (1B), of a kind specified in the direction.

(1B) This subsection covers a body corporate if:

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(a) the body corporate is a subsidiary of the NOHC/NOHC subsidiary; and
(b) the life company is a subsidiary of the body corporate.

(1C) Without limiting the generality of subsections (1), (1A) and (2), but subject to subsection (3), a direction referred to in those subsections may:
(a) deal with some only of the matters referred to in those subsections; or
(b) deal with a particular class or particular classes of those matters; or
(c) make different provision with respect to different matters or different classes of matters.

72 Subsection 230AC(2)

Omit "paragraph (1)(a)", substitute "paragraph (1)(a) or subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i)".

73 Subsection 230AC(3)

Omit "paragraph (1)(b)", substitute "paragraph (1)(b) or subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii)".

74 Subsection 230AD(3) (heading)

Repeal the heading, substitute:

Issue or acquisition of shares etc. despite other laws etc.

75 Subsection 230AD(3)

After "issue", insert "or acquire".

76 Paragraph 230AD(3)(a)

After "the *Corporations Act 2001*", insert "(without limiting the scope of section 251AA of this Act)".

77 Paragraph 230AD(3)(d)

Omit "(as defined in section 761A of the *Corporations Act 2001*) of a financial market (as defined in that section)", substitute "of a financial market".

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78 After subsection 230AE(1)

Insert:

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 230AB(1B), treat the reference in paragraph (1)(a) to "the policy owners of the company" as being a reference to "the policy owners of the life company mentioned in subsection 230AB(1A)".

79 At the end of section 230AE

Add:

(4) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 230AB(1B), treat the references in paragraph (3)(c) to "the company" as being a reference to "the NOHC/NOHC subsidiary mentioned in subsection 230AB(1B)".

80 Section 230AJ

Repeal the section, substitute:

230AJ Recapitalisation direction not grounds for denial of obligations

(1) This section applies if a body corporate 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) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
  (a) deny any obligations under the contract;
  (b) accelerate any debt under the contract;
  (c) close out any transaction relating to the contract;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) the body corporate being subject to a recapitalisation direction;

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(b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a recapitalisation direction.

81 Subsection 230AK(9)

Repeal the subsection.

82 Subsection 230B(1)

Omit "Without limiting subsection (1AA), APRA may", substitute "APRA may".

83 Paragraph 230B(1)(b)

Omit "and such a contravention is likely to give rise to a prudential risk", substitute "and the direction is reasonably necessary for one or more prudential matters relating to the body corporate".

84 Subsection 230B(1AA)

Repeal the subsection, substitute:

(1AA) 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 APRA has reason to believe that:

(a) a subsidiary of the body corporate has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(b) a subsidiary of the body corporate is likely to contravene this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(c) the direction is in respect of a subsidiary of the body corporate and is necessary in the interests of:

(i) if the body corporate is a life company—policy owners or prospective policy owners of the life company; or

(ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company that is a subsidiary of the NOHC; or

(d) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary's liabilities; or

(e) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or

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(f) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or

(g) a subsidiary of the body corporate is conducting the subsidiary's affairs in an improper or financially unsound way; or

(h) 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; or

(j) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause it to be unable to continue to supply services to:

(i) if the body corporate is a life company—the life company; or

(ii) if the body corporate is a registered NOHC—any life company that is a subsidiary of the NOHC; or

(k) the direction is in respect of a subsidiary of the body corporate and the failure to issue a direction would materially prejudice the interests of:

(i) if the body corporate is a life company—policy owners or prospective policy owners of the life company; or

(ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company that is a subsidiary of the NOHC.

(1AB) However, APRA can only make a direction as a result of a ground referred to in paragraph (1AA)(a), (b), (d), (e), (f), (g) or (j) if APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.

(1AC) APRA may give a body corporate that is a subsidiary of a life company or of a registered NOHC a direction of a kind specified in subsection (3) if:

(a) APRA has given the life company or registered NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary; or

(b) APRA may give the life company or registered NOHC a direction under subsection (1AA) because one or more of the

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grounds referred to in that subsection have been satisfied in respect of the subsidiary.

(1AD) APRA cannot give a direction under subsection (1AC) to a body corporate of a kind specified in regulations (if any) made for the purposes of this subsection.

(1AE) Subsections (1), (1AA) and (1AC) do not limit each other.

85 Paragraph 230B(1A)(b)

Repeal the paragraph, substitute:

(b) specify:

(i) in the case of a direction under subsection (1AC)—the ground referred to in subsection (1AA) as a result of which the direction is given; or

(ii) otherwise—the ground referred to in subsection (1) or (1AA) as a result of which the direction is given.

86 After subsection 230B(1A)

Insert:

(1B) In deciding whether to give a direction under subsection (1), (1AA) or (1AC) to a body corporate, APRA may disregard any external support for the body corporate.

(1C) The regulations may specify that a particular form of support is not external support for the purposes of subsection (1B).

87 Paragraph 230B(2)(v)

Repeal the paragraph, substitute:

(v) to make changes to the body corporate's systems, business practices or operations;

(w) to reconstruct, amalgamate or otherwise alter all or part of any of the following:

(i) the business, structure or organisation of the body corporate;

(ii) the business, structure or organisation of the group constituted by the body corporate and its subsidiaries;

(x) to do, or to refrain from doing, anything else in relation to the affairs of the body corporate.

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88 After subsection 230B(3)

Insert:

(3A) Without limiting the generality of paragraph (2)(x), a direction under that paragraph to an eligible foreign life insurance company may be any one or more of the following:

(a) a direction that the company act in a way so as to ensure that:

(i) a particular asset, or a particular class of assets, of the company is returned to the control (however described) of the part of the company's life insurance business that is carried on in Australia; or

(ii) a particular liability, or a particular class of liabilities, of the company ceases to be the responsibility (however described) of the part of the company's life insurance business that is carried on in Australia;

(b) a direction that the company not act in a way that has the result that:

(i) a particular asset, or a particular class of assets, of the company ceases to be under the control (however described) of the part of the company's life insurance business that is carried on in Australia; or

(ii) a particular liability, or a particular class of liabilities, of the company becomes the responsibility (however described) of the part of the company's life insurance business that is carried on in Australia.

(3B) The kinds of direction that may be given as mentioned in subsection (2) are not limited by any other provision in this Part.

(3C) The kinds of direction that may be given as mentioned in a particular paragraph of subsection (2) are not limited by any other paragraph of that subsection.

89 Subsections 230C(1) to (2)

Repeal the subsections, substitute:

(1) This section applies if a body corporate 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

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(b) law of a foreign country (including the law of part of a foreign country).

(1A) None of the matters mentioned in subsection (1B) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:

(a) deny any obligations under the contract;

(b) accelerate any debt under the contract;

(c) close out any transaction relating to the contract;

(d) enforce any security under the contract.

This subsection has effect subject to subsections (2) and (3).

(1B) The matters are as follows:

(a) the body corporate being subject to a direction by APRA under section 230B;

(b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a direction by APRA under section 230B.

(2) If the body corporate is prevented from fulfilling its obligations under the contract because of a direction under section 230B, other than a direction under paragraph 230B(2)(o), the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the body corporate under the contract.

90 Subsection 230D(1)

Omit "life company or registered NOHC", substitute "life company, registered NOHC or other body corporate".

91 Paragraph 230D(3)(a)

Omit "a particular life company or registered NOHC", substitute "a particular life company, registered NOHC or other body corporate".

92 Paragraph 230D(3)(b)

Omit "any life companies or registered NOHCs", substitute "any life companies, registered NOHCs or other bodies corporate".

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93 Subsection 230D(4)

Omit "any life company or registered NOHC", substitute "any life company, registered NOHC or other body corporate".

94 Section 230E

Repeal the section.

95 Subsection 230F(1)

Omit "A life company or registered NOHC", substitute "A life company, registered NOHC or other body corporate".

96 Subsection 230F(2)

Omit "a life company or registered NOHC", substitute "a life company, registered NOHC or other body corporate".

97 Subsection 230F(2)

Omit "company or NOHC" (wherever occurring), substitute "life company, NOHC or other body corporate".

98 Subsection 230F(3)

Omit "a life company or registered NOHC", substitute "a life company, registered NOHC or other body corporate".

99 Subsection 230F(3)

Omit "company or NOHC" (wherever occurring), substitute "life company, NOHC or other body corporate".

100 Subsection 230F(4)

Omit "a life company or registered NOHC", substitute "a life company, registered NOHC or other body corporate".

101 Subsection 230F(4)

Omit "company or NOHC", substitute "life company, NOHC or other body corporate".

102 At the end of Division 2 of Part 10A

Add:

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Subdivision C—Secrecy and disclosure provisions relating to all directions

231 APRA may determine that a direction is covered by secrecy provision

(1) This section applies if APRA has given an entity (the ***directed entity***) a direction under this Act.

