



Financial Sector Reform (Amendments and Transitional Provisions) Act 1998

No. 54, 1998



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**An Act to amend laws, and to deal with transitional
matters, in connection with the reform of the
financial sector, and for other purposes**

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No. 54, 1998

**An Act to amend laws, and to deal with transitional
matters, in connection with the reform of the
financial sector, and for other purposes**

[Assented to 29 June 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Sector Reform
(Amendments and Transitional Provisions) Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (a) Schedule 1;
 - (b) Schedule 2, other than item 86;
 - (c) Schedule 3;
 - (d) Schedule 4;
 - (e) Schedule 7;
 - (f) Schedule 8;
 - (g) Schedule 9, subject to subsections (9) and (10);
 - (h) Parts 1 to 3 of Schedule 10;
 - (i) Schedule 11;
 - (j) Schedule 12, subject to subsection (12);
 - (k) Parts 1 to 6 of Schedule 13;
 - (l) Schedule 14;
 - (m) Schedule 15;
 - (n) Parts 1 to 6 of Schedule 16;
 - (o) Schedule 17;
 - (p) Schedule 18, other than the items amending the *Australian Prudential Regulation Authority Act 1998*.
- (3) Subject to subsection (4), item 86 of Schedule 2 commences on a day to be fixed by Proclamation.
- (4) If item 86 of Schedule 2 does not commence under subsection (3) within the period of 24 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (5) Part 3 of Schedule 4 is taken to have commenced on 3 May 1998.
- (6) Parts 1 to 4 of Schedule 5 commence:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if item 32 of Schedule 3 to the *Company Law Review Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) immediately after the commencement of item 32 of Schedule 3 to the *Company Law Review Act 1998* if that item does not

commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.

- (7) Part 5 of Schedule 5 commences:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if Schedule 5 to the *Company Law Review Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) immediately after the commencement of Schedule 5 to the *Company Law Review Act 1998* if that Schedule does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (8) Schedule 6 commences:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if the *Managed Investments Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) immediately after the commencement of the *Managed Investments Act 1998* if that Act does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (9) If item 5 of Schedule 2 to the *Insurance Laws Amendment Act 1998* commences on or before the commencement of the *Australian Prudential Regulation Authority Act 1998*, items 76, 128 and 143 to 149 of Schedule 9 to this Act do not commence.
- (10) Parts 3 and 4 of Schedule 9 commence:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if that Act commences after the commencement of item 5 of Schedule 2 to the *Insurance Laws Amendment Act 1998*; or
 - (b) immediately after the commencement of item 5 of Schedule 2 to the *Insurance Laws Amendment Act 1998* if the *Australian Prudential Regulation Authority Act 1998* commences on or before the commencement of that item.
- (11) The items in Part 4 of Schedule 10 listed in the table commence:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if the corresponding item of

Schedule 1 to the *Insurance Laws Amendment Act 1998* commences before the commencement of the corresponding item; or

- (b) immediately after the commencement of the corresponding item of Schedule 1 to the *Insurance Laws Amendment Act 1998* if that item does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.

Corresponding items table

Item	Item in Part 4 of Schedule 10 to this Act	Corresponding item of Schedule 1 to the <i>Insurance Laws Amendment Act 1998</i>
1	61	47
2	62	52
3	63	60
4	64	66

- (12) If, under subsection (2), Schedule 12 commences on the same day as provisions of the *Insurance Laws Amendment Act 1998* commence, that Schedule commences on that day immediately after the commencement of those provisions.
- (13) Part 7 of Schedule 13 commences on the day on which this Act receives the Royal Assent.
- (14) Part 7 of Schedule 16 commences:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if Part 1 of Schedule 2 to the *Superannuation Legislation Amendment Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
- (b) immediately after the commencement of Part 1 of Schedule 2 to the *Superannuation Legislation Amendment Act 1998* if that Part does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (15) Items 232 to 234 of Part 8 of Schedule 16 commence:
- (a) immediately after the commencement of the *Australian Prudential Regulation Authority Act 1998* if item 42 of Schedule 1 to the *Superannuation Legislation Amendment*

-
- (Choice of Superannuation Funds) Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
- (b) immediately after the commencement of item 42 of Schedule 1 to the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1998* if that item does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.

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- (16) Items 235 and 236 of Part 8 of Schedule 16 commence:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if item 50 of Schedule 1 to the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) immediately after the commencement of item 50 of Schedule 1 to the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1998* if that item does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (17) Part 3 of Schedule 17 has effect only if the *Australian Prudential Regulation Authority Act 1998* commences before the commencement of Schedule 3 to the *Superannuation Legislation Amendment Act 1998* and, if so, Part 3 commences immediately after the commencement of Schedule 3 to the *Superannuation Legislation Amendment Act 1998*.
- (18) The items in Schedule 18 amending the *Australian Prudential Regulation Authority Act 1998* commence:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if the *Public Service Act 1998* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) immediately after the commencement of the *Public Service Act 1998* if that Act does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (19) Schedule 19 commences on the day on which this Act receives the Royal Assent.

3 Schedule(s)

Subject to section 2, the Corporations Law and each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Australian Securities Commission Act 1989

1 Title

Omit “**establish an Australian Securities Commission**”, substitute “**provide for the Australian Securities and Investments Commission**”.

2 Paragraph 1(1)(a)

Repeal the paragraph, substitute:

- (a) to provide for the Australian Securities and Investments Commission which will administer such laws of:
 - (i) the Commonwealth; and
 - (ii) the Capital Territory; and
 - (iii) the States and the other Territories;as confer functions and powers under those laws on the Commission; and

3 Subsection 1(2)

Repeal the subsection, substitute:

- (2) In performing its functions and exercising its powers, the Commission must strive to:
 - (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
 - (b) promote the confident and informed participation of investors and consumers in the financial system; and
 - (c) achieve uniformity throughout Australia in how the Commission and its delegates perform those functions and exercise those powers; and
 - (d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
 - (e) receive, process and store, efficiently and quickly, the information given to the Commission under the laws that confer functions and powers on it; and

- (f) ensure that information is available as soon as practicable for access by the public; and
- (g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws that confer functions and powers on it.

4 Section 1A

After “*Securities*”, insert “*and Investments*”.

5 Subsection 1B(1)

After “This Act”, insert “(except section 12A)”.

6 Subsection 5(1)

Insert:

APRA means the Australian Prudential Regulation Authority.

7 Subsection 5(1) (definition of *Commission*)

Repeal the definition, substitute:

Commission means the Australian Securities and Investments Commission.

8 At the end of section 7

Add:

- (2) From the commencement of this subsection, the Commission is to be known as the Australian Securities and Investments Commission.

9 Subsection 9(3A)

Repeal the subsection.

10 After section 12

Insert:

12A Functions and powers—non-national scheme laws

- (1) The Commission has the functions and powers that are conferred on it by or under the following Acts:
 - (a) the *Insurance Act 1973*;

- (b) the *Insurance (Agents and Brokers) Act 1984*;
 - (c) the *Insurance Contracts Act 1984*;
 - (d) the *Superannuation (Resolution of Complaints) Act 1993*;
 - (e) the *Life Insurance Act 1995*;
 - (f) the *Retirement Savings Accounts Act 1997*;
 - (g) the *Superannuation Industry (Supervision) Act 1993*.
- (2) The Commission has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.
- (3) The Commission has the function of monitoring and promoting market integrity and consumer protection in relation to the payments system by:
- (a) promoting the adoption of approved industry standards and codes of practice; and
 - (b) promoting the protection of consumer interests; and
 - (c) promoting community awareness of payments system issues; and
 - (d) promoting sound customer-banker relationships, including through:
 - (i) monitoring the operation of industry standards and codes of practice; and
 - (ii) monitoring compliance with such standards and codes.
- (4) Subsections (2) and (3) confer functions and powers to the extent to which they are not in excess of the legislative power of the Commonwealth.
- (5) The Commission may:
- (a) advise the Minister about any changes to a law listed in subsection (1) that the Commission thinks are needed to help overcome any problems that the Commission has encountered in the course of performing its functions or exercising any of its powers under that law; and
 - (b) advise the Minister and make such recommendations as it thinks fit about any matter relating to its functions in subsections (2) and (3).

- (6) The Commission has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.

Note: The heading to section 11 is altered by adding at the end “—**national scheme laws**”.

11 At the end of Division 10 of Part 3

Add:

93AA Enforcement of undertakings

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

12 At the end of paragraph 102(2)(a)

Add “or”.

13 At the end of subsection 102(2)

Add:

; or (d) a person appointed by APRA under section 45 of the *Australian Prudential Regulation Authority Act 1998*.

14 After subsection 102(2)

Insert:

- (2A) The Commission must not delegate a function or power to an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*, unless the Chief Executive Officer of APRA has agreed to the delegation in writing.

15 At the end of section 102

Add:

- (8) If this section is being applied as a law of a State, it applies only in relation to functions and powers conferred by a national scheme law.

16 Section 123

Repeal the section, substitute:

123 Chairperson to disclose certain interests to Minister

The Chairperson must give written notice to the Minister of all direct or indirect pecuniary interests that the Chairperson has or acquires in:

- (a) a business carried on in Australia or a body corporate carrying on such a business; or
- (b) a pooled superannuation trust (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or a body corporate that is a trustee of such a trust; or
- (c) a superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or an approved deposit fund (within the meaning of that Act) or a body corporate that is a trustee of such a fund; or
- (d) an RSA or an RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*).

17 Subsection 127(1)

Omit all the words from and including “disclosure information” to and including “this jurisdiction”, substitute:

disclosure information:

- (a) given to it in confidence in or in connection with the performance of its functions or the exercise of its powers under a national scheme law of this jurisdiction; or
- (b) that is protected information.

18 After subsection 127(1)

Insert:

(1A) Disclosing summaries of information or statistics derived from information is authorised use and disclosure of the information provided that information relating to any particular person cannot be found out from those summaries or statistics.

(1B) Disclosing:

- (a) the names of entities that are RSA providers or RSA institutions for the purposes of the RSA Act; or
- (b) the addresses at which business relating to entities referred to in paragraph (a) is conducted; or
- (c) any other information that is reasonably necessary to enable members of the public to contact a person who performs functions in relation to an RSA (within the meaning of the RSA Act);

is authorised use and disclosure of the information.

(1C) Disclosing any or all of the following information about an RSA provider is authorised use and disclosure of the information:

- (a) whether or not the RSA provider has lodged a return under section 44 of the RSA Act in respect of a particular year of income;
- (b) whether or not a notice, or a particular kind of notice, has been given under section 92 of the RSA Act in relation to an RSA provider in respect of a particular year of income.

(1D) Disclosing:

- (a) the names of:
 - (i) superannuation funds, approved deposit funds and pooled superannuation trusts that are superannuation entities for the purposes of the SIS Act; or
 - (ii) superannuation entities that are non-complying superannuation funds or non-complying approved

deposit funds, or are not pooled superannuation trusts, as the case may be, in relation to a specified year of income for the purposes of Part IX of the Income Tax Assessment Act; or

(iii) superannuation funds and approved deposit funds that are eligible roll-over funds for the purposes of Part 24 of the SIS Act; and

(b) the addresses at which business relating to funds or trusts referred to in paragraph (a) is conducted; and

(c) particulars of names of beneficiaries and amounts set out in a statement of unclaimed money given to the Commission under section 225 of the SIS Act; and

(d) any other information that is reasonably necessary to enable members of the public to contact a person who performs functions in relation to a superannuation entity (within the meaning of the SIS Act);

is authorised use and disclosure of the information.

(1E) Disclosing any or all of the following information about a fund, scheme or trust (of a type referred to in subsection (1D)) is authorised use and disclosure of the information:

(a) whether or not the trustee of the fund, scheme or trust has lodged a return under section 36 of the SIS Act in respect of a particular year of income;

(b) whether or not a decision has been made by APRA to give a notice, or a particular kind of notice, in relation to the fund, scheme or trust under section 40 of the SIS Act in relation to a particular year of income;

(c) whether or not a notice or a particular kind of notice has been given by APRA or the Commission under section 40 or 254 of the SIS Act in relation to the fund, scheme or trust, in respect of a particular year of income;

(d) in the case of a superannuation fund—whether or not the trustee of the fund has told APRA that the trustee is willing to accept a particular kind of contribution.

19 After subsection 127(2)

Insert:

(2A) Disclosing information to one of the following is authorised use and disclosure of the information:

- (a) the Minister;
- (b) the Secretary to the Department for the purpose of advising the Minister, or an officer authorised for that purpose;
- (c) APRA.

20 At the end of paragraph 127(4)(a)

Add “or”.

21 After paragraph 127(4)(a)

Insert:

- (aa) will enable or assist:
 - (i) the Australian Bureau of Criminal Intelligence; or
 - (ii) the Australian Financial Institutions Commission; or
 - (iii) the Superannuation Complaints Tribunal;to perform any of its functions or powers; or
- (ab) will enable or assist an officer of the Commonwealth Attorney-General’s Department who is in the office known as the Office of Law Enforcement Co-ordination to perform any of his or her functions or powers; or

22 After paragraph 127(4)(c)

Insert:

- or (d) will enable or assist a prescribed professional disciplinary body to perform 1 of its functions;

23 Subsection 127(4)

Omit “agency or government by a person”, insert “agency, government or disciplinary body by a person”.

24 Subsection 127(4B)

After “subsection (4C)”, insert “(including a body corporate that is a foreign company)”.

25 After subparagraph 127(4B)(a)(i)

Insert:

- (ia) the business law of a foreign country; or

26 After subsection 127(4E)

Insert:

- (4EA) If the Commission discloses information to a disciplinary body under paragraph (4)(d), the body or a member of the body:
- (a) must not disclose the information to any other person; and
 - (b) must not use the information for any purpose other than for deciding whether or not to take disciplinary or other action or for taking that action.

Penalty: Imprisonment for 2 years.

27 After subparagraph 127(4F)(b)(i)

Insert:

- (ia) the business law of a foreign country; or

28 Subsection 127(6)

Omit “(2)”, substitute “(1A), (1B), (1C), (ID), (IE), (2), (2A)”.

29 At the end of section 127

Add:

- (8) If this section is being applied as a law of a State, it applies only in relation to the performance of the Commission’s functions and the exercise of the Commission’s powers under a national scheme law.
- (9) In this section:

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

protected information means information disclosed or obtained, or a document given or produced, (whether before or after the commencement of this section) for the purposes of a function in section 12A and relating to the affairs of:

- (a) a body regulated by the Commission; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the Corporations Law) to a body regulated by the Commission; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by the Commission;

other than information that has already been lawfully made available to the public from other sources.

RSA Act means the *Retirement Savings Accounts Act 1997*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

30 Paragraph 135(1)(a)

Omit “under a national scheme law of this or any other jurisdiction”.

31 Subsection 135(4)

Repeal the subsection, substitute:

- (4) This section and subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* have effect subject to:
- (a) a provision that a national scheme law of this or any other jurisdiction makes about money or property that vests in the Commission under such a law; and
 - (b) Part 22 of the *Superannuation Industry (Supervision) Act 1993*.

32 At the end of section 138

Add:

- (2) The report must also set out information about the exercise during the year of the Commission’s powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*.
- (3) In relation to the Commission’s functions under the *Insurance (Agents and Brokers) Act 1984*, the report must include information about:
 - (a) the number of persons registered by the Commission for the time being as foreign insurance agents, life insurance brokers or general insurance brokers, respectively; and
 - (b) any suspensions or cancellations effected by the Commission under section 25 or 31H of that Act during the period to which the report relates; and
 - (c) any prosecutions for offences against that Act during that period; and

- (d) any insolvency of an insurance intermediary that came to the Commission's notice during that period; and
- (e) any other matters (if any) as are prescribed.

33 Section 245

After "*Securities*", insert "*and Investments*".

34 Paragraph 246(1)(f)

After "*Securities*", insert "*and Investments*".

35 At the end of the Act

Add:

Part 18—Transitional: from the ASC to ASIC

268 Changes to name of ASC and the *Australian Securities Commission Act 1989*

- (1) After the commencement of this section, a reference in:
 - (a) an Act of this jurisdiction; or
 - (b) an instrument under such an Act; or
 - (c) an award or other industrial determination, order or agreement; or
 - (d) any other order (whether executive, judicial or otherwise); or
 - (e) any contract; or
 - (f) any pleading in, or process issued in connection with, any legal or other proceeding; or
 - (g) any other instrument;

to the *Australian Securities Commission Act 1989* is taken to be a reference to the *Australian Securities and Investments Commission Act 1989*, except in relation to matters that occurred before the commencement of this section.

- (2) After the commencement of this section, a reference in:
 - (a) an Act of the Commonwealth; or
 - (b) an instrument under such an Act;

to the ASC (or the Australian Securities Commission) is taken to be a reference to ASIC, except in relation to matters that occurred before the commencement of this section.

Note: Subsection (2) is enacted in case the effect of subsections 5(3) to (5) is to exclude the application of section 25B of the *Acts Interpretation Act 1901*.

Schedule 2—Amendment of the Banking Act 1959

1 Section 5

Insert:

ADI is short for authorised deposit-taking institution.

2 Section 5

Insert:

ADI statutory manager has the meaning given by subsection 13A(2).

3 Section 5

Insert:

administrator of an ADI's business means an administrator appointed under subsection 13A(1) to take control of an ADI's business.

4 Section 5

Insert:

APRA means the Australian Prudential Regulation Authority.

5 Section 5

Insert:

APRA board member means a member of APRA's board of management, including APRA's Chair and Chief Executive Officer.

6 Section 5

Insert:

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

7 Section 5

Insert:

authorised deposit-taking institution means a body corporate in relation to which an authority under subsection 9(3) is in force.

8 Section 5

Insert:

authorised NOHC means a body corporate:

- (a) in relation to which an authority under subsection 11AA(2) is in force; and
- (b) that is a NOHC of an ADI or ADIs.

9 Section 5 (definition of *bank*)

Repeal the definition, substitute:

bank means an ADI that is permitted under section 66 to assume or use:

- (a) the word *bank*, *banker* or *banking*; or
- (b) any other word (whether or not in English) that is of like import to a word referred to in paragraph (a).

10 Section 5

Insert:

banking business means:

- (a) a business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution; or
- (b) a business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent, of:
 - (i) both taking money on deposit (otherwise than as part-payment for identified goods or services) and making advances of money; or
 - (ii) other financial activities prescribed by the regulations for the purposes of this definition.

11 Section 5 (definition of *foreign bank*)

Omit "*bank*", substitute "*ADI*".

12 Section 5

Insert:

industry liquidity contract means a contract under which emergency liquidity support is to be provided by parties to the contract to any ADI that is a party to the contract if a specified event occurs.

13 Section 5

Insert:

insolvent, in relation to a body corporate, means that the body corporate is not able to pay all its debts as and when they become due and payable.

14 Section 5

Insert:

NOHC is short for non-operating holding company.

15 Section 5

Insert:

NOHC authority means an authority under subsection 11AA(2).

16 Section 5

Insert:

non-operating holding company means, in relation to a body corporate, a body corporate:

- (a) of which the first body corporate is a subsidiary; and
- (b) that does not carry on a business (other than a business consisting of the ownership or control of other bodies corporate); and
- (c) that is incorporated in Australia.

17 Section 5 (definition of *prudential matters*)

Omit all the words from and including “, in relation to a bank” to and including “bank:”, substitute “, in relation to a body corporate that is an ADI or a NOHC, means matters relating to the conduct by the body corporate of any of its affairs:”.

18 Section 5

Insert:

prudential regulation means a regulation under section 11A.

19 Section 5

Insert:

prudential standard means a standard under section 11AF.

20 Section 5 (definition of *Queensland Industry Development Corporation*)

Repeal the definition.

21 Section 5

Insert:

section 9 authority means an authority under subsection 9(3).

22 Section 5 (definition of *State Bank Limited*)

Repeal the definition.

23 Section 5

Insert:

subsidiary has the meaning given by subsection (2).

24 Section 5

Insert:

ultimate termination of control has the meaning given by subsection 13C(1).

25 At the end of section 5

Add:

- (2) 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 Law.

26 Subsection 6(1)

Omit “Subject to subsections (1A), (1B) and (1C), nothing in Part II”, substitute “Nothing in Part II”.

27 Subsections 6(1A), (1B) and (1C) (including the notes)

Repeal the subsections (including the notes).

28 Section 8

Add at the end:

Note: See also section 11, which provides for the making of determinations that provisions of this Act do not apply to certain persons carrying on banking business.

29 Subsection 9(1)

Repeal the subsection.

30 Subsection 9(2)

Omit “(not being a body corporate specified in the First Schedule)”.

31 Subsection 9(2)

Omit “the Treasurer”, substitute “APRA”.

32 At the end of subsection 9(2)

Add:

Note: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975* and the *Financial Sector (Shareholdings) Act 1998*.

33 Subsection 9(3)

Repeal the subsection, substitute:

- (3) If an application has been made, APRA may grant the body corporate an authority to carry on banking business in Australia. The authority must be in writing, and APRA must give the body corporate written notice of the granting of the authority.

Note 1: The fact that a body corporate is granted an authority to carry on banking business in Australia does not mean it is entitled to call itself a bank. To do this, the body corporate will need to have a consent under section 66.

Note 2: For APRA’s power to revoke an authority, see section 9A.

- (3A) Without limiting the circumstances in which APRA may refuse an application by a body corporate for authority to carry on banking business in Australia, APRA may refuse such an application if the body corporate is a subsidiary of a NOHC that does not hold a NOHC authority.

34 Subsection 9(4)

Omit “The Governor-General”, substitute “APRA”.

35 At the end of subsection 9(4)

Add:

The conditions must relate to prudential matters.

36 After subsection 9(4)

Insert

- (4A) Without limiting the conditions that APRA may impose under subsection (4) on an ADI’s authority, APRA may make the authority conditional on a body corporate of which the ADI is a subsidiary being an authorised NOHC.

37 Subsection 9(5)

Omit “relating to a prudential matter”.

38 Subsection 9(5)

Before “the regulations”, insert “the prudential standards or”.

39 Subsections 9(7) to (11)

Repeal the subsections, substitute:

(7) If APRA:

(a) grants an authority under subsection (3); or

(b) imposes, varies or revokes conditions under subsection (4);

APRA must cause notice of that action to be published in the *Gazette*. APRA may also cause notice of that action to be published in any other way it considers appropriate.

(8) A failure to comply with subsection (7) does not affect the validity of the action concerned.

40 After section 9

Insert:

9A Revocation of authority

- (1) APRA must revoke a body corporate's section 9 authority if:
 - (a) the body corporate, by notice in writing to APRA, requests the revocation of the authority; and
 - (b) APRA is satisfied that the revocation of the authority:
 - (i) would not be contrary to the national interest; and
 - (ii) would not be contrary to the interests of depositors of the body corporate.
- (2) APRA may revoke a body corporate's section 9 authority if APRA is satisfied that:
 - (a) the body corporate has failed to comply with:
 - (i) a requirement of this Act or the regulations; or
 - (ii) a direction under Division 1BA; or
 - (iii) a condition of its section 9 authority; or
 - (b) it would be contrary to the national interest for the authority to remain in force; or
 - (c) it would be contrary to the interests of depositors of the body corporate for the authority to remain in force; or
 - (d) 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
 - (e) the body corporate is insolvent and is unlikely to return to solvency within a reasonable period of time; or
 - (f) the body corporate has ceased to carry on banking business in Australia.

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.

- (3) Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's section 9 authority unless:

- (a) APRA has given the body corporate a notice in writing advising the body corporate:
 - (i) that APRA is considering revoking the authority for the reasons specified in the notice; and
 - (ii) that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and
 - (iii) of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and
 - (b) APRA has considered any submissions that were made by the body corporate by the specified date.
- (4) APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:
- (a) contrary to the national interest; or
 - (b) contrary to the interests of depositors with the body corporate.
- (5) A revocation of a body corporate's section 9 authority under subsection (1) or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.
- (6) If APRA revokes a body corporate's section 9 authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the *Gazette*. APRA may also cause notice of the revocation to be published in any other way it considers appropriate.
- (7) A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

9B Bodies that cease to exist or change their names

- (1) If APRA is satisfied that a body corporate that has been granted a section 9 authority:
 - (a) has ceased to exist; or
 - (b) has changed its name;

APRA must cause notice of that fact to be published in the *Gazette*.
APRA may also cause notice of that fact to be published in any other way it thinks appropriate.

- (2) If the body corporate has ceased to exist, its section 9 authority is taken to be revoked on publication of the notice in the *Gazette*.
- (3) If the body corporate has changed its name, its section 9 authority has effect after the publication of the notice in the *Gazette* as if it had been granted to the body under its changed name.

9C Publication of list of ADIs

APRA may, from time to time, publish a list of ADIs:

- (a) in the *Gazette*; or
- (b) in such other manner as APRA determines.

41 Subsection 10(2)

Omit “the Treasurer”, substitute “APRA”.

Note: The heading to section 10 is altered by omitting “**Treasurer**” and substituting “**APRA**”.

42 Subsection 10(3)

Omit “A bank specified in the First Schedule”, substitute “An ADI”.

43 Subsection 10(3)

Omit “the bank” (wherever occurring), substitute “the ADI”.

44 Subsection 10(3)

Omit “the Treasurer”, substitute “APRA”.

45 Subsection 11(1)

Repeal the subsection, substitute:

- (1) APRA may, by order published in the *Gazette*, determine that all or specified provisions of this Act do not apply to a person during the period while the order continues in force. The determination has effect accordingly.

Note: The heading to section 11 is replaced by the heading “**APRA may determine that provisions of this Act do not apply**”.

46 At the end of section 11

Add:

- (4) APRA may, by order published in the *Gazette*, vary or revoke an order under this section.

47 After Division 1 of Part II

Insert:

Division 1AA—Authority to be a NOHC of an ADI

11AA Authority to be a NOHC

- (1) A body corporate may apply in writing to APRA for an authority under this section. The authority operates as an authority in relation to the body corporate and any ADIs that are subsidiaries of the body corporate from time to time.

Note 1: The body corporate may want the authority:

- (a) because APRA refuses or may refuse to grant a subsidiary of the body corporate a section 9 authority unless the body corporate holds a NOHC authority (see subsection 9(3A)); or
- (b) for a purpose connected with the *Financial Sector (Shareholdings) Act 1998*.

Note 2: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975* and the *Financial Sector (Shareholdings) Act 1998*.

- (2) APRA may grant the authority if it considers it is appropriate to do so.

Note: For APRA's power to revoke the authority, see section 11AB.

- (3) APRA may, at any time, by notice in writing given to the body corporate:
- (a) impose conditions, or additional conditions, on the authority; and
- (b) vary or revoke conditions imposed on the authority.

The conditions must relate to prudential matters.

- (4) A condition may be expressed to have effect despite anything in the prudential standards or the regulations.
- (5) The body corporate must comply with any conditions to which the authority is subject.

-
- (6) If APRA:
- (a) grants an authority under subsection (2); or
 - (b) imposes, varies or revokes conditions under subsection (3);
- APRA must cause notice of that action to be published in the *Gazette*. APRA may also cause notice of that action to be published in any other way that it considers appropriate.
- (7) A failure to comply with subsection (6) does not affect the validity of the action concerned.

11AB Revocation of authority

- (1) APRA must revoke a NOHC authority granted to a body corporate if:
- (a) the body corporate, by notice in writing to APRA, requests the revocation of the authority; and
 - (b) APRA is satisfied that revocation of the authority:
 - (i) would not be contrary to the national interest; and
 - (ii) would not be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.
- (2) APRA may revoke a NOHC authority granted to a body corporate if APRA is satisfied that:
- (a) the body corporate has failed to comply with:
 - (i) a requirement of this Act or the regulations; or
 - (ii) a direction under Division 1BA; or
 - (iii) a condition of its NOHC authority; or
 - (b) the body corporate has ceased to be a NOHC of any ADI or ADIs; or
 - (c) it would be contrary to the national interest for the authority to remain in force; or
 - (d) it would be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate for the authority to remain in force; or
 - (e) 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*.