(2) APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the policy owners of any life company or to promote financial system stability in Australia.

Note: For repeal of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) APRA must give the directed entity a copy of the determination as soon as practicable after making it.

(4) An instrument under subsection (2) is not a legislative instrument.

(5) If APRA makes a determination under subsection (2), APRA must consider whether it is appropriate in the circumstances to also make a determination under either or both of subsections 231C(2) and 231C(5).

231A Secrecy relating to directions

(1) A person commits an offence if:

(a) APRA has given an entity (the ***directed entity***) a direction under this Act; and

(b) the direction is covered by a determination under subsection 231(2); and

(c) the person is, or has been, covered by subsection (2) of this section in relation to the direction; and

(d) the person discloses information; and

(e) the information reveals the fact that the direction was made.

Penalty: Imprisonment for 2 years.

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(2) A person is covered by this subsection in relation to the direction if the person is:

(a) the directed entity; or

(b) an officer, employee or contractor of the directed entity at a time on or after APRA gave the directed entity the direction; or

(c) any other person who, because of his or her employment, or in the course of that employment, has acquired information that reveals the fact that the direction was made.

Exception

(3) Subsection (1) does not apply if:

(a) the disclosure is authorised by section 231B, 231C, 231D, 231E, 231F or 231G; or

(b) the disclosure is required by an order or direction of a court or tribunal.

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

231B Disclosure of publicly available information

A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, to the extent that the information has already been lawfully made available to the public.

231C Disclosure allowed by APRA

(1) A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) a determination under subsection (2) allows the disclosure by the person; and

(b) if APRA has included conditions in the determination—those conditions are satisfied.

Determinations relating to specified person

(2) APRA may, in writing, make a determination allowing:

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(a) a specified person covered by subsection 231A(2) in relation to a specified direction; or
(b) a specified person covered by subsection 231A(2) in relation to a direction that is in a specified class of directions;

to disclose specified information in relation to the direction.

(3) An instrument under subsection (2) is not a legislative instrument.

(4) APRA must give a copy of the determination as soon as practicable after making it to:
(a) the directed entity; and
(b) the person specified, or each person specified, in the determination.

Determinations relating to specified class of persons

(5) APRA may, by legislative instrument, make a determination allowing a specified class of persons covered by subsection 231A(2) in relation to a direction that is in a specified class of directions to disclose:
(a) specified kinds of information in relation to the direction; or
(b) any kind of information in relation to the direction.

Conditions in determinations

(6) APRA may include conditions in a determination under subsection (2) or (5) that relate to any of the following:
(a) the kind of entities to which the disclosure may be made;
(b) the way in which the disclosure is to be made;
(c) any other matter that APRA considers appropriate.

231D Disclosure to legal representative for purpose of seeking legal advice

A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:
(a) the disclosure is to the person's legal representative; and

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(b) the purpose of the person making the disclosure is for the legal representative to provide legal advice, or another legal service, in relation to the direction.

231E Disclosure allowed by APRA Act secrecy provision

(1) A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) the person is:

(i) an APRA member (within the meaning of subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*); or

(ii) an APRA staff member (within the meaning of that subsection); or

(iii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who is covered by paragraph (c) of the definition of ***officer*** in subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*; and

(b) the information is protected information (within the meaning of subsection 56(1) of that Act), or is contained in a protected document (within the meaning of that subsection); and

(c) the disclosure is in accordance with subsection 56(3), (4), (5), (5AA), (6), (6A), (7), (7A), (7B) or (7C) of that Act.

Relationship to APRA Act secrecy provision

(2) Disclosure of information in relation to a direction is not an offence under section 56 of the *Australian Prudential Regulation Authority Act 1998* if the disclosure is authorised by section 231B, 231C, 231D, 231F or 231G.

231F Disclosure in circumstances set out in the regulations

A person covered by subsection 231A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, if the disclosure is made in circumstances (if any) set out in the regulations.

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231G Disclosure for purpose

A person covered by subsection 231A(2) (the ***relevant person***) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) another person covered by subsection 231A(2) in relation to the direction disclosed that information to the relevant person for a particular purpose in accordance with section 231C, 231D, 231E or 231F, or in accordance with a previous operation of this section; and

(b) the disclosure by the relevant person is for the same purpose.

231H Exceptions operate independently

Sections 231B, 231C, 231D, 231E, 231F and 231G do not limit each other.

103 Subsection 236(1) (definition of *reviewable decision*)

Omit ", subject to subsection (1AA),".

104 Subsection 236(1) (paragraphs (g) and (ga) of the definition of *reviewable decision*)

Repeal the paragraphs, substitute:

(g) a decision to revoke registration under subsection 26(1);

(ga) a refusal to revoke the registration of a company under section 27;

(gaa) a decision to give a direction under subsection 27A(1);

(gab) a refusal to approve a proposed assignment under subsection 27A(4);

(gac) a decision to impose conditions on an approval under subsection 27A(4);

105 Subsection 236(1) (after paragraph (ge) of the definition of *reviewable decision*)

Insert:

(gf) a decision to give a notice under subsection 28AA(2);

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

Add:

; (zr) a decision to give a direction under subsection 230B(1AA) as a result of the ground referred to in paragraph 230B(1AA)(a), (b) or (c);

(zs) a decision to give a direction under subsection 230B(1AC) as a result of the ground referred to in paragraph 230B(1AC)(a) or (b), to the extent that the paragraph relates to a ground referred to in paragraph 230B(1AA)(a), (b) or (c).

107 After section 246

Insert:

246A Protection from liability—general

(1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.

(2) To avoid doubt, any information provided by a person to APRA under section 88A or 98A is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.

(3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

246B Protection from liability—directions and secrecy

(1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:

(a) the person does the thing, or omits to do the thing, for the purpose of any of the following:

(i) complying with a direction under this Act given by APRA to a body corporate;

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(ii) complying with section 231A (secrecy) in relation to a direction under this Act given by APRA to a body corporate; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is any of the following:

(i) an officer or senior manager of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(ii) an employee or agent of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(iii) the body corporate or a member of a relevant group of bodies corporate of which the body corporate is also a member.

(2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

(3) In this section:

employee of a body corporate includes a person engaged to provide advice or services to the body corporate.

officer has the meaning given by section 9 of the *Corporations Act 2001*.

246C Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

(a) section 179AK;

(b) subsection 50(2);

(c) section 89;

(d) section 99;

(e) section 156A;

(f) section 156B;

(g) section 179;

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(h) section 246A;
(i) section 246B;
(j) section 247;
(k) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

108 After section 251

Insert:

251AA Act has effect despite the Corporations Act

This Act has effect despite any provision of the *Corporations Act 2001*.

109 Subsection 254(5)

Omit "paragraph (1)(a)", substitute "paragraph (1)(g)".

110 Schedule

Insert:

administrator, of a body corporate's business, means an administrator appointed under subsection 179AA(1) to take control of the body corporate's business.

Australian business assets and liabilities, of an eligible foreign life insurance company, has the meaning given by subsection 16ZE(6).

Australian financial sector statutory manager (or ***AFS statutory manager***) means:
(a) a Banking Act statutory manager (within the meaning of the *Banking Act 1959*); or
(b) an Insurance Act statutory manager (within the meaning of the *Insurance Act 1973*); or
(c) a Life Insurance Act statutory manager.

direction under this Act means a direction under any of the following provisions:
(a) section 27A;
(b) section 125A;

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(c) section 230AB;
(d) section 230B.

111 Schedule (paragraph (a) of the definition of *external administrator*)

Omit "or provisional liquidator".

112 Schedule (paragraph (b) of the definition of *external administrator*)

Omit "a judicial manager", substitute "a judicial manager or Life Insurance Act statutory manager".

113 Schedule

Insert:

financial market has the meaning given by section 761A of the *Corporations Act 2001*.

holding company, of a body corporate, means another body corporate of which the first body corporate is a subsidiary.

Life Insurance Act statutory manager has the meaning given by subsection 179AA(8).

liquidator includes a provisional liquidator.

listing rules has the meaning given by section 761A of the *Corporations Act 2001*.

NOHC/NOHC subsidiary has the meaning given by subsection 230AA(5).

prudential matters means matters relating to:

(a) the conduct of any part of the affairs of, or the structuring or organising of, a life company, a registered NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, in such a way as:
  (i) to keep the life company, NOHC, group or member or members of the group in a sound financial position; or
  (ii) to facilitate resolution of the life company, NOHC, group or member or members of the group; or

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(iii) to protect the interests of policy owners of any life company; or

(iv) not to cause or promote instability in the Australian financial system; or

(b) the conduct of any part of the affairs of a life company, a registered NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, with integrity, prudence and professional skill.

114 Schedule (definition of *recapitalisation direction*)

Omit "subsection 230AB(1)", substitute "subsection 230AB(1) or (1B)".

115 Schedule

Insert:

related body corporate:

(a) in Part 7—has the meaning given by section 129; and

(b) otherwise—has the meaning given by section 16.

116 Schedule (definition of *related company*)

Repeal the definition.

117 Schedule

Insert:

relevant group of bodies corporate has the meaning given by section 15A.

resolution means the process by which APRA or other relevant persons manage or respond to an entity:

(a) being unable to meet its obligations; or

(b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or

(c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

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subsidiary has the meaning given by section 16.

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Part 2—Application provisions

118 Interpretation

In this Part:

commencement time means the time when this item commences.

new Life Insurance Act means the *Life Insurance Act 1995* as amended by this Schedule.

old Life Insurance Act means the *Life Insurance Act 1995* as in force immediately before the commencement time.

119 Application—amendments to directions powers

(1) The amendments made by this Schedule to section 230B of the *Life Insurance Act 1995* apply to directions given on and after the commencement time.

(2) The amendments made by this Schedule to Subdivision A of Division 2 of Part 10A of the *Life Insurance Act 1995* apply to directions given on and after the commencement time.

120 Continuation of prudential standards

To avoid doubt, the amendments made by this Schedule do not affect the validity of a prudential standard made under section 230A of the *Life Insurance Act 1995* that was in force immediately before the commencement time.

121 Saving—conditions on registration under section 21

(1) A condition in effect under subsection 22(1) of the old Life Insurance Act is taken to be in effect on and after the commencement time under section 22 of the new Life Insurance Act.

(2) To avoid doubt, this item does not prevent the variation or revocation of a condition on or after the commencement time.

122 Application—conditions on registration under section 21

The amendment made by item 7 of this Schedule applies to:

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(a) the imposition of new conditions on a company's registration under section 21 of the *Life Insurance Act 1995* on or after the commencement time; and

(b) the variation or revocation of conditions on a company's registration under section 21 of the *Life Insurance Act 1995* on or after the commencement time (even if the conditions were imposed before the commencement time); and

(c) the doing of an act on or after the commencement time, or the failure to do an act on or after the commencement time, resulting in a contravention of such a condition.

123 Application—revocation of registration under section 21

(1) The amendments made by items 8, 9, 10, 11 and 16 of this Schedule apply to a company's registration under section 21 of the *Life Insurance Act 1995* whether the registration was made before, on or after the commencement time.

(2) The amendments made by items 8, 9, 10, 11 and 16 of this Schedule apply in relation to a matter mentioned in a paragraph of subsection 26(1) of the new Life Insurance Act that occurs on or after the commencement time (including such a matter that starts before the commencement time and continues on or after the commencement time).

124 Saving—conditions on NOHC registration

(1) A condition in effect under subsection 28B(1) of the old Life Insurance Act is taken to be in effect on and after the commencement time under section 28B of the new Life Insurance Act.

(2) To avoid doubt, this item does not prevent the variation or revocation of a condition on or after the commencement time.

125 Application—conditions on NOHC registration

The amendments made by items 12, 13 and 14 of this Schedule apply to:

(a) the imposition of new conditions on a NOHC registration on or after the commencement time; and

(b) the variation or revocation of conditions on a NOHC registration on or after the commencement time (even if the

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conditions were imposed before the commencement time); and

(c) the doing of an act on or after the commencement time, or the failure to do an act on or after the commencement time, resulting in a contravention of such a condition.

126 Application—revocation of NOHC registration

(1) The amendment made by item 15 of this Schedule applies to a NOHC registration whether the registration was made before, on or after the commencement time.

(2) The amendment made by item 15 of this Schedule applies in relation to a matter mentioned in a paragraph of subsection 28C(1) of the new Life Insurance Act that occurs on or after the commencement time (including such a matter that starts before the commencement time and continues on or after the commencement time).

127 Application—stay provisions

(1) The amendment made by item 38 of this Schedule applies in relation to a matter referred to in subsection 165B(3) of the new Life Insurance Act that occurs on or after the commencement time.

(2) The amendment made by item 44 of this Schedule applies in relation to an act referred to in subsection 168C(3) of the new Life Insurance Act that is done on or after the commencement time.

(3) The amendment made by item 80 of this Schedule applies in relation to a recapitalisation direction referred to in subsection 230AJ(3) of the new Life Insurance Act that is given on or after the commencement time.

(4) The amendment made by item 89 of this Schedule applies in relation to a direction referred to in subsection 230C(1B) of the new Life Insurance Act that is given on or after the commencement time.

128 Application—conversion and write-off provisions

The amendment made by item 64 of this Schedule applies in relation to the conversion or writing-off of any instrument at or after the commencement time, whether the instrument was issued before, at or after that time.

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Schedule 4—Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

Financial Sector (Business Transfer and Group Restructure) Act 1999

1 Title

After "**to provide for transfers of business between some kinds of financial institutions,**", insert "**to provide for transfers of shares and other interests in some kinds of financial institutions,**".

2 Section 1

Omit "*(Business Transfer and Group Restructure)*", substitute "*(Transfer and Restructure)*".

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act's previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

3 Subsection 4(1)

Insert:

Australian business assets and liabilities, of a body corporate that is a foreign ADI, a foreign general insurer or an eligible foreign life insurance company, means the following:

(a) the assets and liabilities of the body corporate in Australia;

(b) any other rights and liabilities of the body corporate that:

(i) are related to its operations in Australia; and

(ii) if regulations are made for the purposes of this subparagraph—are of a kind specified in those regulations.

4 Subsection 4(1) (definition of *certificate of transfer*)

Repeal the definition, substitute:

certificate of transfer:

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(a) in relation to a voluntary transfer of business—means a certificate issued under section 18; and
(b) in relation to a compulsory transfer of business—means a certificate issued under section 33; and
(c) in relation to a compulsory transfer of shares—means a certificate issued under section 33.

5 Subsection 4(1) (definition of *compulsory transfer determination*)

Repeal the definition, substitute:

compulsory transfer determination means:
(a) a compulsory transfer of business determination; or
(b) a compulsory transfer of shares determination.

6 Subsection 4(1)

Insert:

compulsory transfer of business determination means a determination under section 25.

compulsory transfer of shares determination means a determination under section 25AA.

eligible foreign life insurance company has the same meaning as in the *Life Insurance Act 1995*.

foreign ADI has the same meaning as in the *Banking Act 1959*.

foreign general insurer has the same meaning as in the *Insurance Act 1973*.

7 Subsection 4(1) (definition of *partial transfer*)

Repeal the definition, substitute:

partial transfer means a transfer of business described in subsection 8(2).

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8 Subsection 4(1) (after paragraph (a) of the definition of *receiving body*)

Insert:

(aa) in relation to a transfer of shares under Part 4—a body corporate to which shares in another body corporate are to be transferred, or have been transferred under that Part; or

9 Subsection 4(1) (definition of *regulated body*)

Repeal the definition, substitute:

regulated body means a body corporate that is:

(a) an ADI; or

(b) a life insurance company; or

(c) a general insurer.

10 Subsection 4(1) (definition of *regulated business*)

Repeal the definition, substitute:

regulated business in relation to a regulated body, means:

(a) for a body that is an ADI—the body's banking business (within the meaning of the *Banking Act 1959*); or

(b) for a body that is a life insurance company—the body's life insurance business (within the meaning of the *Life Insurance Act 1995*); or

(c) for a body that is a general insurer—the body's insurance business (within the meaning of the *Insurance Act 1973*).

11 Subsection 4(1) (definition of *related*)

Repeal the definition.

12 Subsection 4(1)

Insert:

related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body, as determined in accordance with section 4A.

relevant group of bodies corporate has the meaning given by section 4B.

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13 Subsection 4(1) (definition of *total transfer*)

Repeal the definition, substitute:

> ***total transfer*** means a transfer of business described in subsection 8(3).

14 Subsection 4(1) (after paragraph (a) of the definition of *transferring body*)

Insert:

(aa) in relation to a transfer of shares under Part 4—a body corporate, shares in which are to be transferred, or have been transferred, to another body corporate under that Part; or

15 After section 4

Insert:

4A Related body corporate

For the purposes of this Act, the question whether a body corporate is related to another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

4B Relevant group of bodies corporate

For the purposes of this Act, each of the following constitutes a ***relevant group of bodies corporate***:

(a) a regulated body and its subsidiaries;

(b) an authorised NOHC (within the meaning of the *Banking Act 1959*) and its subsidiaries;

(c) an authorised NOHC (within the meaning of the *Insurance Act 1973*) and its subsidiaries;

(d) a registered NOHC (within the meaning of the *Life Insurance Act 1995*) and its subsidiaries.

16 Paragraph 8(1)(a)

Omit "transfers under Part 3", substitute "transfers of business under Part 3".

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17 Paragraph 8(1)(b)

Omit "transfers under Part 4", substitute "transfers of business under Part 4".

18 Subsection 8(1)

Omit "Either kind of transfer", substitute "Either kind of transfer of business".