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.

- (3) Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's NOHC authority unless:
 - (a) APRA has given the body corporate a notice in writing advising the body corporate:
 - (i) that APRA is considering revoking the authority for the reasons specified in the notice; and
 - (ii) that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and
 - (iii) of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and
 - (b) APRA has considered any submissions that were made by the body corporate by the specified date.
- (4) APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:
 - (a) contrary to the national interest; or
 - (b) contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.
- (5) A revocation of a body corporate's NOHC authority under subsection (1) or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.
- (6) If APRA revokes a body corporate's NOHC authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the *Gazette*. APRA may also cause notice of the revocation to be published in any other way it considers appropriate.
- (7) A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

11AC Bodies that cease to exist or change their names

- (1) If APRA is satisfied that a body corporate that has been granted a NOHC authority:
 - (a) has ceased to exist; or
 - (b) has changed its name;APRA must cause notice of that fact to be published in the *Gazette*. APRA may also cause notice of that fact to be published in any other way it thinks appropriate.
- (2) If the body corporate has ceased to exist, any NOHC authority granted to the body corporate that is still in force is taken to be revoked on publication of the notice in the *Gazette*.
- (3) If the body corporate has changed its name, any NOHC authority granted to the body corporate that is still in force has effect after the publication of the notice in the *Gazette* as if it had been granted to the body under its changed name.

11AD Publication of list of NOHCs

- APRA may, from time to time, publish a list of authorised NOHCs:
- (a) in the *Gazette*; or
 - (b) in such other manner as APRA determines.

48 Division 1A of Part II (heading)

Repeal the heading, substitute:

Division 1A—Prudential supervision and monitoring of ADIs and authorised NOHCs

49 Before section 11A

Insert in Division 1A of Part II:

11AF APRA may make prudential standards for ADIs and authorised NOHCs

- (1) APRA may, in writing, determine standards in relation to prudential matters to be complied with by ADIs and authorised NOHCs.

Note: A failure to comply with a standard is not an offence, but it may lead to a direction being given under section 11CA.

- (2) A standard:
- (a) comes into force:
 - (i) unless subparagraph (ii) applies—on the day on which the determination of the standard is made; or
 - (ii) if that determination specifies a later day as the day on which the standard comes into force—on the day so specified; and
 - (b) continues in force until it is revoked.
- (3) APRA may, in writing, vary or revoke a standard.
- (4) If APRA determines or varies a standard it must, as soon as practicable, cause a notice advising of the determination of the standard, or of the variation of the standard, and summarising the purpose and effect of the standard or variation, to be published:
- (a) in the *Gazette*; and
 - (b) in a daily newspaper or daily newspapers circulating generally in each State or Territory.
- (5) If APRA revokes a standard it must, as soon as practicable, cause a notice of the revocation to be published:
- (a) in the *Gazette*; and
 - (b) in a daily newspaper or daily newspapers circulating generally in each State or Territory.
- (6) APRA must take reasonable steps to ensure that copies of the current text of the standards are available for inspection and purchase.
- (7) A failure to comply with subsection (4), (5) or (6) does not affect the validity of the action concerned.
- (8) In this section:

Territory means a territory to which this Act extends.

50 Section 11A

Omit “banks”, substitute “ADIs and authorised NOHCs”.

Note: The heading to section 11A is altered by inserting “also” after “may”.

51 Section 11B

Omit “the Reserve Bank”, substitute “APRA”.

Note: The heading to section 11B is altered by omitting “**Reserve Bank**” and substituting “**APRA**”.

52 Section 11B

Omit “banks” (wherever occurring), substitute “ADIs and authorised NOHCs”.

53 After Division 1A of Part II

Insert:

Division 1BA—APRA’s power to issue directions

Subdivision A—Directions other than directions to enforce certified industry liquidity contracts

11CA APRA may give directions in certain circumstances

- (1) APRA may give a body corporate that is an ADI or an authorised NOHC a direction of a kind specified in subsection (2) if APRA considers that:
 - (a) the body corporate has contravened a prudential regulation or a prudential standard; or
 - (b) if the body corporate is an ADI—the direction is necessary in the interests of depositors of the ADI; or
 - (c) if the body corporate is an authorised NOHC—the direction is necessary in the interests of depositors of any ADI that is a subsidiary of the body corporate.

The direction is to be by notice in writing given to the body corporate.

- (2) The kinds of direction the body corporate may be given are as follows:
 - (a) a direction to comply with the whole or a part of a prudential regulation or a prudential standard;
 - (b) a direction to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;
 - (c) a direction to do all or any of the following:

- (i) remove a director, secretary, executive officer or employee of the body corporate from office;
 - (ii) ensure a director, secretary, executive officer or employee of the body corporate does not take part in the management or conduct of the business of the body corporate except as permitted by APRA;
 - (iii) appoint a person or persons as a director, secretary, executive officer or employee of the body corporate for such term as APRA directs;
- (d) a direction to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;
- (e) a direction not to give any financial accommodation to any person;
- (f) a direction not to accept the deposit of any amount;
- (g) a direction not to borrow any amount;
- (h) a direction not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;
- (i) a direction not to repay any amount paid on shares;
- (j) a direction not to pay a dividend on any shares;
- (k) a direction not to repay any money on deposit or advance;
- (l) a direction not to pay or transfer any amount to any person, or create an obligation (contingent or otherwise) to do so;
- (m) a direction not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
- (n) any other direction as to the way in which the affairs of the body corporate are to be conducted or not conducted.

A direction under paragraph (l) not to pay any amount does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

- (3) The direction 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 direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (5) The direction has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the direction if, at the

time of revocation, it considers that the direction is no longer necessary or appropriate.

- (6) In this section, the expressions *director*, *secretary*, *executive officer* and *employee* have the same meanings as they have in the Corporations Law.

Note: For further information about directions, see Subdivision C.

Subdivision B—Directions to enforce certified industry liquidity contracts

11CB APRA may certify an industry liquidity contract

APRA may certify an industry liquidity contract if all of the parties to the contract make a written request to APRA that the contract be certified and APRA considers it appropriate to certify the contract. The certification must be by notice in writing to the parties to the contract.

11CC APRA may direct parties to an industry liquidity contract to comply with the contract

- (1) APRA may direct any ADI that is a party to an industry liquidity contract that is certified under section 11CB to carry out, or cease to carry out, specified acts if APRA considers:
- (a) that carrying out, or ceasing to carry out, those acts, is necessary in order for the terms of the contract to be fulfilled; and
 - (b) that the direction is in the interests of the depositors of one or more of the ADIs that are parties to the contract.
- The direction must be by notice in writing to the ADI.
- (2) The direction may deal with the time by which, or period during which, it is to be complied with.
- (3) The ADI has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (4) The direction has effect until:
- (a) APRA revokes the direction by notice in writing to the ADI (see subsection (5)); or

- (b) APRA revokes the certification of the industry liquidity contract by notice in writing to the ADIs that are parties to it (see subsection (6)).
- (5) APRA may revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.
- (6) APRA may revoke the certification of the industry liquidity contract if it considers that it is appropriate to do so for any reason.

Subdivision C—General provisions relating to all directions

11CD Direction not grounds for denial of obligations

- (1) Subject to subsections (2) and (3), the fact that an ADI or an authorised NOHC is subject to a direction by APRA under Subdivision A or B is not a ground for any other party to a contract to which the ADI or NOHC is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.
- (2) If an ADI or an authorised NOHC is prevented from fulfilling its obligations under a contract because of a direction under Subdivision A, other than a direction under paragraph 11CA(2)(k), the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the ADI or authorised NOHC under the contract.
- (3) A party to a contract to which subsection (2) applies may apply to the Federal Court of Australia for an order relating to the effect on the contract of a direction under Subdivision A. The order may deal with matters including (but not limited to):
 - (a) requiring a party to the contract to fulfil an obligation under the contract despite subsection (2);
 - (b) obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under Subdivision A.

11CE Supply of information about issue and revocation of directions

Power to publish notice of directions in Gazette

- (1) APRA may publish in the *Gazette* notice of any direction made under Subdivision A or B. The notice must include the name of the ADI or authorised NOHC given the direction and a summary of the direction.

Requirement to publish notice of revocation of certain directions in Gazette

- (2) If APRA publishes notice of a direction made under Subdivision A or B and then later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about direction to Treasurer and Reserve Bank

- (3) If the Treasurer or the Reserve Bank requests APRA to provide information about:
 - (a) any directions under Subdivision A or B in respect of a particular ADI or authorised NOHC; or
 - (b) any directions made during a specified period under Subdivision A or B in respect of any ADIs or authorised NOHCs;

APRA must comply with the request.

Power to inform Treasurer and Reserve Bank of direction

- (4) APRA may provide any information that it considers appropriate to the Treasurer or the Reserve Bank about any directions, or revocations of directions, made under Subdivision A or B, in respect of any ADI or authorised NOHC, at any time.

Requirement to inform Treasurer and Reserve Bank of revocation of direction if informed of making of direction

- (5) If APRA provides the Treasurer or the Reserve Bank with information about a direction and then later revokes the direction, APRA must notify that person of the revocation of the direction as

soon as practicable after the revocation. Failure to notify the person does not affect the validity of the revocation.

11CF Secrecy requirements

Information relating to directions and revocations of directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette* under section 11CE.

11CG Non-compliance with a direction

- (1) An ADI or an authorised NOHC must comply with any direction given to it under Subdivision A or Subdivision B.
- (2) An officer of an ADI or of an authorised NOHC must take reasonable steps to ensure that the ADI or NOHC complies with any direction given to it under Subdivision A or Subdivision B if the officer's duties include ensuring that the ADI or NOHC complies with the direction, or with a class of directions that includes the direction.
- (3) For the purposes of this section:

officer, in relation to an ADI or an authorised NOHC includes:

- (a) a director, secretary, executive officer or employee of the ADI or NOHC; and
- (b) a receiver and manager, appointed under a power contained in an instrument, of property of the ADI or NOHC; and
- (c) an official manager, or deputy official manager, of the ADI or NOHC; and
- (d) a liquidator of the ADI or NOHC appointed in a voluntary winding-up of the ADI; and
- (e) a trustee or other person administering a compromise or arrangement made between the ADI or NOHC and other persons.

Expressions used in the definition of *officer* have the same meanings as they have in the Corporations Law.

54 Division 1B of Part II (heading)

Repeal the heading, substitute:

Division 1B—Provisions relating to certain ADIs

55 Section 11D (definition of *foreign bank*)

Repeal the definition, substitute:

foreign ADI does not include the Bank of China.

56 Section 11E

Omit “bank” (wherever occurring), substitute “ADI”.

Note: The heading to section 11E is altered by omitting “banks” and substituting “ADIs”.

57 Subsection 11E(2)

Omit “the Governor of the Reserve Bank”, substitute “APRA”.

58 Section 11F

Omit “bank” (wherever occurring), substitute “ADI”.

Note: The heading to section 11F is altered by omitting “banks” and substituting “ADIs”.

59 Section 11F

Omit “bank’s”, substitute “ADI’s”.

60 After the heading to Division 2 of Part II

Insert:

Subdivision A—General provisions relating to depositor protection

61 Section 12

Omit “the Reserve Bank”, substitute “APRA”.

Note: The heading to section 12 is altered by omitting “Reserve Bank” and substituting “APRA”.

62 Section 12

Omit “banks”, substitute “ADIs”.

63 Sections 13, 14, 15 and 16

Repeal the sections, substitute:

13 ADI to supply information to APRA

APRA's power to obtain information

- (1) APRA may, by notice in writing to an ADI, require the ADI to supply it, within the time specified in the notice, with such information relating to the ADI's financial stability as is specified in the notice.
- (2) The information supplied in compliance with a requirement under subsection (1) must, if required by the notice, be verified by a statutory declaration made by an officer of the ADI concerned who is authorised by the ADI to make the declaration.

Information to be supplied if ADI unable, or likely to be unable, to meet obligations

- (3) An ADI must immediately inform APRA if the ADI considers that it is likely to become unable to meet its obligations, or is about to suspend payment.

APRA's power to appoint an investigator if information not provided

- (4) APRA may appoint a person to investigate the affairs of an ADI if the ADI fails to comply with a requirement to provide information under this section.

Interpretation

- (5) In this section:
officer, in relation to an ADI, has the same meaning as in section 11CG.

13A Consequences of inability or failure of ADI to meet obligations

Appointment of investigator or administrator or control by APRA

- (1) APRA may appoint a person to investigate the affairs of an ADI, take control of the ADI's business or appoint an administrator to take control of the ADI's business if:

- (a) the ADI informs APRA that the ADI considers that it is likely to become unable to meet its obligations or that it is about to suspend payment; or
- (b) APRA considers that the ADI is likely to become unable to meet its obligations or is about to suspend payment; or
- (c) the ADI becomes unable to meet its obligations or suspends payment.

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

- (2) Throughout this Subdivision and Subdivision B, the term **ADI statutory manager** is used. It refers to the entity in control of an ADI's business under this Subdivision. That entity will be either APRA or an administrator of an ADI's business appointed by APRA.

Australian assets of ADI to be available to meet deposit liabilities

- (3) If an ADI becomes unable to meet its obligations or suspends payment, the assets of the ADI in Australia are to be available to meet that ADI's deposit liabilities in Australia in priority to all other liabilities of the ADI.
- (4) An ADI must hold assets (excluding goodwill) in Australia of a value that is equal to or greater than the total amount of its deposit liabilities in Australia unless it is authorised by APRA to hold assets of a lesser value.