19 After subsection 8(1)

Insert:

(1A) This Act also provides for ***compulsory transfers*** of shares in regulated bodies.

20 At the end of subsection 8(4)

Add:

Note: The regulated bodies making the application cannot be general insurers (see section 10).

21 Paragraph 8(5)(a)

Omit "***compulsory transfer determination***", substitute "***compulsory transfer of business determination***".

22 After subsection 8(5)

Insert:

(5A) For a compulsory transfer of shares to take effect, APRA must:

(a) make a determination (the ***compulsory transfer of shares determination***) that there is to be a transfer of shares in a body (the ***transferring body***) to another body (the ***receiving body***); and

(b) issue a certificate (the ***certificate of transfer***) stating that the transfer is to take effect.

The transfer of shares takes effect when the certificate of transfer comes into force.

23 At the end of subsection 9(1)

Add:

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Note: The regulated bodies making the application cannot be general insurers (see section 10).

24 Subsection 11(1)

Omit "approve a transfer of business if APRA considers that:", substitute "approve a transfer of business if:".

25 Paragraph 11(1)(a)

Before "application for approval", insert "APRA considers that".

26 Paragraph 11(1)(b)

Before "the transfer has been", insert "APRA considers that".

27 Paragraph 11(1)(c)

Before "the transfer should be approved", insert "APRA considers that".

28 Paragraph 11(1)(d)

Repeal the paragraph, substitute:

(d) where:

(i) the transferring body is established in a State or Territory; and

(ii) the receiving body is established in a State or Territory;

APRA has considered whether legislation to facilitate the transfer that satisfies the requirements of section 14 has been enacted in the State or Territory in which the transferring body is established and the State or Territory in which the receiving body is established; and

29 After subsection 11(1)

Insert:

(1A) To avoid doubt, APRA may make a determination under this section even if the legislation mentioned in paragraph (1)(d) has not been enacted as mentioned in that paragraph.

30 Section 14

Before "State or Territory legislation referred", insert "(1)".

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31 At the end of section 14

Add:

(2) To avoid doubt, this section is enacted only for the purposes of paragraph 11(1)(d).

Note: Under that paragraph, in order to make a determination under section 11 where both the transferring body and the receiving body are established in a State or Territory, APRA needs to consider whether legislation satisfying the requirements of this section has been enacted. However, APRA is not prevented from making such a determination if such legislation has not been enacted (see subsection 11(1A)).

32 Paragraph 24(1)(a)

Omit "***compulsory transfer determination***", substitute "***compulsory transfer of business determination***".

33 After subsection 24(1)

Insert:

(1A) For a compulsory transfer of shares to take effect, APRA must:

(a) make a determination (the ***compulsory transfer of shares determination***) that there is to be a transfer of shares in a body (the ***transferring body***) to another body (the ***receiving body***) (see section 25AA); and

(b) issue a certificate (the ***certificate of transfer***) stating that the transfer is to take effect (see section 33).

(1B) A compulsory transfer of business determination and a compulsory transfer of shares determination are both ***compulsory transfer determinations***.

34 Subsection 24(2)

Omit "the compulsory transfer determination", substitute "a compulsory transfer determination".

35 Subsection 24(3)

Omit "The compulsory transfer determination", substitute "A compulsory transfer determination".

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36 Subsection 24(3)

Omit "the certificate of transfer", substitute "a certificate of transfer".

37 Subsection 24(4)

Omit "the certificate of transfer", substitute "a certificate of transfer for a transfer of shares or for a transfer of business".

38 Subsection 24(5)

Omit "The transfer of business", substitute "A transfer of business".

39 At the end of section 24

Add:

(6) A transfer of shares takes effect when the certificate of transfer comes into force (see section 35A).

40 Section 25 (heading)

Repeal the heading, substitute:

25 Compulsory transfer of business determinations

41 Subparagraphs 25(1)(a)(iii) and (iv)

Repeal the subparagraphs, substitute:

(iii) APRA is investigating the affairs of the transferring body, or has appointed a person to investigate the affairs of the transferring body, under subsection 13A(1) of the *Banking Act 1959*; or

(iv) there is a Banking Act statutory manager of the transferring body under the *Banking Act 1959*; or

42 Paragraph 25(1B)(a)

Repeal the paragraph, substitute:

(a) APRA is making, or has made within a reasonable period:

(i) a determination under subsection (1) or (1A) relating to the ADI for the total transfer or partial transfer of its business to a body corporate (the ***original receiving body***) (whether or not the transfer provided for in that determination has occurred); or

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(ii) a determination under section 25AA relating to the ADI for the transfer of the shares in the ADI to a body corporate (also the ***original receiving body***) (whether or not the transfer provided for in that determination has occurred); and

43 Subparagraph 25(1C)(a)(iii)

Omit "company; and", substitute "company; or".

44 At the end of paragraph 25(1C)(a)

Add:

(iv) there is a Life Insurance Act statutory manager of the transferring body under the *Life Insurance Act 1995*; and

45 Subsection 25(1D)

Omit "only the business", substitute "only business".

46 After subparagraph 25(1D)(a)(iii)

Insert:

(iiia) there is a Life Insurance Act statutory manager of the transferring body under the *Life Insurance Act 1995*; or

47 After subsection 25(1D)

Insert:

Transfer from a body corporate related to a life insurance company to another body

(1DA) APRA may make a written determination that there is to be a total transfer or partial transfer of business from a body corporate that is related to a life insurance company and is not an ADI, general insurer or life insurance company to another body corporate (the ***transferee***). APRA may make the determination only if:

(a) APRA is making, or has made within a reasonable period:

(i) a determination under subsection (1C) or (1D) relating to the life insurance company for the total transfer or partial transfer of its business to a body corporate (the

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original receiving body) (whether or not the transfer provided for in that determination has occurred); or

(ii) a determination under section 25AA relating to the life insurance company for the transfer of the shares in the life insurance company to a body corporate (also the ***original receiving body***) (whether or not the transfer provided for in that determination has occurred); and

(b) the transferee is the original receiving body or is related to the original receiving body.

48 Subparagraph 25(1E)(a)(iii)

Omit "insurer; and", substitute "insurer; or".

49 At the end of paragraph 25(1E)(a)

Add:

(iv) there is an Insurance Act statutory manager of the transferring body under the *Insurance Act 1973*; and

50 Subsection 25(1F)

Omit "only the business", substitute "only business".

51 After subparagraph 25(1F)(a)(iii)

Insert:

(iiia) there is an Insurance Act statutory manager of the transferring body under the *Insurance Act 1973*; or

52 After subsection 25(1F)

Insert:

Transfer from a body corporate related to a general insurer to another body

(1G) APRA may make a written determination that there is to be a total transfer or partial transfer of business from a body corporate that is related to a general insurer and is not an ADI, general insurer or life insurance company to another body corporate (the ***transferee***). APRA may make the determination only if:

(a) APRA is making, or has made within a reasonable period:

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(i) a determination under subsection (1E) or (1F) relating to the general insurer for the total transfer or partial transfer of its business to a body corporate (the ***original receiving body***) (whether or not the transfer provided for in that determination has occurred); or

(ii) a determination under section 25AA relating to the general insurer for the transfer of the shares in the general insurer to a body corporate (also the ***original receiving body***) (whether or not the transfer provided for in that determination has occurred); and

(b) the transferee is the original receiving body or is related to the original receiving body.

53 Paragraph 25(2)(f)

Repeal the paragraph, substitute:

(f) where:

(i) the transferring body is established in a State or Territory; and

(ii) the receiving body is established in a State or Territory;

APRA has considered whether legislation to facilitate the transfer that satisfies the requirements of section 14 has been enacted in the State or Territory in which the transferring body is established and the State or Territory in which the receiving body is established; and

54 After subsection 25(2)

Insert:

(2A) To avoid doubt, APRA may make a determination under this section even if the legislation mentioned in paragraph (2)(f) has not been enacted as mentioned in that paragraph.

55 After section 25

Insert:

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25AA Compulsory transfer of shares determinations

Transferring body is regulated body

(1) APRA may make a written determination that there is to be a transfer of shares in a regulated body to another body corporate. APRA may make the determination only if:

(a) any of the following requirements are met:

(i) if the regulated body is an ADI—the Minister has declared under section 25A that a transfer of shares in the transferring body to the receiving body should occur;

(ii) if the regulated body is an ADI and subparagraph (i) does not apply—APRA is satisfied that any of the conditions in subparagraph 25(1)(a)(i), (ii), (iii), (iv) or (v) have been satisfied;

(iii) if the regulated body is a life insurance company—APRA is satisfied that any of the conditions in subparagraph 25(1C)(a)(i), (ii), (iii) or (iv) have been satisfied;

(iv) if the regulated body is a general insurer—APRA is satisfied that any of the conditions in subparagraph 25(1E)(a)(i), (ii), (iii) or (iv) have been satisfied; and

(b) if the transferring body is an ADI—APRA has considered the interests of depositors of the transferring body (when viewed as a group) and considers that, having regard to their interests, it would be appropriate for the transfer to be made; and

(c) if the transferring body is a life insurance company or general insurer—APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to their interests, it would be appropriate for the transfer to be made; and

(d) if the receiving body is an ADI—APRA is satisfied that the transfer is appropriate, having regard to the interests of depositors of the receiving body when viewed as a group; and

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(e) if the receiving body is a life insurance company or general insurer—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

(f) the conditions in subsection (3) exist.

Transferring body cannot be foreign body

(2) APRA cannot make a determination under this section if the transferring body is any of the following:

(a) a foreign ADI;

(b) a foreign general insurer;

(c) an eligible foreign life insurance company.

Common conditions for making a determination under this section

(3) APRA may make a determination under this section only if:

(a) APRA is satisfied that the board of directors of the receiving body has consented to the transfer; and

(b) APRA is satisfied that the transfer is appropriate, having regard to:

(i) the interests of the financial sector as a whole; and

(ii) any other matters that APRA considers relevant; and

(c) either:

(i) the Minister has consented to the transfer; or

(ii) the Minister's consent to the transfer is not required (see section 29).

Formal requirements for determinations under this section

(4) A determination under this section must include particulars of the transfer, including the names of the transferring body and the receiving body.

(5) A determination under this section must include a statement of the reasons why the determination has been made.

(6) A determination under this section must be signed by an authorised APRA officer.

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Determinations under this section are not legislative instruments

(7) A determination made under this section is not a legislative instrument.

56 Section 25A

Repeal the section, substitute:

25A Ministerial declaration that compulsory transfer should occur in relation to ADI

(1) The Minister may declare, in writing given to APRA, that:
  (a) a transfer of business should occur from a specified ADI to another specified body corporate; or
  (b) a transfer of shares in a specified ADI to another specified body corporate should occur; or
  (c) either:
    (i) a transfer of business should occur from a specified ADI to another specified body corporate; or
    (ii) a transfer of shares in a specified ADI to another specified body corporate should occur.

(2) A declaration made under subsection (1) is not a legislative instrument.

57 Section 26

Omit "the compulsory transfer determination" (wherever occurring), substitute "a compulsory transfer determination".

58 Subsection 27(1)

After "paragraph 25(2)(d)", insert "or 25AA(3)(a)".

59 Section 28

Before "State or Territory legislation referred", insert "(1)".

60 Section 28

After "State or Territory legislation referred to in paragraph 25(2)(f)", insert ", as that paragraph applies in relation to a compulsory transfer of business".

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61 At the end of section 28

Add:

(2) To avoid doubt, this section is enacted only for the purposes of paragraph 25(2)(f).

Note: Under that paragraph, in order to make a determination under section 25 where both the transferring body and the receiving body are established in a State or Territory, APRA needs to consider whether legislation satisfying the requirements of this section has been enacted. However, APRA is not prevented from making such a determination if such legislation has not been enacted (see subsection 25(2A)).

62 Section 29

Before "The Minister's", insert "(1)".

63 Section 29

Omit "the transfer of business (see paragraph 25(2)(g))", substitute "a transfer of business (see paragraph 25(2)(g)) or a transfer of shares (see paragraph 25AA(3)(c))".

64 At the end of section 29

Add:

(2) A determination made under paragraph (1)(a) is not a legislative instrument.

(3) A determination made under paragraph (1)(b) is a legislative instrument.

65 Subsection 30(1)

Repeal the subsection, substitute:

(1) The transferring body or the receiving body, or both of those bodies, may provide APRA with a written statement specifying, or specifying a mechanism for determining, things that are to happen, or that are taken to be the case, in relation to:

(a) in the case of a transfer of business—assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected; or

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(b) in the case of a transfer of shares—shares that are to be transferred, or in relation to the transfer of shares that is to be effected.

66 Subsection 31(1)

Omit "The compulsory transfer determination", substitute "A compulsory transfer determination".

67 Paragraph 31(1)(a)

Omit "transfer of business", substitute "transfer of business or transfer of shares".

68 Paragraph 31(1)(b)

Omit "transfer of business", substitute "transfer of business or transfer of shares".

69 Section 32

Omit "the compulsory transfer determination", substitute "a compulsory transfer determination".

70 Paragraph 33(1)(c)

Omit "paragraph 25(2)(d)", substitute "paragraph 25(2)(d) or 25AA(3)(a)".

71 Paragraph 33(2)(b)

Omit "state whether", substitute "in the case of a transfer of business—state whether".

72 Paragraph 33(2)(c)

Omit "if it is a partial transfer", substitute "in the case of a transfer of business that is a partial transfer".

73 Subsection 33(3)

Repeal the subsection, substitute:

(3) The certificate may include provisions specifying, or specifying a mechanism for determining, other things that are to happen, or that are taken to be the case:

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(a) in the case of a transfer of business—in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected, whether the transfer is total or partial; or

(b) in the case of a transfer of shares—in relation to shares that are to be transferred, or in relation to the transfer of shares that is to be effected.

74 Section 35 (heading)

Repeal the heading, substitute:

35 Time and effect of compulsory transfer—transfer of business

75 Before subsection 35(1)

Insert:

(1A) This section applies if a compulsory transfer of business determination has been made.

76 After section 35

Insert:

35A Time and effect of compulsory transfer—transfer of shares

(1) This section applies if a compulsory transfer of shares determination has been made.

(2) When the certificate of transfer comes into force, all the shares in the transferring body, wherever those shares are located, become shares held by the receiving body without any transfer, conveyance or assignment.

(3) Furthermore, those shares become shares held by the receiving body free from any trust, liability or other encumbrance.

(4) If the certificate includes provisions of a kind referred to in subsection 33(3):

(a) if the provisions specify that particular things are to happen or are taken to be the case—those things are, by force of this

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section, taken to happen, or to be the case, in accordance with those provisions; and

(b) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

(5) If there is an approved section 30 statement in relation to the transfer, then:

(a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with the statement; and

(b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

77 Before subsection 36(1)

Insert:

(1A) This section applies if a compulsory transfer of business determination has been made

78 Section 36AA

Repeal the section, substitute:

36AA Compulsory transfer not ground for denial of obligations

(1) This section applies if a body corporate covered by subsection (2) is or was 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) This subsection covers the following:

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(a) a body corporate that is, or is proposed to become, a transferring body;
(b) a body corporate that is a member of a relevant group of bodies corporate, if another member of that group is, or is proposed to become, a transferring body.

(3) None of the matters mentioned in subsection (4) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
(a) deny any obligations under the contract;
(b) accelerate any debt under the contract;
(c) close out any transaction relating to the contract;
(d) enforce any security under the contract.

(4) The matters are as follows:
(a) an act being done for the purposes of Division 2 or 3, or a certificate of transfer coming into force under Division 3, in connection with the body corporate;
(b) if the body corporate is a member of a relevant group of bodies corporate—an act being done for the purposes of Division 2 or 3, or a certificate of transfer coming into force under Division 3, in connection with another member of the group.

79 At the end of Part 4

Add:

Division 5—Special provisions relating to compulsory transfers of shares

36AC Application of Division

This Division applies in relation to a compulsory transfer of shares under this Part, or a proposed compulsory transfer of shares under this Part.

36AD Extended meaning of *share*

Treat all of the following things as being a share:

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(a) a legal or equitable right or interest in a share;
(b) an interest in a share that is an interest of a kind specified in the regulations.

36AE Regulations may make special provision in relation to compulsory transfer of shares

(1) The regulations may provide in relation to any of the following matters:
(a) the payment to a holder of shares in the transferring body of a purchase price for those shares;
(b) the resolution of disputes involving a holder of shares in the transferring body (including the resolution of such disputes by the Federal Court);
(c) the publication of information relating to the compulsory transfer of shares, or proposed compulsory transfer of shares, by APRA, the transferring body and the receiving body;
(d) the freeing of shares in the transferring body from any trust, liability or other encumbrance when they become shares held by the receiving body;
(e) any matter incidental to:
(i) the compulsory transfer of shares, or proposed compulsory transfer of shares; or
(ii) any of the other matters mentioned in this subsection.

(2) The regulations may prescribe penalties, not exceeding 50 penalty units, for offences against the regulations.

(3) This section does not limit the regulations that may be made for the purposes of this Act.

80 Section 36A(1)

Repeal the subsection, substitute:

(1) This Part deals with proposals by an ADI, general insurer or life insurer (the ***operating body***) for a restructure arrangement (under Part 5.1 of the *Corporations Act 2001*) that would:
(a) make the operating body a subsidiary of a non-operating holding company (***NOHC***); or

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(b) would facilitate compliance by the operating body (or a related body corporate of the operating body) with a requirement under certain directions or prudential standards.

81 Section 36A(3)

Omit "the NOHC".