13B Investigators—ADI must provide information and facilities

- (1) If APRA has appointed a person to investigate the affairs of an ADI under section 13 or 13A, the ADI must give the person access to its books, accounts and documents and must give the person such information and facilities as the person requires to conduct the investigation.
- (2) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by investigators under this Act.

13C ADI statutory managers—termination of control*Conditions necessary for termination of control*

- (1) If APRA assumes control of an ADI's business or appoints an administrator of an ADI's business, APRA must ensure that either it or an administrator of the ADI's business has control of the ADI's business until:
- (a) the following conditions are satisfied:
 - (i) the ADI's deposit liabilities in Australia have been repaid or APRA is satisfied that suitable provision has been made for their repayment; and
 - (ii) APRA considers that it is no longer necessary for it or an administrator to remain in control of the ADI's business; or
 - (b) APRA considers that the ADI is insolvent and is unlikely to be returned to solvency within a reasonable time, and APRA has applied for the ADI to be wound up under the Corporations Law (see section 14F).

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 an ADI's business by APRA and an administrator or between administrators.

Events to precede termination

- (2) Before making an ultimate termination of control by an ADI statutory manager of an ADI's business, APRA must:
- (a) ensure that directors of the ADI have been appointed or elected under the ADI's constitution at a meeting called by the ADI statutory manager in accordance with the ADI's constitution; or
 - (b) appoint directors of the ADI by instrument in writing; or
 - (c) ensure that a liquidator for the ADI has been appointed.

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 an ADI's business by an ADI statutory manager.

- (4) If the ADI 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 ADI statutory manager's control of the ADI's business. If the director was appointed by APRA, the director holds office until the ADI'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 ADI's constitution, the constitution governs the appointment.

Note: For further information about what happens when an ADI statutory manager is in control of an ADI's business, see Subdivision B.

64 At the end of Division 2 of Part II

Add:

Subdivision B—Provisions dealing with control of an ADI's business by an ADI statutory manager

14A ADI statutory manager's powers and functions

ADI statutory manager's powers and functions include powers and functions of board

- (1) An ADI statutory manager has the powers and functions of the members of the board of directors of the ADI (collectively and individually), including the board's powers of delegation.

Note: When an ADI statutory manager takes control of the business of an ADI, the directors of the ADI cease to hold office (see section 15).

ADI statutory manager's power to obtain information

- (2) 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. The person must comply with the requirement.

Penalty: Imprisonment for 12 months.

- (3) 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.
- (4) 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.

ADI statutory manager's power to sell whole or part of ADI's business

- (5) An ADI statutory manager may sell or otherwise dispose of the whole or any part of the ADI's business. The sale or disposal may occur on any terms and conditions that the ADI statutory manager considers appropriate.

Interpretation

- (6) In this section:
- officer**, in relation to an ADI, has the same meaning as in section 11CG.

14B Administrator in control—additional powers to recommend action by APRA

Types of recommendation

- (1) An administrator of an ADI'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 in respect of the ADI;
 - (b) if the administrator considers that the ADI is insolvent and could not be restored to solvency within a reasonable period:
 - (i) that APRA apply under section 14F to the Federal Court of Australia for an order that the ADI be wound up; or
 - (ii) that APRA revoke the ADI's section 9 authority.

Effect of recommendation

- (2) If an administrator of an ADI's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

14C ADI statutory manager's liabilities and duties

Liability for loss due to fraud etc.

- (1) If an ADI incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act by the ADI statutory manager, the ADI statutory manager is liable for the loss.

Other losses

- (2) An ADI statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, negligence or wilful failure to comply with this Act. If the ADI statutory manager is an administrator of the ADI's business, the administrator must provide details of the loss in a written report to APRA. However, failure to do so does not make the administrator liable for the loss.

Subsections (1) and (2) apply instead of general indemnity provisions

- (3) The question whether an ADI statutory manager is liable for a loss is to be determined in accordance with subsections (1) and (2), rather than in accordance with section 70A of this Act or section 58 of the *Australian Prudential Regulation Authority Act 1998*.

ADI statutory manager not liable under section 588G of the Corporations Law

- (4) An ADI statutory manager is not to be taken to be a director for the purposes of section 588G of the Corporations Law of a State or internal Territory.

Signpost to secrecy obligations

- (5) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by ADI statutory managers under this Act.

14D Administrator in control—additional duties

Duty to report to APRA on request

- (1) A person who is an administrator of an ADI's business must give to APRA a written report showing how the control of the ADI'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 an ADI's business must give to APRA a written report showing how the control of the ADI'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 an ADI's business a direction relating to the control of the ADI'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 ADI's business and request APRA to alter the direction.
- (4) If an administrator of an ADI'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.

14E Termination of administrator's appointment

- (1) If an administrator of an ADI's business contravenes a requirement of this Division, APRA may terminate the administrator's appointment.
- (2) The terms and conditions of the administrator's appointment may provide for termination in circumstances in addition to those mentioned in subsection (1).
- (3) This section has effect subject to section 13C.

14F 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:
 - (a) an ADI statutory manager is in control of the ADI's business; and
 - (b) APRA considers that the ADI is insolvent and could not be restored to solvency within a reasonable period.
- (2) The winding up of the ADI is to be conducted in accordance with the Corporations Law of a State or internal Territory under which the ADI is incorporated or is taken to be incorporated.

15 Effect on directors of ADI statutory manager taking control of an ADI's business

- (1) The directors of an ADI cease to hold office when an ADI statutory manager takes control of the ADI's business.

Note: For the definition of *director*, see subsection (4).

- (2) A director of an ADI must not be appointed or elected while an ADI statutory manager is in control of the ADI's business unless the appointment is made under subsection 13C(2).
- (3) If a person who ceased to hold office under subsection (1), or a purported director of the ADI appointed or elected in contravention of subsection (2), purports to act in relation to the ADI's business while an ADI statutory manager has control of the ADI's business, those acts are invalid and of no effect.
- (4) For the purposes of this section, *director* has the same meaning as it has in the Corporations Law.

15A Effect on external administrator of ADI statutory manager taking control of an ADI's business

- (1) The appointment of an external administrator of an ADI is terminated when an ADI statutory manager takes control of the ADI's business.

Note: For the definition of *external administrator*, see subsection (5).

- (2) An external administrator of an ADI must not be appointed while an ADI statutory manager is in control of the ADI's business unless APRA approves the appointment.
- (3) If a person who ceased to be the external administrator of an ADI under subsection (1), or a purported external administrator of the ADI appointed in contravention of subsection (2), purports to act in relation to the ADI's business while an ADI statutory manager has control of the ADI's business, those acts are invalid and of no effect.
- (4) APRA must inform the external administrator of an ADI that an ADI statutory manager will take control of the ADI's business as soon as possible after the decision that an ADI statutory manager will take control of the ADI's business is made. However, failure

to inform the external administrator does not affect the operation of this section.

- (5) For the purposes of this section, *external administrator* means any of the following:
- (a) a liquidator or provisional liquidator;
 - (b) a receiver, manager, managing controller, receiver and manager or other controller (other than an ADI statutory manager);
 - (c) a voluntary administrator or administrator of a deed of a company arrangement or a scheme manager.

Expressions used in this subsection have the same meanings as they have in the Corporations Law.

15B Effect on legal proceedings of ADI statutory manager taking control of an ADI's business

- (1) A person cannot begin or continue a proceeding in a court against an ADI while an ADI statutory manager is in control of the ADI's business unless:
- (a) the court grants leave on the ground that the person would be caused hardship if leave were not granted; or
 - (b) APRA consents to the proceedings beginning or continuing.
- (2) A person intending to apply for leave of the court under paragraph (1)(a) must give APRA at least 10 days notice of the intention to apply. APRA may apply to the court to be joined as a party to the proceedings for leave.
- (3) In this section, a reference to a proceeding against an ADI includes a reference to a cross-claim or third party claim against an ADI.

15C ADI statutory manager being in control not grounds for denial of obligations

The fact that an ADI statutory manager is in control of an ADI's business is not a ground for any other party to a contract to which the ADI is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

16 Costs of statutory management

- (1) APRA's costs (including costs in the nature of remuneration and expenses) of being in control of an ADI's business, or of having an administrator in control of an ADI's business, are payable from the ADI's funds and are a debt due to APRA.
- (2) Despite anything contained in any law relating to the winding-up of companies, but subject to subsection 13A(3), debts due to APRA by an ADI under subsection (1) have priority in a winding-up of the ADI over all other unsecured debts.

16A 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 ADI statutory managers in respect of specified ADIs 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 an ADI statutory manager takes control of an ADI'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 ADI 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 an ADI's business; or
 - (b) appoints an administrator of an ADI's business; or
 - (c) makes an ultimate termination of control in respect of an ADI'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.

65 After Division 2 of Part II

Insert:

**Division 2A—Auditors of ADIs and authorised NOHCs
and their subsidiaries**

**16B Requirements for auditors and people who have been auditors
to give information to APRA**

Duty to give information when required

- (1) APRA may, by notice in writing, require a person who is, or who has been, an auditor of:
- (a) an ADI; or
 - (b) an authorised NOHC; or
 - (c) a subsidiary of an ADI or authorised NOHC;
- to provide information about the ADI, authorised NOHC or subsidiary to APRA if APRA considers that the provision of the information will assist APRA in performing its functions under this Act. The person must comply with the requirement.

Penalty: Imprisonment for 6 months.

Additional duty to give information about ADIs

- (2) A person who is, or who has been, an auditor of an ADI must inform APRA if the person has reasonable grounds for believing that:
- (a) the ADI is insolvent, or there is a significant risk that the ADI will become insolvent; or
 - (b) the ADI has failed to comply with:
 - (i) a prudential standard; or
 - (ii) a requirement of this Act or the regulations; or
 - (iii) a direction under Division 1BA of Part II; or
 - (iv) a condition of its banking authority; or
 - (c) an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI.

Penalty: Imprisonment for 6 months.

Additional duty to give information about authorised NOHCs

- (3) A person who is, or who has been, an auditor of an authorised NOHC must inform APRA if the person has reasonable grounds for believing that:
- (a) the NOHC is insolvent, or there is a significant risk that the NOHC will become insolvent; or
 - (b) the NOHC has failed to comply with:
 - (i) a prudential standard; or
 - (ii) a requirement of this Act or the regulations; or
 - (iii) a direction under Division 1BA of Part II; or
 - (iv) a condition of its NOHC authority; or
 - (c) an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC.

Penalty: Imprisonment for 6 months.

Additional duty to give information about subsidiaries of ADIs or authorised NOHCs

- (4) A person who is, or who has been, an auditor of a subsidiary of an ADI or an authorised NOHC (other than a subsidiary that itself is an ADI or an authorised NOHC) must inform APRA if the person has reasonable grounds for believing that:
- (a) the subsidiary is insolvent, or there is a significant risk that the subsidiary will become insolvent; or
 - (b) the subsidiary has failed to comply with a requirement of this Act or the regulations; or
 - (c) an existing or proposed state of affairs may materially prejudice the interests of depositors of:
 - (i) if the subsidiary is a subsidiary of an ADI—the ADI; or
 - (ii) if the subsidiary is a subsidiary of an authorised NOHC—any ADI that is a subsidiary of the NOHC.

Penalty: Imprisonment for 6 months.

Self-incrimination

- (5) An individual is not excused from complying with a requirement under this section to give information on the ground that doing so

would tend to incriminate the individual or make the individual liable to a penalty.

(6) If:

- (a) before giving information in compliance with a requirement under this section, 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.

16C Auditor may provide information to APRA

A person who is, or who has been, an auditor of:

- (a) an ADI; or
- (b) an authorised NOHC; or
- (c) a subsidiary of an ADI or authorised NOHC;

may provide information about the ADI, authorised NOHC or subsidiary to APRA if the person considers that the provision of that information to APRA will assist APRA in performing its functions under this Act.

66 Subsections 19(1) and (2)

Omit “a bank’s”, substitute “an ADI’s”.

Note: The heading to section 19 is altered by omitting “banks” and substituting “ADIs”.

67 Subsections 19(1) and (2)

Omit “the bank’s”, substitute “the ADI’s”.

68 Subsection 19(3)

Omit “a bank”, substitute “an ADI”.

69 Subsection 19(3)

Omit “the bank”, substitute “the ADI”.

70 Subsections 20(1) and (3)

Omit “banks”, substitute “ADIs”.

71 Section 21

Omit “bank”, substitute “ADI”.

72 Subsection 22(1)

Omit “A bank”, substitute “An ADI”.

Note: The heading to section 22 is altered by omitting “**Banks**”, and substituting “**ADIs**”.

73 Subsection 22(1)

Omit “the bank”, substitute “the ADI”.

74 Subsection 22(1)

Omit “the bank’s” (wherever occurring), substitute “the ADI’s”.

75 Subsection 22(2)

Omit “a bank”, substitute “an ADI”.

76 Subsection 22(2)

Omit “the bank”, substitute “the ADI”.

77 Subsection 23(1)

Omit “a bank”, substitute “an ADI”.

78 Subsection 23(1)

Omit “the bank”, substitute “the ADI”.

79 Subsection 23(2)

Omit “A bank”, substitute “An ADI”.

80 Paragraphs 23(2)(a) and (b)

Omit “the bank”, substitute “the ADI”.

81 Subsection 24(1)

Omit “a bank”, substitute “an ADI”.

82 Subsection 24(1)

Omit “that bank’s”, substitute “the ADI’s”.

83 Subsection 24(2)

Omit “bank”, substitute “ADI”.

84 Section 25

Omit “a bank”, substitute “an ADI”.

85 Section 25

Omit “the bank” (wherever occurring), substitute “the ADI”.

86 Division 3 of Part II

Repeal the Division.

87 Section 32 (definitions of *excess receipts of foreign currency and surplus foreign currency*)

Omit “a bank”, substitute “an ADI”.

88 Section 32 (definitions of *excess receipts of foreign currency and surplus foreign currency*)

Omit “that bank’s”, substitute “that ADI’s”.

89 Subsection 33(1)

Omit “bank”, substitute “ADI”.

90 Subsection 33(1)

Omit “bank’s”, substitute “ADI’s”.

91 Subsection 33(2)

Omit “bank”, substitute “ADI”.

92 Subsection 33(3)

Omit “a bank”, substitute “an ADI”.

93 Subsection 33(3)

Omit “that bank”, substitute “that ADI”.

94 Subsection 33(4)

Omit “A bank”, substitute “An ADI”.

95 Subsection 33(4)

Omit “the bank”, substitute “the ADI”.

96 Subsection 33(5)

Omit “A bank”, substitute “An ADI”.

97 Subsection 33(5)

Omit “bank’s” (wherever occurring), substitute “ADI’s”.

98 Subsection 33(6)

Omit “bank’s”, substitute “ADI’s”.

99 Subsection 33(6)

Omit “a bank”, substitute “an ADI”.

100 Section 34

Omit “a bank”, substitute “an ADI”.

101 Section 34

Omit “the bank”, substitute “the ADI”.

102 Section 34

Omit “that bank”, substitute “the ADI”.

103 Section 35

Omit “a bank”, substitute “an ADI”.

104 Paragraph 35(a)

Omit “that bank”, substitute “the ADI”.

105 Subsections 36(1) and (2)

Omit “banks”, substitute “ADIs”.

106 Subsections 36(1) and (2)

Omit “a bank”, substitute “an ADI”.

107 Paragraph 36(3)(b)

Omit “a bank”, substitute “an ADI”.

108 Part IIA (heading)

Repeal the heading, substitute:

Part IIA—ADI mergers (operation of State and Territory Laws)

109 Subsections 38A(1) and (2)

Omit “the Third Schedule”, substitute “Schedule 1”.

110 Subsection 38A(2)

After “Commonwealth,”, insert “of the Australian Capital Territory,”.

111 Subsection 38A(3)

Omit “bodies corporate that carry on the general business of banking”, substitute “ADIs”.

112 Paragraph 38A(4)(b)

After “the Commonwealth,”, insert “of the Australian Capital Territory,”.

113 Paragraphs 50(a) and (b)

Omit “banks”, substitute “ADIs”.

114 Paragraph 50(c)

Omit “a bank”, substitute “an ADI”.

115 Paragraphs 51(1)(a), (b), (c) and (f)

Omit “the Reserve Bank”, substitute “APRA”.

116 At the end of paragraphs 51(1)(a), (b), (c) and (d)

Add “and”.

117 Paragraph 51(1)(a)

Omit “a bank”, substitute “an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC,”.

Note: The heading to section 51 is altered by omitting “**banks**” and substituting “**ADIs, authorised NOHCs and their subsidiaries**”.

118 Paragraph 51(1)(b)

Omit “a bank”, substitute “an ADI”.

119 After paragraph 51(1)(b)

Insert:

(ba) requiring:

- (i) an authorised NOHC; or
 - (ii) a subsidiary of an ADI or an authorised NOHC;
- to give information to APRA in respect of the NOHC or subsidiary; and

120 Paragraph 51(1)(d)

Omit “bank”, substitute “ADI, authorised NOHC or subsidiary”.

121 Paragraph 51(1)(e)

Omit “the Treasurer to exempt a bank”, substitute “APRA to exempt an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC,”.

122 Paragraph 51(1)(e)

After “paragraph (b)”, insert “or (ba)”.

123 Paragraph 51(1)(f)

Omit “a bank”, substitute “an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC,”.

124 Subparagraph 51(1)(f)(iv)

Omit “the bank”, substitute “the ADI, authorised NOHC or subsidiary”.

125 Subsection 51(2)

Omit “bank”, substitute “ADI”.

126 Section 52

Repeal the section.

127 Section 61

Repeal the section, substitute:

61 APRA may conduct investigations

- (1) APRA may appoint a person to investigate and report on prudential matters in relation to a body corporate that is an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, if it is satisfied that such a report is necessary. The appointment must be in writing and must specify the prudential matters that are to be the subject of the investigation and report.
- (2) If APRA has appointed a person under this section to investigate and report on prudential matters in relation to a body corporate, the body corporate must give the person access to its books, accounts and documents and must give the person such information and facilities as the person requires to conduct the investigation and produce the report.
- (3) Nothing in this section is intended to limit the operation of any other provision of this Act.

128 Section 62

Repeal the section, substitute:

62 Supply of information

- (1) APRA may require persons to provide information as follows:
 - (a) an ADI may be required to give APRA information in respect of the ADI;
 - (b) an authorised NOHC may be required to give APRA information in respect of the NOHC;
 - (c) a subsidiary of an ADI or an authorised NOHC may be required to give APRA information in respect of the subsidiary;
 - (d) any other person who carries on any banking business in Australia may be required to give APRA information in connection with the person's banking business.

The person required to provide the information must comply with the requirement.

- (2) A requirement under subsection (1) must not require information to be given with respect to the affairs of an individual customer of an ADI unless the information is in respect of prudential matters relating to the ADI.

(3) An individual is not excused from complying with a requirement under subsection (1) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(4) If:

(a) before giving information in compliance with a requirement under subsection (1), 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.

(5) Nothing in section 51 restricts the powers conferred by this section.

129 Subsection 63(1)

Omit “a bank (other than a foreign bank) specified in the First Schedule”, substitute “an ADI (other than a foreign ADI)”.

Note: The heading to section 63 is altered by omitting “banks” and substituting “ADIs”.

130 Paragraphs 63(1)(a) and (b)

Omit “bank”, substitute “ADI”.

131 Subsection 63(4)

Omit “bank” (wherever occurring), substitute “ADI”.

132 At the end of section 63

Add:

(5) The Treasurer may, in writing, delegate all or any of his powers under this section to:

(a) APRA, an APRA board member or an APRA staff member;
or

(b) an officer of the Department.

133 Section 64

Repeal the section.

134 Subsection 65(1)

Omit “a bank”, substitute “an ADI or an authorised NOHC”.

Note: The heading to section 65 is altered by omitting “**Banks**” and substituting “**ADIs and authorised NOHCs**”.

135 Subsection 65(1)

Omit “the bank” (wherever occurring), substitute “the ADI or NOHC”.

136 Subsection 65(2)

Omit “the bank”, substitute “the ADI or NOHC”.

137 Subsection 65(2)

Omit “the Reserve Bank”, substitute “APRA”.

138 Subsection 65(2)

Omit “that bank”, substitute “the ADI or NOHC”.

139 Subsection 65(3)

Repeal the subsection, substitute:

- (3) The provisions of Subdivision B of Division 2 of Part II have effect, so far as they are applicable, as if they also extended to APRA being in control of the business of the ADI or NOHC under subsection (2) of this section, and as if they covered authorised NOHCs in the same way as they cover ADIs.

140 Subsection 65(4)

Omit “the Reserve Bank” (wherever occurring), substitute “APRA”.

141 Subsection 65(4)

Omit “a bank in pursuance of”, substitute “the ADI or NOHC under”.

142 Subsection 65(4)

Omit “that bank” (wherever occurring), substitute “the ADI or NOHC”.

143 Subsections 66(1) and (2)

Repeal the subsections, substitute:

- (1) Except with the consent of APRA, a person must not, in Australia, assume or use a restricted word or expression in relation to a financial business carried on by the person (whether or not in Australia).

Note: For the meanings of *restricted word or expression*, *assume or use* and *financial business*, see subsection (4).

- (1A) Subsection (1) does not prevent an ADI from using the word **banking** in referring to the fact that it has been granted an authority under this Act.

Note: For example, an ADI may, in its letterhead, refer to itself as being authorised under the *Banking Act 1959* to carry on banking business.

- (1B) A consent may be expressed to apply to a particular person or to persons included in a class of persons.

- (2) APRA may, at any time:

- (a) impose conditions, or additional conditions, on a consent; or
- (b) vary or revoke conditions imposed on a consent; or
- (c) revoke a consent.

- (2A) The form of the granting of a consent, or the taking of action under subsection (2) in relation to a consent, is to be as follows:

- (a) if the consent applies to a particular person—notice in writing served on the person;
- (b) if the consent applies to a class of persons—notice in writing published in the *Gazette*.

Note: The heading to section 66 is replaced by the heading “**Restriction on use of certain words and expressions**”.

144 Subsection 66(4)

Repeal the subsection, substitute:

- (4) In this section:

- (a) a reference to a restricted word or expression is a reference to:
 - (i) the word **bank**, **banker** or **banking**; or
 - (ii) the expression **building society**, **credit union** or **credit society**; or
 - (iii) any other word or expression specified in a determination in force under subsection (5); or

- (iv) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and
- (b) a reference to a word or expression being assumed or used includes a reference to the word or expression being assumed or used:
 - (i) as part of another word or expression; or
 - (ii) in combination with other words, letters or other symbols; and
- (c) a reference to a financial business is a reference to a business that:
 - (i) consists of, or includes, the provision of financial services; or
 - (ii) relates, in whole or in part, to the provision of financial services.

145 At the end of section 66

Add:

- (5) APRA may, in writing, determine that a specified word or expression is to be a restricted word or expression for the purposes of this section. A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

146 After section 66

Insert:

66A Restriction on use of expressions *authorised deposit-taking institution* and *ADI*

- (1) A person who is not an ADI must not, in Australia, assume or use the expression *authorised deposit-taking institution*, or *ADI*, in relation to a financial business carried on by the person (whether or not in Australia).

Note: For the meanings of *assume or use* and *financial business*, see subsections (2) and (3).

- (2) In this section:
 - (a) a reference to an expression being assumed or used includes a reference to the expression being assumed or used:
 - (i) as part of another expression; or

- (ii) in combination with other words, letters or other symbols; and
- (b) a reference to a financial business is a reference to a business that:
 - (i) consists of, or includes, the provision of financial services; or
 - (ii) relates, in whole or in part, to the provision of financial services.
- (3) However, this section does not prohibit the use of the letters ADI as part of another word.

Note: For example, the letters *adi* appear in the word *traditional*. Use of the word *traditional* is not prohibited by this section.

147 Subsection 67(1)

Omit “the Treasurer”, substitute “APRA”.

148 Subsection 67(1)

Omit “a bank”, substitute “an ADI”.

149 Subsection 67(2)

Omit “The Treasurer”, substitute “APRA”.

150 After section 69

Insert:

69AA Powers about money of depositors who have died

- (1) If a depositor of an ADI dies, the ADI may apply an amount not exceeding \$15,000 held by the ADI that was deposited or paid up on a withdrawable share by the deceased person:
 - (a) in payment of the deceased person’s funeral expenses or debts; or
 - (b) in payment to the executor of the deceased person’s will; or
 - (c) in payment to anyone else who is, in the ADI’s opinion, entitled to the amount, having regard to the laws of probate and accepted practice for the administration of deceased estates.

The amount may be applied without production of probate, of the will or letters of administration of the estate.

- (2) No action lies against an ADI for acting, or failing to act, under subsection (1).

151 At the end of subsection 69A(3) (after the note)

Add:

Example: A body corporate is convicted of contravening section 8. The court may impose a fine of up to 1,000 penalty units (which is 5 times the maximum penalty applicable in the table).

152 Section 69A (table)

Repeal the table, substitute:

Table of offences			
Item	Column 1 (continuing offences)	Column 2 (ordinary offences)	Column 3 (penalty level)
1	section 7		A
2	section 8		A
3	subsection 9(6)		A
4		subsection 10(3)	B
5	subsection 11(3)		A
6	subsection 11AA(5)		A
7	subsection 11CG(1)		B
8	subsection 11CG(2)		B
9		subsection 11E(2)	B
10		subsection 13(3)	A
11	subsection 13A(4)		A
12	section 13B		B
13	subsection 33(4)		A
14		subsection 36(1) or (2)	A
15		section 41	A
16		subsection 42(1) or (2)	B
17		subsection 45(1) or (3)	A
18		section 46	A
19	subsection 61(2)		B
20	subsection 62(1)		A
21		section 63	A

Table of offences			
Item	Column 1 (continuing offences)	Column 2 (ordinary offences)	Column 3 (penalty level)
22	section 66		B
23	subsection 66A(1)		B
24	section 67		B
25		subsection 69(10)	B

153 Section 69D

Omit “Section 79A of the *Reserve Bank Act 1959*”, substitute “Part 6 of the *Australian Prudential Regulation Authority Act 1998*”.

154 After section 69D

Insert:

69E Compensation for acquisition of property

(1) If:

- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay to the person compensation of a reasonable amount as agreed on between the Commonwealth and the person. If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

- (2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.
- (3) In this section:

acquisition of property and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

69F Severability

Act also has effect as provided in this section

- (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

References to a NOHC of an ADI

- (2) 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 NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;
 - (b) the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

References to a subsidiary of an ADI

- (3) 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 subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;
 - (b) this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;
 - (c) this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as

mentioned in paragraph (b) of the *banking business definition*.

References to a subsidiary of an authorised NOHC

- (4) 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 subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;
 - (b) this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the *banking business definition*;
 - (c) this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the *banking business definition*.

Interpretation

- (5) In this section:

banking business definition means the definition of banking business in subsection 5(1).

155 Section 70A

Repeal the section, substitute:

70A Indemnity

A person is not subject to any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in connection with the exercise of powers or performance of functions under this Act or in compliance with obligations imposed by this Act.

70B Act has effect despite the Corporations Law

This Act has effect despite any provision of the Corporations Law of a State or internal Territory.

156 Subsection 71(2)

Omit “the Reserve Bank functions relating to the supervision of banks”, substitute “APRA functions relating to the supervision of ADIs and NOHCs”.

157 Subsection 71(4)

Omit “the Reserve Bank”, substitute “APRA”.

158 The First Schedule

Repeal the Schedule.

159 The Third Schedule (heading)

Repeal the heading, substitute:

Schedule 1—State and Territory laws relating to bank mergers

Note: See section 38A.

Schedule 3—Repeal of the Banks (Shareholdings) Act 1972

1 The whole of the Act

Repeal the Act.