82 Paragraph 36B(1)(b)

Repeal the paragraph, substitute:

(b) the arrangement would:

(i) result in the operating body becoming a subsidiary of a NOHC; or

(ii) facilitate compliance by the operating body (or a related body corporate of the operating body) with a requirement covered by subsection (1A).

83 After subsection 36B(1)

Insert:

(1A) This subsection covers a requirement under any of the following:

(a) a direction under any of the following:

(i) section 11CA of the *Banking Act 1959*;

(ii) section 104 of the *Insurance Act 1973*;

(iii) section 230B of the *Life Insurance Act 1995*;

(b) a prudential standard mentioned in the definition of ***prudential requirements*** in subsection 36C(4).

84 Subsection 36E(1)

Omit "(for example, the body that is to become the NOHC)".

85 Subsection 36G(1)

Repeal the subsection, substitute:

(1) A ***restructure instrument*** included in a restructure approval is an instrument in relation to an operating body that gives relief (as mentioned in subsection (2)) to:

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(a) if the restructure approval relates to a restructure arrangement covered by subparagraph 36B(1)(b)(i)—any or all of the following, as specified in the instrument:
  (i) the NOHC that is the subject of the restructure approval;
  (ii) any body corporate related to that NOHC;
  (iii) if the instrument specifies a requirement in Division 1 of Part 2J.1 of the *Corporations Act 2001*—any other person involved in complying with the requirement; or

(b) if the restructure approval relates to a restructure arrangement covered by subparagraph 36B(1)(b)(ii)—any or all of the following, as specified in the instrument:
  (i) the operating body;
  (ii) any body corporate related to the operating body;
  (iii) if the instrument specifies a requirement in Division 1 of Part 2J.1 of the *Corporations Act 2001*—any other person involved in complying with the requirement.

86 Section 36L

Repeal the section, substitute:

36L What is an internal transfer certificate?

An ***internal transfer certificate*** is a certificate, issued by APRA under section 36M for the purpose of giving effect to a restructure arrangement described in a restructure approval, giving effect to:

(a) if the restructure arrangement is covered by subparagraph 36B(1)(b)(i)—the transfer of specified assets and liabilities between any 2 of the following bodies (including a transfer between any 2 subsidiaries of the NOHC that is the subject of the restructure arrangement):
  (i) the NOHC;
  (ii) the operating body;
  (iii) any other subsidiary of the NOHC; or

(b) if the restructure approval relates to a restructure arrangement covered by subparagraph 36B(1)(b)(ii)—the transfer of specified assets and liabilities between any 2 of the following bodies (including a transfer between any 2 related bodies corporate of the operating body):

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(i) the operating body;

(ii) a related body corporate of the operating body.

Note: The assets or liabilities may be specified by reference to a class or classes of assets or liabilities—see subsection 33(3A) of the *Acts Interpretation Act 1901*.

87 Paragraphs 37(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) in the case of a transfer of business—a specified asset of the transferring body has become a transferred asset of that receiving body; or

(d) in the case of a transfer of business—a specified liability of the transferring body has become a transferred liability of the receiving body; or

(e) in the case of a transfer of shares—a specified share in the transferring body has become a share held by that receiving body.

88 Section 41(1)

Omit "For the purposes of deciding whether or how to perform or exercise functions or powers under this Act in relation to a transfer of business, or a proposed or possible transfer of business, from or to an ADI, or in relation to the restructure, or the possible restructure, of an ADI and one or more related bodies corporate", substitute "For the purposes of deciding whether or how to perform or exercise functions or powers under this Act in relation to things mentioned in subsection (1A)".

89 After subsection 41(1)

Insert:

(1A) For the purposes of subsection (1), the things mentioned in this subsection are as follows:

(a) a transfer of business, or a proposed or possible transfer of business, from or to an ADI;

(b) a transfer of shares, or a proposed or possible transfer of transfer of shares in an ADI;

(c) the restructure, or the possible restructure, of an ADI and one or more related bodies corporate.

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90 Subsection 41(2)

Omit "For the purpose of deciding whether or how to perform or exercise functions or powers under this Act in relation to a transfer of business, or a proposed or possible transfer of business, from or to a life insurance company, or in relation to the restructure, or the possible restructure, of a life insurance company and one or more related bodies corporate", substitute "For the purposes of deciding whether or how to perform or exercise functions or powers under this Act in relation to things mentioned in subsection (3)".

91 Subsection 41(3)

Repeal the subsection, substitute:

(3) For the purposes of subsection (2), the things mentioned in this subsection are as follows:

(a) a transfer of business, or a proposed or possible transfer of business, from or to a life insurance company;

(b) a transfer of shares, or a proposed or possible transfer of transfer of shares in a life insurance company;

(c) the restructure, or the possible restructure, of a life insurance company and one or more related bodies corporate.

(4) For the purposes of deciding whether or how to perform or exercise functions or powers under this Act in relation to things mentioned in subsection (5), each of the following provisions:

(a) section 115 of the *Insurance Act 1973*;

(b) any other provision of that Act, or of another Act, prescribed by the regulations;

has effect as if this Act were part of the Act that contains the provision.

(5) For the purposes of subsection (4), the things mentioned in this subsection are as follows:

(a) a transfer of business, or a proposed or possible transfer of business, from or to a general insurer;

(b) a transfer of shares, or a proposed or possible transfer of transfer of shares in a general insurer;

(c) the restructure, or the possible restructure, of a general insurer and one or more related bodies corporate.

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92 Section 42

Omit "about the business that is to be, or that may be, transferred.", substitute:

about:

(a) in the case of a transfer of business—the business that is to be, or that may be, transferred; or

(b) in the case of a transfer of shares:

(i) the shares that are to be, or that may be, transferred; and

(ii) the business of the transferring body.

93 Subsection 43(4)

Omit "a transfer of business", substitute "the transfer of business or transfer of shares".

94 Subsection 43(9)

Omit "a transfer of business (whether voluntary or compulsory),", substitute "a transfer of business (whether voluntary or compulsory), a transfer of shares,".

95 Paragraphs 43(9A)(a) and (b)

Repeal the paragraphs, substitute:

(a) a transfer of business or transfer of shares under Part 4;

(b) anything done to enable or facilitate a transfer of business or transfer of shares under Part 4 (including an agreement referred to in section 30).

96 After section 43

Insert:

43A Transfers of Australian regulated business of foreign body

(1) This section applies to a transfer of business under Part 3 or 4 from a transferring body to another body if the transferring body is:

(a) a foreign ADI; or

(b) a foreign general insurer; or

(c) an eligible foreign life insurance company.

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(2) For the purposes of the transfer of business, treat the Australian business assets and liabilities of the transferring body as the entire business of the transferring body.

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Schedule 5—Amendment of the Payment Systems and Netting Act 1998

Part 1—Main amendments

Payment Systems and Netting Act 1998

1 Section 5

Insert:

> ***ADI*** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959*.
>
> ***Banking Act statutory manager*** has the same meaning as in the *Banking Act 1959*.

2 Section 5 (definition of *Business Transfer Act*)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

3 Section 5 (before paragraph (a) of the definition of *direction stay provision*)

Insert:

(aa) subsection 11CAC(2) of the *Banking Act 1959*;

4 Section 5 (after paragraph (b) of the definition of *direction stay provision*)

Insert:

(ba) subsection 36C(2) of the *Insurance Act 1973*;

5 Section 5 (after paragraph (d) of the definition of *direction stay provision*)

Insert:

(da) subsection 230AAD(2) of the *Life Insurance Act 1995*;

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6 Section 5 (paragraph (d) of the definition of *external administration*)

Repeal the paragraph, substitute:

(d) a Banking Act statutory manager takes control of the person's business under the *Banking Act 1959*; or

(da) an Insurance Act statutory manager takes control of the person's business under the *Insurance Act 1973*; or

(db) a Life Insurance Act statutory manager takes control of the person's business under the *Life Insurance Act 1995*; or

7 Section 5

Insert:

general insurer has the same meaning as in the *Insurance Act 1973*.

Insurance Act statutory manager has the same meaning as in the *Insurance Act 1973*.

life company has the same meaning as in the *Life Insurance Act 1995*.

Life Insurance Act statutory manager has the same meaning as in the *Life Insurance Act 1995*.

receiving body has the same meaning as in the Business Transfer Act.

8 Section 5 (definition of *regulated body*)

Repeal the definition, substitute:

regulated body means a body corporate that is any of the following:

(a) an ADI;

(b) a general insurer;

(c) a life company;

(d) an authorised NOHC (within the meaning of the *Banking Act 1959*);

(e) an authorised NOHC (within the meaning of the *Insurance Act 1973*);

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(f) a registered NOHC (within the meaning of the *Life Insurance Act 1995*);
(g) a subsidiary of a body corporate mentioned in paragraph (a), (b), (c), (d), (e) or (f);
(h) a private health insurer within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*.