Schedule 4—Amendment of the Corporations Law set out in section 82 of the Corporations Act 1989

Part 1—Changing the administration of the Corporations Law

1 Section 9 (definition of ASC)

Repeal the definition, substitute:

ASIC means the Australian Securities and Investments Commission.

2 Section 9 (definition of *Advisory Committee*)

After “*Securities*”, insert “*and Investments*”.

3 Section 9 (paragraph (c) of the definition of *Board*)

After “*Securities*”, insert “*and Investments*”.

4 Section 9 (definition of *Commission*)

Omit “Australian Securities Commission”, substitute “Australian Securities and Investments Commission”.

5 Section 9 (definition of *Commission Act*)

After “*Securities*”, insert “*and Investments*”.

6 Section 9 (note to definition of *unclaimed money account*)

After “*Securities*”, insert “*and Investments*”.

7 Small business guide in Part 1.5

Omit “Australian Securities Commission Practice Notes”, substitute “Australian Securities and Investments Commission Practice Notes”.

8 Small business guide (paragraph 1.1)

Omit “Australian Securities Commission”, substitute “Australian Securities and Investments Commission”.

9 Paragraph 109Q(2)(c)

After “*Securities*”, insert “*and Investments*”.

10 Subsection 1339(1) (note)

After “*Securities*”, insert “*and Investments*”.

11 Subsections 1339(2) and (3)

After “*Securities*”, insert “*and Investments*”.

12 Subsection 1339(3) (note)

After “*Securities*”, insert “*and Investments*”.

Part 2—Changing references to “ASC” to “ASIC”

13 Amendment of the Corporations Law

The provisions of the Corporations Law specified in this Part are amended by omitting “The ASC” (wherever occurring) and “the ASC” (wherever occurring) and in both cases substituting “ASIC”.

Note 1: The headings to sections 170, 170A, 206F, 206J, 242A, 242B, 242C and 317 are altered by omitting “ASC” and substituting “ASIC”.

Note 2: The headings to subsections 206D(3), 206E(3), 216E(2), 216F(6) and 283C(7) are altered by omitting “ASC” and substituting “ASIC”.

14 Subsection 109X(3)

15 Subsection 111J(1)

16 Small business guide (paragraphs 1.1, 1.7, 3.2, 3.3, 3.8, 3.9, 4.1, 4.2, 4.3, 4.4, 5.1, 5.4 and 6.1, section 7 and paragraphs 9.3 and 11.6)

17 Note 1 to subsection 116(2)

18 Note to subsection 116(4)

19 Paragraph 168(1)(a)

20 Subsection 168(2)

21 Subsection 170(1)

22 Subsection 170A(1)

23 Table in subsection 206C(1)

24 Subsection 206D(3)

25 Subsections 206E(3) to (4)

26 Section 206F

27 Subsection 206G(2)

28 Section 206J

29 Table in section 206K (item relating to section 733)

30 Paragraph 216E(1)(d)

31 Subsection 216E(2)

32 Subsections 216F(3), (6), (8) and (10)

33 Subsection 216H(3)

34 Subsections 242(1) to (2)

35 Paragraphs 242(5)(b) and (6)(a) to (b)

36 Subsections 242(7) to (9)

37 Subsections 242A(1) to (2)

38 Section 242B (including the note to the section)

39 Subsections 242C(1) and (3)

40 Paragraph 283B(b)

41 Paragraph 283C(2)(b)

42 Note 2 to subsection 283C(3)

43 Subsection 283C(7)

44 Subsections 317(1) and (4)

45 Subsection 317B(2)

46 Paragraph 317B(3)(e)

47 Subsection 317B(4)

Schedule 5—Amendment of the Corporations Law set out in section 82 of the Corporations Act 1989 to take account of the Company Law Review Act 1998

Part 1—General amendments to take account of Schedule 1 to the Company Law Review Act 1998

1 Small business guide in Part 1.5

Omit “Australian Securities Commission Practice Notes”, substitute
“Australian Securities and Investments Commission Practice Notes”.

2 Paragraph 1.1 of the Small business guide in Part 1.5

Omit “Australian Securities Commission”, substitute “Australian
Securities and Investments Commission”.

3 Heading to Division 5 of Part 2M.3

Repeal the heading, substitute:

Division 5—Lodging reports with ASIC

4 Heading to Chapter 2N

Repeal the heading, substitute:

Chapter 2N—Annual return and lodgments with ASIC

5 Heading to Part 2N.2

Repeal the heading, substitute:

Part 2N.2—Lodgments with ASIC

6 Section 1362CH

Omit “The ASC’s”, substitute “ASIC’s”.

Part 2—Changing “ASC” to “ASIC” to take account of Schedule 1 to the Company Law Review Act 1998

7 Amendment of the Corporations Law

The provisions of the Corporations Law specified in this Part are amended by omitting “The ASC” (wherever occurring) and “the ASC” (wherever occurring) and in both cases substituting “ASIC”. This does not apply to the reference to the ASC Law in paragraph 1438(2)(a).

Note 1: The headings to sections 118, 130, 138, 143, 158, 160, 164, 165, 246F, 254X, 254Y, 257E, 294, 311, 319, 320, 347, 350, 351, 352, 601AB, 601AE, 601BD, 601BJ, 601DH and 1438 are altered by omitting “ASC” or “the ASC” and in both cases substituting “ASIC”.

Note 2: The headings to sections 159, 340, 341, 601AF and 601DJ are altered by omitting “ASC’s” and substituting “ASIC’s”.

Note 3: The headings to subsections 118(2), 172(2), 173(6), 256D(1), 257C(3), 257D(3), 260B(5), 601AA(3), 601AB(1), 601AD(2), 601AH(1) and (4), 601BD(2) and 1440(1) and (2) are altered by omitting “ASC” and substituting “ASIC”.

8 Small business guide in Part 1.5 (paragraphs 1.1, 1.10, 3.2 to 3.3, 3.7 to 3.9, 4.1 to 4.4 and 5.1, 5.4, sections 6 and 8 and paragraphs 10.3 and 12.6)

9 Subsections 113(3) to (4)

10 Subsection 117(1)

11 Subsections 118(1) to (2)

12 Subsection 129(2)

13 Subsections 130(1) to (2)

14 Subsection 136(5)

15 Section 138

16 Subsection 142(2)

- 17 Subsections 143(1) to (3) (including the note to subsection 143(1))**
- 18 Paragraph 145(2)(b)**
- 19 Subsection 145(3)**
- 20 Section 146**
- 21 Note to subsection 147(3)**
- 22 Subsections 150(1) to (2)**
- 23 Subsections 151(2) to (3)**
- 24 Subsections 152(1) to (3)**
- 25 Paragraph 157(1)(b)**
- 26 Subsections 157(2) to (3)**
- 27 Subsections 158(1) and (3) to (4)**
- 28 Subsections 159(1) to (2)**
- 29 Section 160**
- 30 Subsection 162(3)**
- 31 Subsection 163(1)**
- 32 Subsections 164(1) to (7) (including the note to subsection 164(7))**
- 33 Subsections 165(1), (3) to (5)**
- 34 Paragraph 172(1)(d)**
- 35 Subsection 172(2)**
- 36 Subsections 173(3), (6), (8) and (10)**

- 37 Subsection 175(3)**
- 38 Subsection 246C(5)**
- 39 Subsection 246D(6)**
- 40 Subsections 246F(1) and (3)**
- 41 Subsections 246G(2) and (4)**
- 42 Paragraph 247C(a)**
- 43 Paragraph 249A(5)(b)**
- 44 Subsection 249B(2)**
- 45 Subsections 250P(1) to (2) and (4)**
- 46 Paragraph 251A(5)(c)**
- 47 Paragraphs 251B(3)(b) and (4)(b)**
- 48 Paragraph 253M(3)(c)**
- 49 Paragraphs 253N(3)(b) and (4)(b)**
- 50 Notes 1 and 2 to subsection 254B(1)**
- 51 Subsection 254E(2)**
- 52 Subsection 254H(4)**
- 53 Subsection 254N(2)**
- 54 Subsections 254X(1) to (2)**
- 55 Note to subsection 254X(3)**
- 56 Section 254Y**
- 57 Subsections 256D(1) to (2)**
- 58 Subsection 256E(2)**

- 59 Paragraph 257B(7)(b)**
- 60 Subsection 257C(3)**
- 61 Subsections 257D(3) to (4)**
- 62 Section 257E**
- 63 Subsection 257F(2)**
- 64 Note to subsection 257H(3)**
- 65 Table item 3 in section 257J**
- 66 Subsection 259B(4)**
- 67 Subsection 259C(2)**
- 68 Subsection 259D(1)**
- 69 Paragraph 260A(1)(b)**
- 70 Subsections 260B(5) to (7)**
- 71 Table items 3 and 5 in section 285**
- 72 Subsections 289(2) to (3)**
- 73 Table item 4 in section 291**
- 74 Paragraph 292(2)(b)**
- 75 Subsection 294(1)**
- 76 Paragraph 302(c)**
- 77 Note 2 to section 302**
- 78 Section 311 (including the note to the section)**
- 79 Subsections 319(1) to (2)**
- 80 Paragraph 319(4)(e)**

- 81 Subsection 319(5)**
- 82 Section 320**
- 83 Subsection 321(1)**
- 84 Subsection 322(1)**
- 85 Subsection 339(1)**
- 86 Subsection 340(1)**
- 87 Paragraph 340(3)(c)**
- 88 Subsection 340(4)**
- 89 Subsection 341(1)**
- 90 Subsections 342(1) to (3)**
- 91 Subsections 345(1) to (3)**
- 92 Note to subsection 345(4)**
- 93 Subsection 346(2)**
- 94 Section 347**
- 95 Table item 9 in section 348**
- 96 Note to the table in section 348**
- 97 Section 350**
- 98 Subsections 351(1) to (2)**
- 99 Section 352**
- 100 Subsections 601AA(1) and (3) to (5)**
- 101 Subsections 601AB(1) to (5)**
- 102 Subsections 601AC(1) to (2)**

- 103 Subsections 601AD(2) to (4) (including the note to subsection 601AD(4))**
- 104 Subsections 601AE(1) to (5) (including the note to subsection 601AE(1))**
- 105 Section 601AF (including the note to the section)**
- 106 Subsections 601AH(1) to (2)**
- 107 Note to subsection 601AH(3)**
- 108 Subsections 601AH(4) to (5)**
- 109 Subsections 601BC(1), (6) and (9)**
- 110 Subsections 601BD(1) to (2)**
- 111 Subsections 601BJ(1) and (3)**
- 112 Subsections 601BL(1) to (2)**
- 113 Subsections 601DA(1) to (3)**
- 114 Note to subsection 601DC(3)**
- 115 Subsections 601DH(1) to (2) (including note 3 to subsection 601DH(2))**
- 116 Subsections 601DJ(1) and (3) to (4) (including the note to subsection 601DJ(4))**
- 117 Subsections 1362CJ(2) to (3)**
- 118 Table item 5 in section 1424**
- 119 Subsection 1427(6)**
- 120 Subsection 1432(2)**
- 121 Section 1435**

122 Subsections 1438(1) to (3)

123 Subsections 1440(1) to (2)

Part 3—General amendments to take account of Schedules 2 to 4 to the Company Law Review Act 1998

124 Section 9 (definition of *ASIC database*)

Repeal the definition.

125 Section 9

Insert

ASIC database means so much of the national companies database kept by ASIC as consists of:

- (a) some or all of a register kept by ASIC under this Law; or
 - (b) information set out in a document lodged under this Law;
- but does not include ASIC's document imaging system.

Part 4—Changing “ASC” to “ASIC” to take account of Schedules 2 to 4 to the Company Law Review Act 1998

126 Amendment of the Corporations Law

The provisions of the Corporations Law specified in this Part are amended by omitting “The ASC” (wherever occurring) and “the ASC” (wherever occurring) and in both cases substituting “ASIC”.

Note 1: The heading to section 242 is altered by omitting “ASC” or “the ASC”, and substituting “ASIC”.

Note 2: The headings to subsections 509(5) to (6) are altered by omitting “ASC” and substituting “ASIC”.

127 Section 9 (definition of *ACM*)

128 Section 9 (paragraphs (a) to (b) of the definition of *annual return*)

129 Section 9 (definition of *ARBN*)

130 Note at the end of section 102

131 Paragraphs 109X(1)(c) to (d)

132 Subsection 109X(2)

133 Paragraph 216E(1)(d)

134 Note to subsection 225A(5)

135 Subsection 238(1A)

136 Subsections 242(1) and (3) to (4)

137 Paragraphs 242AA(2)(b) and (3)(a) to (b)

138 Subsection 242AA(4)

139 Paragraph 413(1)(d)

- 140 Subsection 461(2)**
- 141 Paragraph 480(d)**
- 142 Subsection 481(5)**
- 143 Subsection 506(1B)**
- 144 Subsection 507(11)**
- 145 Subsections 509(5) and (6)**
- 146 Subsection 510(1A)**
- 147 Subsection 544(1A)**
- 148 Subsection 588(4)**
- 149 Paragraphs 589(3)(a) to (b)**
- 150 Subparagraph 744(9)(b)(i)**
- 151 Subsection 1274(7A)**
- 152 Paragraph 1289(1)(c)**

Part 5—General amendments to take account of Schedule 5 to the Company Law Review Act 1998

153 Amendment of the Corporations Law

The provisions of the Corporations Law specified in this Part are amended by omitting “The ASC” (wherever occurring) and “the ASC” (wherever occurring) and in both cases substituting “ASIC”.

Note: The heading to subsection 256C(5) is altered by omitting “ASC” and substituting “ASIC”.

154 Subsection 254H(4)

155 Subsections 256C(3) and (5)

56 Table item 3 in section 256E

Schedule 6—Amendment of the Corporations Law set out in section 82 of the Corporations Act 1989 to take account of the Managed Investments Act 1998

Part 1—General amendments to take account of Schedule 1 to the Managed Investments Act 1998

1 Subsection 601FF (note)

After “*Securities*”, insert “*and Investments*”.

2 Subsection 601FJ(1)

Omit “the ASC’s”, substitute “ASIC’s”.

3 Paragraph 601HH(1)(b)

Omit “the ASC’s”, substitute “ASIC’s”.

Part 2—Changing “ASC” to “ASIC” to take account of Schedule 1 to the Managed Investments Act 1998

4 Amendment of the Corporations Law

The provisions of the Corporations Law specified in this Part are amended by omitting “The ASC” (wherever occurring) and “the ASC” (wherever occurring) and in both cases substituting “ASIC”.

Note 1: The headings to sections 601EC, 601FF, 601FJ, 601FN, 601HD, 601HF, 601NG and 601PB are altered by omitting “ASC” or “the ASC”, and substituting “ASIC”.

Note 2: The heading to section 601QA is altered by omitting “ASC’s” and substituting “ASIC’s”.

Note 3: The headings to subsections 601HE(2) and 601PC(4) are altered by omitting “ASC” and substituting “ASIC”.

5 Subsection 601EA(1)

6 Subsections 601EB(1) to (3)

7 Section 601EC

8 Subsection 601ED(3)

9 Paragraph 601EE(1)(a)

10 Paragraph 601FC(1)(l)

11 Subsections 601FF(1) to (2) (including the note to subsection 601FF(1))

12 Paragraphs 601FL(2)(a) and (c)

13 Paragraphs 601FM(2)(a) and (c)

14 Section 601FN

15 Subsections 601FP(3) to (4)

16 Subsections 601FQ(4) to (5)

- 17 Subsections 601GC(2) to (3)**
- 18 Subsection 601HB(1)**
- 19 Section 601HC**
- 20 Section 601HD**
- 21 Subsections 601HE(2) to (3)**
- 22 Subsection 601HF(1)**
- 23 Paragraph 601HF(2)(b)**
- 24 Subsections 601HG(4) and (7)**
- 25 Paragraph 601HG(8)(b)**
- 26 Subparagraphs 601HH(2)(a)(i) to (ii)**
- 27 Paragraph 601HH(2)(b)**
- 28 Subsections 601HH(3) to (4)**
- 29 Paragraphs 601HH(5)(b) to (c)**
- 30 Section 601HI**
- 31 Subsections 601JA(3) to (4)**
- 32 Subsections 601JB(5) to (6)**
- 33 Paragraph 601JC(c)**
- 34 Subsection 601JD(2)**
- 35 Section 601JE**
- 36 Subsection 601KB(5)**
- 37 Subsection 601KE(3)**
- 38 Subsection 601NC(2)**

- 39 Paragraph 601ND(2)(d)**
- 40 Paragraph 601NF(3)(d)**
- 41 Section 601NG**
- 42 Subsections 601PA(1) and (3) to (4)**
- 43 Subsection 601PB(1)**
- 44 Subparagraph 601PB(1)(e)(iii)**
- 45 Subsections 601PB(2) to (5)**
- 46 Subsections 601PC(1) to (2) and (4)**
- 47 Subsections 601QA(1) and (3) to (4)**
- 48 Subsection 1454(2)**
- 49 Subsection 1455(2)**
- 50 Subsection 1456(1)**
- 51 Paragraph 1456(2)(c)**
- 52 Paragraph 1457(1)(b)**
- 53 Paragraph 1459(3)(d)**
- 54 Subsection 1460(5)**
- 55 Paragraphs 1460(6)(b) to (c)**

**Part 3—General amendments to take account of
Schedule 2 to the Managed Investments Act
1998**

56 Section 9 (definition of *responsible entity*)

Omit “the ASC’s”, substitute “”.

57 Subsection 331AC(1)

Omit “the ASC’s”, substitute “ASIC’s”.

Part 4—Changing “ASC” to “ASIC” to take account of Schedule 2 to the Managed Investments Act 1998

58 Amendment of the Corporations Law

The provisions of the Corporations Law specified in this Part are amended by omitting “The ASC” (wherever occurring) and “the ASC” (wherever occurring) and in both cases substituting “ASIC”.

59 Section 9 (definition of *ARSM*)

60 Paragraph 66(4)(c)

61 Paragraph 172(1A)(d)

62 Subsection 331AB(7)

63 Subparagraphs 331AC(2)(a)(i) to (ii)

64 Paragraph 331AC(2)(b)

65 Subsections 331AC(3) to (4)

66 Paragraphs 331AC(5)(b) to (c)

67 Subsections 331AC(6) to (7)

68 Section 825A

69 Section 1343A

Schedule 7—Amendment of the Financial Corporations Act 1974

1 Subsection 4(1)

Insert:

Governor means the Governor of the Reserve Bank.

2 Paragraph 8(2)(b)

Repeal the paragraph, substitute:

(b) the corporation is an authorised deposit-taking institution (as defined in section 5 of the *Banking Act 1959*);

3 Paragraph 8(2)(l)

Omit “Treasurer” (wherever occurring), substitute “Governor”.

4 Paragraph 9(9)(c)

Repeal the paragraph, substitute:

(c) if a corporation included in the Register ceases to exist, or ceases to be a corporation to which this Act applies—cause the corporation’s name, address of registered office, and any other particulars of the corporation, to be removed from the Register.

5 Subsection 10(1)

Omit “Treasurer”, substitute “Governor”.

6 Subsection 10(2)

Omit “Treasurer”, substitute “Governor”.

7 Subsection 10(3)

Repeal the subsection.

8 Subsection 10(4)

Omit “Treasurer”, substitute “Governor”.

9 Subsection 10(5)

Omit “Treasurer”, substitute “Governor”.

10 Subsection 10(5)

Omit “to be furnished to the Reserve Bank and shall also cause a copy of the list or variation”.

11 Subsection 10(5A)

Omit “Treasurer” (wherever occurring), substitute “Governor”.

12 Subsection 10(5A)

Omit “must give to the Reserve Bank a copy of the list so prepared and”.

13 Subsections 10(5B) and (5C)

Repeal the subsections.

14 Subsection 10(5D)

Omit “Treasurer”, substitute “Governor”.

15 Subsection 10(7)

Omit “Treasurer” (wherever occurring), substitute “Governor”.

16 Subsection 10(8)

Repeal the subsection.

17 Subsection 11(12)

Repeal the subsection.

18 Subsection 11(14)

Omit “Treasurer”, substitute “Governor”.

19 Section 22A

Repeal the section, substitute:

22A Delegation by Governor

- (1) The Governor may, by signed instrument, delegate all or any of the powers listed in subsection (2) to:

- (a) a member of the Reserve Bank Board of the Reserve Bank;
or
 - (b) an officer of the Reserve Bank Service referred to in section 66 of the *Reserve Bank Act 1959*.
- (2) The powers that may be delegated are as follows:
- (a) the Governor's powers under paragraph 8(2)(1);
 - (b) the Governor's powers under section 10, other than powers under subsection 10(1).

Schedule 8—Amendment of the Insurance Acquisitions and Takeovers Act 1991

1 Title

Omit “ownership and”.

2 Section 3 (paragraph (a) of the first dot point)

Repeal the paragraph.

3 Section 3 (paragraphs (b) and (c) of the first dot point)

Re-letter as paragraphs (a) and (b) respectively.

4 Section 4

Insert:

APRA means the Australian Prudential Regulation Authority.

5 Section 4 (definition of *Commissioner*)

Repeal the definition.

6 Section 4 (definition of *reviewable decision*)

Omit “2,”.

7 Section 4 (definition of *reviewable decision*)

Omit “28,”.

8 Section 4 (paragraph (b) of the definition of *value*)

Omit “the Commissioner” (wherever occurring), substitute “APRA”.

9 Subsection 19(2)

Repeal the subsection.

10 Part 2

Repeal the Part.

11 Subsection 63(1)

Omit “2,”.

12 Subsection 64(1)

Omit “2,”.

13 Subsection 65(1)

Omit “2,”.

14 Subsection 65(1)

Omit “28,”.

15 Subsection 65(2)

Omit “2,”.

16 Subsection 65(2)

Omit “28,”.

17 Paragraphs 69(a) and (b)

Repeal the paragraphs, substitute:

- (a) APRA; or
- (b) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

18 Subsection 74(2) (paragraphs (a) and (b) of the definition of officer)

Repeal the paragraphs, substitute:

- (a) APRA; or
- (b) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

19 Section 75

Repeal the section, substitute:

75 APRA Act secrecy provisions apply

Section 56 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

20 Subsection 77(1)

Omit “the Commissioner” (wherever occurring), substitute “APRA”.

21 Subsection 77(3)

Omit “The Commissioner”, substitute “APRA”.

22 Paragraph 78(1)(a)

Omit “the Commissioner”, substitute “APRA”.

23 Subsection 78(3)

Omit “The Commissioner”, substitute “APRA”.

24 Paragraph 79(1)(a)

Omit “the Commissioner”, substitute “APRA”.

25 Subsection 79(3)

Omit “The Commissioner”, substitute “APRA”.

26 Subsection 81(2)

Repeal the subsection.

27 Subsection 82(2)

Omit “2,”.

Schedule 9—Amendment of the Insurance Act 1973

Part 1—Changing the administration of the Act (main amendments)

1 Subsection 3(1)

Insert:

APRA means the Australian Prudential Regulation Authority.

2 Subsection 3(1)

Insert:

ASIC means the Australian Securities and Investments
Commission.

3 Subsection 3(1)

Insert:

authorised person means a person authorised under subsection
(1A).

4 Subsection 3(1) (definition of *Commissioner*)

Repeal the definition.

5 After subsection 3(1)

Insert:

(1A) APRA may, in writing, authorise a person who is an APRA staff
member, within the meaning of the *Australian Prudential
Regulation Authority Act 1998*, to perform the functions of an
authorised person under this Act.

6 Section 8

Repeal the section, substitute:

8 General administration of Act

- (1) Subject to subsection (3), APRA has the general administration of this Act, other than section 113.
- (2) Subject to subsection (3), ASIC has the general administration of section 113.
- (3) The Treasurer may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

7 Section 19A

Repeal the section.

8 Section 23

Omit “he or she”, substitute “APRA”.

9 Section 24

Omit “he or she”, substitute “APRA”.

10 Subsection 27(1)

Omit “he or she” (wherever occurring), substitute “APRA”.

11 Paragraph 29(4)(a)

Omit “him or her”, substitute “APRA or the Treasurer”.

12 Subsection 29(4)

Omit “his or her”, substitute “that”.

13 Subsection 30(2A)

Omit “he or she”, substitute “APRA”.

14 Subsection 30(4)

Omit “he or she”, substitute “APRA”.

15 Subsection 31(3)

Omit “he or she”, substitute “APRA”.

16 Paragraph 31(3C)(a)

Omit “him or her”, substitute “APRA”.

17 Subsection 31(3C)

Omit “his or her”, substitute “the”.

18 Subsection 33(2)

Omit “him or her”, substitute “APRA”.

19 Subsection 33(2)

Omit “he or she”, substitute “APRA”.

20 Subsection 33(2)

Omit “his or her”, substitute “APRA’s”.

21 Subsection 33(3)

Omit “he or she”, substitute “APRA”.

22 Subsections 34(3) and (5)

Omit “he or she” (wherever occurring), substitute “APRA”.

23 Subsections 36(2), (3) and (4)

Omit “he or she”, substitute “APRA”.

24 Subsections 36(2) and (3)

Omit “him or her”, substitute “APRA”.

25 Subsection 37(1)

Omit “he or she”, substitute “APRA”.

26 Subsection 40(5)

Omit “him or her”, substitute “APRA”.

27 Subsection 41(2)

Omit “he or she”, substitute “APRA”.

28 Subsection 44(9)

Omit “he or she”, substitute “APRA”.

29 Subsection 46(4)

Omit “he or she”, substitute “APRA”.

30 Section 49

Omit “him or her”, substitute “APRA”.

31 Subsection 49C(2)

Omit “he or she”, substitute “APRA”.

32 Subsection 49E(3)

Omit “he or she”, substitute “APRA”.

33 Subsection 49G(2)

Omit “the Commissioner’s”, substitute “APRA’s”.

**34 Subsection 50(1) (paragraph (d) of the definition of
prescribed person)**

Omit “he or she”, substitute “APRA”.

35 Subsection 51(1)

Omit “he or she” (wherever occurring), substitute “APRA”.

36 Paragraphs 51(1)(a) and (2)(c)

Omit “him or her”, substitute “APRA”.

37 Subsection 52(1)

Omit “he or she” (wherever occurring), substitute “APRA”.

38 Paragraph 52(2)(a)

Omit “the Commissioner’s”, substitute “APRA’s”.

39 Paragraph 52(2)(c)

Omit “himself or herself”, substitute “itself”.

40 Paragraph 52(2)(d)

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

41 Subsection 52(6)

Repeal the subsection.

42 Subsection 54(1)

Omit “his or her”, substitute “the”.

43 Subsection 54(1)

Omit “he or she”, substitute “an authorised person (if the investigation is by APRA), or the inspector,”.

44 Subsection 54(2)

Omit “Commissioner” (wherever occurring), substitute “authorised person”.

45 Subsections 55(1) and (2)

Omit “he or she”, substitute “APRA or the inspector”.

46 Paragraph 55(1)(c)

Omit “the Commissioner”, substitute “a specified authorised person”.

47 After subsection 55(2)

Insert:

(2A) APRA’s powers under subsection (2) to make copies of, or take extracts from, books may be exercised on APRA’s behalf by an authorised person.

48 Paragraph 56(1)(c)

Omit “the Commissioner”, substitute “an authorised person”.

49 Subsection 56(2)

Omit “the Commissioner” (first occurring), substitute “an authorised person”.

50 Subsection 56(2)

Omit “the Commissioner” (second and third occurring), substitute “the authorised person”.

51 Section 57

Omit “the Commissioner” (first occurring), substitute “an authorised person”.

52 Paragraph 57(b)

Omit “the Commissioner” (wherever occurring), substitute “the authorised person”.

53 Subsection 58(1)

Omit “The Commissioner”, substitute “An authorised person”.