9 Section 5 (definition of *regulated business*)

Repeal the definition, substitute:

regulated business:
(a) in relation to an ADI—means the ADI's banking business (within the meaning of the *Banking Act 1959*); and
(b) in relation to a general insurer—means the general insurer's insurance business (within the meaning of the *Insurance Act 1973*); and
(c) in relation to a life company—means the life company's life insurance business (within the meaning of the *Life Insurance Act 1995*).

10 Section 5

Insert:

related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body, as determined in accordance with section 5AA.

specified moratorium provision: each of the following is a ***specified moratorium provision***:
(a) section 15BA of the *Banking Act 1959*;
(b) section 15BB of the *Banking Act 1959*;
(c) section 15BC of the *Banking Act 1959*;
(d) section 62PA of the *Insurance Act 1973*;
(e) section 62PB of the *Insurance Act 1973*;
(f) section 62PC of the *Insurance Act 1973*;
(g) section 62ZOS of the *Insurance Act 1973*;
(h) section 62ZOT of the *Insurance Act 1973*;
(j) section 62ZOU of the *Insurance Act 1973*;

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(k) section 161A of the *Life Insurance Act 1995*;
(l) section 161B of the *Life Insurance Act 1995*;
(m) section 161C of the *Life Insurance Act 1995*;
(n) section 179AS of the *Life Insurance Act 1995*;
(o) section 179AT of the *Life Insurance Act 1995*;
(p) section 179AU of the *Life Insurance Act 1995*.

11 Section 5 (after paragraph (fb) of the definition of *specified provisions*)

Insert:

(fc) the specified moratorium provisions; and

12 Section 5 (before paragraph (a) of the definition of *specified stay provision*)

Insert:

(aa) subsection 11CAC(2) of the *Banking Act 1959*;

13 Section 5 (after paragraph (e) of the definition of *specified stay provision*)

Insert:

(ea) subsection 36C(2) of the *Insurance Act 1973*;

14 Section 5 (after paragraph (g) of the definition of *specified stay provision*)

Insert:

(ga) subsection 62ZOH(2) of the *Insurance Act 1973*;
(gb) subsection 62ZOX(2) of the *Insurance Act 1973*;

15 Section 5 (after paragraph (k) of the definition of *specified stay provision*)

Insert:

(ka) subsection 179AH(2) of the *Life Insurance Act 1995*;
(kb) subsection 179AX(2) of the *Life Insurance Act 1995*;
(kc) subsection 230AAD(2) of the *Life Insurance Act 1995*;

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16 Section 5 (paragraph (a) of the definition of *statutory/judicial management*)

Repeal the paragraph, substitute:

(a) a Banking Act statutory manager, Insurance Act statutory manager or Life Insurance Act statutory manager has control of the person's business; or

17 After section 5

Insert:

5AA Meaning of related body corporate

For the purposes of this Act, the question whether a body corporate is related to another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

5AB Meaning of subsidiary

For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

18 Subsection 15A(1)

Omit "to which a regulated body is a party".

19 Before paragraph 15A(1)(a)

Insert:

(aa) a party to the contract is:

(i) a regulated body; or

(ii) a related body corporate of a regulated body; and

20 Subsection 15A(2)

Omit "to which a regulated body is a party".

21 Before paragraph 15A(2)(a)

Insert:

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(aa) a party to the contract is:
(i) a regulated body; or
(ii) a related body corporate of a regulated body; and

22 Paragraph 15B(1)(a)

Omit "to which a regulated body is a party".

23 After paragraph 15B(1)(a)

Insert:

(aa) a party to the contract is:
(i) a regulated body; or
(ii) a related body corporate of a regulated body; and

24 After paragraph 15B(1)(b)

Omit "a party", substitute "the party".

25 Section 15C (heading)

Repeal the heading, substitute:

15C When APRA may declare that non-direction stays continue—regulated body is party to trigger contract

26 Subsections 15C(1) and (2)

Repeal the subsections, substitute:

(1) Subsection (2) applies if:
(a) a trigger event to which a specified stay provision (other than a direction stay provision) applies:
(i) is an event that involves a regulated body; and
(ii) happens in relation to a close-out netting contract (the ***trigger contract***) to which the regulated body is a party; and
(b) APRA is satisfied that all the matters in subsection (3) will be satisfied in relation to the party in respect of which the declaration under subsection (2) will be made:
(i) unless subparagraph (ii) applies—at the time the declaration will be made; or

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(ii) if a certificate of transfer will come into force under the Business Transfer Act for a transfer of business from the regulated body to a receiving body—just after that coming into force; and

(c) the party in respect of which the declaration under subsection (2) will be made is not in external administration (disregarding paragraphs (d), (da), (db), (e) and (f) of the definition of ***external administration*** in section 5); and

(d) APRA has not already made a declaration under section 15B in relation to the trigger event happening in relation to the trigger contract.

(2) APRA may, before the end of the resolution period for the trigger event, declare that the specified stay provision is to continue to apply to:

(a) unless paragraph (b) or (c) applies:

(i) all close-out netting contracts to which the regulated body is a party; and

(ii) all securities given over financial property, in respect of obligations under those close-out netting contracts; or

(b) in the case of a total transfer under the Business Transfer Act:

(i) all close-out netting contracts to which the regulated body is a party (and to which the receiving body will become a party immediately after the transfer); and

(ii) all securities given over financial property, in respect of obligations under those close-out netting contracts; or

(c) in the case of a partial transfer under the Business Transfer Act—either or both of the following:

(i) all close-out netting contracts to which the regulated body is a party (and to which the regulated body will remain a party immediately after the transfer), and all securities given over financial property in respect of obligations under those contracts;

(ii) all close-out netting contracts to which the regulated body is a party (and to which the receiving body will become a party immediately after the transfer), and all securities given over financial property in respect of obligations under those contracts.

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27 Paragraphs 15C(3)(c) and (d)

Repeal the paragraphs, substitute:

(c) if the party is an ADI, a general insurer or a life company—that the party has each material authorisation (however described) necessary for its regulated business;

(d) if minimum capital requirements under the *Banking Act 1959*, the *Insurance Act 1973* or the *Life Insurance Act 1995* apply to the party—that either subsection (4) or subsection (5) is satisfied in respect of the party.

28 Paragraph 15C(5)(b)

Repeal the paragraph, substitute:

(b) those arrangements will remain in place until at least the earliest day on which one or more of the following occurs:

(i) subsection (4) is satisfied;

(ii) if a Banking Act statutory manager is in control of the party's business—APRA makes an ultimate termination of control under subsection 13C(3) of the *Banking Act 1959*;

(iii) if an Insurance Act statutory manager is in control of the party's business—APRA makes an ultimate termination of control under subsection 62ZOC(3) of the *Insurance Act 1973*;

(iv) if a Life Insurance Act statutory manager is in control of the party's business—APRA makes an ultimate termination of control under subsection 179AC(3) of the *Life Insurance Act 1995*;

(v) if the party is under judicial management under the *Insurance Act 1973*—an order under section 62ZF of that Act cancelling the judicial management comes into force;

(vi) if the party is under judicial management under the *Life Insurance Act 1995*—an order under section 172 of that Act cancelling the judicial management comes into force.

29 At the end of Division 2 of Part 4

Add:

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15D When APRA may declare that non-direction stays continue—related body corporate of regulated body is party to trigger contract

(1) Subsection (3) applies if:

(a) a trigger event to which a specified stay provision (other than a direction stay provision) applies:

(i) is an event that involves a regulated body (the ***trigger body***); and

(ii) happens in relation to one or more close-out netting contracts (each of which is a ***trigger contract***) to which a related body corporate of the trigger body (the ***contracting body***) is a party; and

(b) APRA is satisfied that all the matters in subsection (5) will be satisfied in relation to each entity covered under subsection (2):

(i) unless subparagraph (ii) applies—at the time the declaration will be made; or

(ii) if a certificate of transfer will come into force under the Business Transfer Act for a transfer of business from the trigger body to a receiving body—just after that coming into force; and

(c) each entity covered under subsection (2) is not in external administration (disregarding paragraphs (d), (da), (db), (e) and (f) of the definition of ***external administration*** in section 5); and

(d) APRA has not already made a declaration under section 15B in relation to the trigger event happening in relation to the trigger contract.

(2) For the purposes of paragraphs (1)(b) and (c), an entity is covered under this subsection if it is:

(a) if section 15E does not apply—the trigger body; or

(b) if section 15E applies because of a transfer of business under the Business Transfer Act from the trigger body to a receiving body:

(i) in the case of a total transfer of business—the receiving body; or

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(ii) in the case of a partial transfer of business—an entity specified in a determination under subsection 15E(3).

(3) APRA may, before the end of the resolution period for the trigger event, make a declaration that the specified stay provision is to continue to apply to:

(a) each trigger contract specified in the declaration; and

(b) all securities given over financial property, in respect of obligations under each trigger contract specified in the declaration.

(4) APRA may specify either or both of the following in a declaration under subsection (3):

(a) one or more trigger contracts;

(b) one or more classes of trigger contracts.

Note: See subsection 15E(2) for a restriction on when APRA may make a declaration under subsection (2) of this section in the case of a transfer of business from the trigger body to a receiving body.

(5) For the purposes of paragraph (1)(b), the matters are as follows:

(a) that the entity covered under subsection (2) is able to meet all its liabilities under:

(i) close-out netting contracts to which it is a party; and

(ii) securities given over financial property in respect of obligations of the entity under those contracts;

as and when they become due and payable;

(b) that the entity covered under subsection (2) is solvent (within the meaning of the *Corporations Act 2001*);

(c) if the entity covered under subsection (2) is an ADI, a general insurer or a life company—that the entity has each material authorisation (however described) necessary for its regulated business;

(d) if minimum capital requirements under the *Banking Act 1959*, the *Insurance Act 1973* or the *Life Insurance Act 1995* apply to the entity covered under subsection (2)—that either subsection (6) or subsection (7) is satisfied in respect of the entity covered under subsection (2).

(6) This subsection is satisfied if the entity's level of capital complies with the minimum capital requirements that apply to it under:

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(a) the *Banking Act 1959*, the *Insurance Act 1973* or the *Life Insurance Act 1995* (as the case requires); and
(b) the applicable prudential standards made under that Act.

(7) This subsection is satisfied if:
(a) arrangements are in place to ensure that the entity performs all its obligations under:
(i) close-out netting contracts to which it is a party; and
(ii) securities given over financial property in respect of obligations of the entity under those contracts;
as and when they are due to be performed; and
(b) those arrangements will remain in place until at least the earliest day on which one or more of the following occurs:
(i) subsection (6) is satisfied;
(ii) if a Banking Act statutory manager is in control of the entity's business—APRA makes an ultimate termination of control under subsection 13C(3) of the *Banking Act 1959*;
(iii) if an Insurance Act statutory manager is in control of the entity's business—APRA makes an ultimate termination of control under subsection 62ZOC(3) of the *Insurance Act 1973*;
(iv) if a Life Insurance Act statutory manager is in control of the entity's business—APRA makes an ultimate termination of control under subsection 179AC(3) of the *Life Insurance Act 1995*;
(v) if the entity is under judicial management under the *Insurance Act 1973*—an order under section 62ZF of that Act cancelling the judicial management comes into force;
(vi) if the entity is under judicial management under the *Life Insurance Act 1995*—an order under section 172 of that Act cancelling the judicial management comes into force.

(8) A declaration under subsection (3) cannot be varied or revoked.

(9) A declaration under this section is not a legislative instrument.

(10) The regulations may do any of the following:

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(a) prescribe requirements relating to how declarations under subsection (3) are to be made (including requirements relating to the content or form of declarations);
(b) prescribe requirements relating to the notification or publication of declarations under subsection (3);
(c) include provisions that apply to determining, either generally or for a particular purpose, the time when declarations under subsection (3) are taken to be made.

Note: Regulations under paragraph (c) may (for example) provide that, for the purpose of this section, a declaration is taken not to have been made until certain requirements of regulations under paragraph (b) have been complied with.

15E Declaration under subsection 15D(3)—total or partial transfer of business

(1) This section applies if:
(a) the requirement in paragraph 15D(1)(a) is satisfied in relation to a trigger event; and
(b) a certificate of transfer will come into force under the Business Transfer Act for:
(i) a total transfer of business from the trigger body to a receiving body; or
(ii) a partial transfer of business from the trigger body to a receiving body.

(2) APRA must not make a declaration under subsection 15D(3) in relation to the trigger event unless APRA is satisfied that the declaration will not have a detrimental effect on any counterparty to a close-out netting contract to which the declaration would apply.

(3) For the purposes of subparagraph 15D(2)(b)(ii), APRA may make a written determination specifying either or both of the following:
(a) the trigger body;
(b) the receiving body.

(4) A determination under subsection (3) cannot be varied or revoked.

(5) A determination under subsection (3) is not a legislative instrument.

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(6) The regulations may do any of the following:

(a) prescribe requirements relating to how determinations under subsection (3) are to be made (including requirements relating to the content or form of declarations);

(b) prescribe requirements relating to the notification or publication of determinations under subsection (3);

(c) include provisions that apply to determining, either generally or for a particular purpose, the time when determinations under subsection (3) are taken to be made.

Note: Regulations under paragraph (c) may (for example) provide that, for the purpose of this section, a determination is taken not to have been made until certain requirements of regulations under paragraph (b) have been complied with.

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Part 2—Application provisions

30 Interpretation

In this Part:

commencement time means the time when this item commences.

31 Application—ceasing non-direction stays for derivatives contracts

The amendments made by items 18 to 29 of this Schedule apply in relation to trigger events that happen on or after the commencement time.

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Schedule 6—Amendment of the Australian Prudential Regulation Authority Act 1998

Australian Prudential Regulation Authority Act 1998

1 Subsection 3(1) (paragraph (f) of the definition of *prudential regulation framework law*)

Repeal the paragraph, substitute:

(f) the *Financial Sector (Transfer and Restructure) Act 1999*;

2 Section 48

After "investigators and administrators under Division 2 of Part II of the *Banking Act 1959*", insert ", Division 1A of Part VB of the *Insurance Act 1973* or Division 1AA of Part 8 of the *Life Insurance Act 1995*.

3 After subparagraph 54C(a)(i)

Insert:

(ia) meeting the entitlement of a receiving body under subsection 16AIC(2) of that Act (Payment of receiving body under transferred liabilities determination), to the extent that the entitlement is comprised of the FCS payment amount mentioned in paragraph 16AIB(1)(a) of that Act; or

4 After subparagraph 54C(b)(i)

Insert:

(ia) meeting the entitlement of a receiving body under subsection 62ZZMC(2) of that Act (Payment of receiving body under transferred liabilities determination), to the extent that the entitlement is comprised of the FCS payment amount mentioned in paragraph 62ZZMB(1)(a) of that Act; or

5 At the end of section 58

Add:

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(4) Subsection (1) does not limit, and is not limited by, any of the following provisions:

(a) section 14C, 52A, 52B, 70A or 70AA of the *Banking Act 1959;*

(b) section 62ZOK, 38A, 38B, 127B or 127C of the *Insurance Act 1973*;

(c) section 179AK, 156A, 156B, 246A or 246B of the *Life Insurance Act 1995.*

6 Subparagraph 59(2)(a)(i)

Repeal the subparagraph, substitute:

(i) the activities of persons conducting investigations under Division 2 of Part II of the *Banking Act 1959*;

7 After paragraph 59(2)(a)

Insert:

(aaa) information on the following matters:

(i) the activities of Banking Act statutory managers (within the meaning of the *Banking Act 1959*);

(ii) the activities of Insurance Act statutory managers (within the meaning of the *Insurance Act 1973*);

(iii) the activities of Life Insurance Act statutory managers (within the meaning of the *Life Insurance Act 1995*);

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Schedule 7—Amendments of other Acts

Corporations Act 2001

1 At the end of subsection 256B(1)

Add:

Note 5: A company may reduce its share capital for the purposes of the conversion and write-off provisions determined by APRA despite this Division (see Subdivision B of Division 1A of Part II of the *Banking Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and Division 1A of Part 10A of the *Life Insurance Act 1995*).

2 At the end of subsection 437F(8)

Add:

Note: An alteration in the status of members of a company that is made during the administration of the company may not be void if it is made for the purposes of the conversion and write-off provisions determined by APRA (see Subdivision B of Division 1A of Part II of the *Banking Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and Division 1A of Part 10A of the *Life Insurance Act 1995*).

3 At the end of subsection 468A(8)

Add:

Note: An alteration in the status of members of a company that is made after the commencement of the winding up by the Court may not be void if it is made for the purposes of the conversion and write-off provisions (see Subdivision B of Division 1A of Part II of the *Banking Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and Division 1A of Part 10A of the *Life Insurance Act 1995*).

Income Tax Assessment Act 1997

4 Paragraph 202-47(1)(a)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

5 Section 320-300

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

6 Paragraph 320-305(b)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

7 Paragraph 322-30(b)

Omit "Division 3 of Part VC", substitute "section 62ZZF, 62ZZFA, 62ZZG or 62ZZGA".

8 Section 322-30 (note 2)

Omit "Division 3 of Part VC of the *Insurance Act 1973* entitles", substitute "Sections 62ZZF, 62ZZFA, 62ZZG and 62ZZGA of the *Insurance Act 1973* entitle".

9 Paragraph 615-35(a)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

10 Subsection 703-37(1)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

11 Paragraph 703-37(4)(a)

Omit "*Financial Sector (Business Transfer and Group Restructure) Act 1999*", substitute "*Financial Sector (Transfer and Restructure) Act 1999*".

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[*Minister's second reading speech made in—*
House of Representatives on 19 October 2017
Senate on 13 February 2018]

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