54 Subsection 59(1)

Repeal the subsection, substitute:

- (1) Powers under this Part may be delegated as follows:
- (a) APRA’s powers may be delegated under section 15 of the *Australian Prudential Regulation Authority Act 1998*;
 - (b) an inspector may, by signed instrument, delegate his or her powers to an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

55 Subparagraph 60(2)(c)(iv)

Omit “he or she”, substitute “APRA or the inspector”.

56 Subsections 60(3) and (4)

Omit “his or her”, substitute “APRA’s or the inspector’s”.

57 Subsections 60(5) and (6)

Omit “him or her”, substitute “APRA”.

58 Subsection 60(7)

Omit “he or she” (wherever occurring), substitute “APRA”.

59 Subsection 62(1)

Omit “he or she” (wherever occurring), substitute “APRA”.

60 Paragraph 62(7A)(a)

Omit “him or her”, substitute “APRA”.

61 Subsection 62(7A)

Omit “his or her”, substitute “APRA’s”.

62 Subsection 63(2)

Omit “or Commissioner”, substitute “or APRA”.

63 Subsections 63(4), (5) and (6)

Omit “he or she” (wherever occurring), substitute “the Treasurer or APRA”.

64 Subsection 63(6)

Omit “his or her” (wherever occurring), substitute “the Treasurer’s or APRA’s”.

65 Subsection 93(2)

Omit “he or she”, substitute “APRA”.

66 Part IX

Repeal the Part.

67 Section 113

Omit “the Commissioner”, substitute “ASIC”.

68 At the end of section 113

Add:

- (2) The following provisions of this Act have effect, in relation to this section, as if references to APRA were instead references to ASIC:
- (a) subsection 115(1);
 - (b) subsection 115A(6);
 - (c) section 124.

69 Subsection 115(1)

Omit “him or her” (first occurring), substitute “APRA”.

70 Subsection 115(1)

Omit “him or her” (second occurring), substitute “APRA or the person”.

71 Subsection 115(2)

Omit “him or her”, substitute “APRA”.

72 Subsection 115A(6)

Omit “him or her”, substitute “APRA”.

73 Subsections 124(1) and (1A)

Omit “under the hand of the Commissioner”, substitute “under APRA’s seal”.

74 Subsection 124(2)

Repeal the subsection.

75 Sections 125, 126 and 127

Repeal the sections, substitute:

125 APRA Act secrecy provisions apply

Section 56 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

76 Paragraph 5 of the Schedule

Omit “him or her”, substitute “APRA”.

Part 2—Changing “Commissioner” to “APRA” (main amendments)

77 Amendment of the Act

The provisions of the Act specified in this Part are amended:

- (a) by omitting “The Commissioner” (wherever occurring) and substituting “APRA”; and
- (b) by omitting “the Commissioner” (wherever occurring) and substituting “APRA”; and
- (c) by omitting “*the Commissioner*” (wherever occurring) and substituting “*APRA*”.

Note 1: The headings to sections 34A, 44, 48, 48B, 49J, 49N, 51, 52 and 55 are altered by omitting “**Commissioner**” and substituting “**APRA**”.

Note 2: The headings to sections 56 and 60 are altered by omitting “**the Commissioner**” and substituting “**APRA**”.

78 Subsection 3(1) (definition of *quarterly statutory accounts*)

79 Subsection 3(1) (definition of *yearly statutory accounts*)

80 Subsections 3A(1) and (2)

81 Subsections 22(1), (4) and (5)

82 Section 23

83 Section 24

84 Subsection 27(1)

85 Section 28

86 Subsections 29(1), (2), (3), (4), (5) and (6)

87 Subsections 30(1), (2), (2A), (4), (4A), (5) and (5A)

88 Subsections 31(3), (3A), (3AB), (3B), (3C) and (3D)

- 89 Subsections 33(2), (3), (6B), (8) and (10)**
- 90 Subsections 34(1), (1A), (1C), (1D), (2), (3), (4) and (5)**
- 91 Subsections 34A(2), (3), (4), (5) and (8)**
- 92 Subsections 36(1), (2), (3), (4) and (6)**
- 93 Subsections 37(1), (2), (2A), (5) and (6)**
- 94 Subsection 40(5)**
- 95 Subsections 41(2), (3) and (5)**
- 96 Section 43**
- 97 Subsections 44(1), (2A), (3), (4), (6), (7), (7AA), (7A) and (9)**
- 98 Subsections 45(2), (3), (4) and (5)**
- 99 Subsections 46(1), (2), (3), (4) and (5)**
- 100 Section 48**
- 101 Subsections 48A(2), (4), (5), (6) and (7)**
- 102 Subsections 48B(1), (3), (4) and (5)**
- 103 Section 49**
- 104 Paragraphs 49B(1)(a) and (2)(a)**
- 105 Subsections 49C(2) and (3)**
- 106 Section 49D**
- 107 Subsections 49E(1), (2), (3), (6), (7) and (8)**
- 108 Subsections 49F(3), (4), (5), (7), (8) and (9)**
- 109 Subsections 49G(2), (5), (7), (10) and (12)**
- 110 Subsection 49H(5)**

- 111 Subsections 49J(1), (2A), (3), (4), (5), (5A), (6) and (9)**
- 112 Subsections 49K(2), (3), (4) and (5)**
- 113 Subsections 49L(1), (2), (3), (4) and (5)**
- 114 Section 49N**
- 115 Section 49P**
- 116 Subsection 50(1) (paragraph (d) of the definition of *prescribed person*)**
- 117 Subsections 51(1), (2) and (4)**
- 118 Subsections 52(1), (1A), (1B), (1C), (2), (3) and (4)**
- 119 Subsection 54(1)**
- 120 Subsections 55(1) (other than paragraph (c)), (2) and (3)**
- 121 Paragraph 56(1)(a)**
- 122 Subsections 58(2) and (3)**
- 123 Subsections 60(1), (1A), (2), (3), (4), (4A), (5), (6) and (7)**
- 124 Subsections 62(1), (1A), (1B), (2), (3), (3B), (5), (7) and (7A)**
- 125 Subsections 63(1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (13) and (14)**
- 126 Subsections 64(1) and (2)**
- 127 Subsections 93(2) and (3)**
- 128 Section 96**
- 129 Section 114**
- 130 Subsections 115(1) and (2)**

- 131 Subsection 115A(6)**
- 132 Subsection 116(1)**
- 133 Subsection 117(2)**
- 134 Subsection 118(4)**
- 135 Subsection 119(2)**
- 136 Paragraph 121(1)(c)**
- 137 Subsections 122(1) and (2)**
- 138 Subsections 123(1), (2), (3) and (4)**
- 139 Subsection 124(2)**
- 140 Subsections 129D(3) and (6)**
- 141 Section 130**
- 142 Section 132**
- 143 Subparagraphs 3(1), (2), (3), (4), (5) and (7) of the Schedule**
- 144 Subparagraphs 4(1) and (2) of the Schedule**
- 145 Paragraph 5 of the Schedule**
- 146 Subparagraph 6(4) of the Schedule**
- 147 Subparagraph 7(2) of the Schedule**
- 148 Paragraph 8 of the Schedule**
- 149 Subparagraphs 9(2) and (3) of the Schedule**

**Part 3—Changing the administration of the Act
(amendments to take account of Schedule 2
to the Insurance Laws Amendment Act 1998)**

150 Paragraph 70(3)(f)

Omit “the Commissioner”, substitute “APRA or an authorised person”.

151 Division 3 of Part VII (heading)

Repeal the heading, substitute:

Division 3—General powers of APRA

152 Subdivision A of Division 4 of Part VII (heading)

Repeal the heading, substitute:

Subdivision A—Inquiries and directions by APRA

153 Paragraph 79(3)(c)

Omit “himself or herself”, substitute “itself”.

154 Paragraph 79(3)(d)

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

155 Subsection 79(6)

Repeal the subsection.

156 Subsection 80(1)

Omit “the Commissioner” (first occurring), substitute “APRA”.

157 Subsection 80(1)

Omit “the Commissioner or the inspector may”, substitute “an authorised person (if the investigation is by APRA), or the inspector, may”.

**158 Paragraphs 80(1)(d) and (e) and subsections 80(2), (3)
and (4)**

Omit “Commissioner”, substitute “authorised person”.

159 Paragraph 81(2)(c)

Omit “the Commissioner”, substitute “an authorised person”.

160 After subsection 81(3)

Insert:

(3A) APRA’s powers under subsection (3) to make copies of, or take extracts from, books may be exercised on APRA’s behalf by an authorised person.

161 Subsection 82(3)

Omit “the Commissioner” (first occurring), substitute “an authorised person”.

162 Subsection 82(3)

Omit “the Commissioner” (second occurring), substitute “the authorised person”.

163 Section 83

Omit “the Commissioner” (first occurring), substitute “an authorised person”.

164 Paragraph 83(b)

Omit “the Commissioner” (wherever occurring), substitute “the authorised person”.

165 Subsection 84(1)

Omit “The Commissioner”, substitute “An authorised person”.

166 Subsection 84(2)

Omit “The Commissioner”, substitute “The authorised person”.

167 Subsection 85(1)

Repeal the subsection, substitute:

- (1) Powers under this Division may be delegated as follows:
 - (a) APRA’s powers may be delegated under section 15 of the *Australian Prudential Regulation Authority Act 1998*;

(b) an inspector may, by signed instrument, delegate his or her powers to an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

168 Subsection 86(4)

Omit “his or her”, substitute “APRA’s or the inspector’s”.

169 Subsection 86(8)

Omit “he or she” (wherever occurring), substitute “APRA”.

170 Subsection 92H(2)

Omit “the Commissioner’s”, substitute “APRA’s”.

Part 4—Changing “Commissioner” to “APRA” (amendments to take account of Schedule 2 to the Insurance Laws Amendment Act 1998)

171 Amendment of the Act

The provisions of the Act specified in this Part are amended:

- (a) by omitting “The Commissioner” (wherever occurring) and substituting “APRA”; and
- (b) by omitting “the Commissioner” (wherever occurring) and substituting “APRA”; and
- (c) by omitting “*the Commissioner*” (wherever occurring) and substituting “*APRA*”.

Note 1: The headings to sections 74, 77, 79, 92G and 92H are altered by omitting “**Commissioner**” and substituting “**APRA**”.

Note 2: The headings to sections 81, 82 and 86 are altered by omitting “**the Commissioner**” and substituting “**APRA**”.

172 Section 65

173 Subsections 68(1), (2), (3), (5), (6), (7) and (8)

174 Subsections 70(1), (2), (3) (other than paragraph (f)) and (5)

175 Subsections 74(1), (2) and (3)

176 Subsections 75(1), (2), (3), (4), (5) and (6)

177 Subsections 76(1) and (3)

178 Subsection 77(1)

179 Subsections 78(1), (2), (3) and (4)

180 Subsections 79(1), (3) and (4)

181 Subsections 81(2) (other than paragraph (c)), (3) and (4)

182 Subsection 82(1)

- 183 Subsections 84(4) and (5)**
- 184 Subsections 86(1), (2), (3), (4), (5), (6), (7) and (8)**
- 185 Subsections 88(1), (3), (4) and (5)**
- 186 Subsections 92D(4) and (5)**
- 187 Subsection 92G(1)**
- 188 Subsection 92H(1)**
- 189 Subsections 92K(4), (5) and (6)**
- 190 Subsections 92L(2) and (3)**
- 191 Subsection 92M(10)**
- 192 Subsection 92Q(3)**
- 193 Subsection 92R(3)**
- 194 Subsections 94A(1), (2) and (5)**
- 195 Subsection 96(2)**
- 196 Section 97**
- 197 Paragraph 121(1)(d)**

Schedule 10—Amendment of the Insurance (Agents and Brokers) Act 1984

Part 1—Changing the administration of the Act

1 Section 9

Insert:

ASIC means the Australian Securities and Investments Commission.

2 Section 9 (definition of *authorised officer*)

Repeal the definition, substitute:

authorised officer means a person appointed by ASIC under section 47 to be an authorised officer for the purposes of the provision in which the expression occurs.

3 Section 9 (definition of *Commissioner*)

Repeal the definition.

4 Subsection 10(4)

Omit “him or her”, substitute “ASIC, the proposed insured or the insured”.

5 Subsection 10(5)

Omit “him or her”, substitute “ASIC”.

6 Subsection 24(4)

Omit “by signed writing”, substitute “in writing”.

7 Subsection 25(3)

Omit “, by writing signed by him or her, specifies”, substitute “specifies in writing”.

8 Subsection 25(5)

Omit “the Commissioner may, by signed writing”, substitute “ASIC may, in writing”.

9 Subsection 31H(3)

Repeal the subsection, substitute:

- (3) Despite subsection (2), a person whose registration is suspended may carry on such of the person's business as a foreign insurance agent as ASIC specifies in writing for such time and subject to such conditions (if any) as ASIC specifies in writing.

10 Subsection 31H(5)

Repeal the subsection, substitute:

- (5) If ASIC cancels a person's registration, ASIC may specify, in writing, a period during which the person is to be disqualified from registration and, if a period is so specified in relation to a person, the person is disqualified from registration during that period.

11 Section 34U

Repeal the section.

12 Subsection 41A(1)

Omit "by signed instrument", substitute "in writing".

13 Subsection 41A(1)

Omit "him or her", substitute "ASIC".

14 Section 45

Repeal the section.

15 Section 47

Repeal the section, substitute:

47 Authorisation of an officer

- (1) ASIC may appoint in writing:
- (a) a staff member of ASIC (within the meaning of the *Australian Securities and Investments Commission Act 1989*); or
 - (b) an APRA staff member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*)

as an authorised officer for the purposes of a specified provision of this Act.

- (2) The appointment may be restricted to a particular function or power under the provision.

Part 2—Changing “Commissioner” to “ASIC”

16 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) and “the Commissioner” (wherever occurring) and in both cases substituting “ASIC”.

Note: The headings to sections 34A and 37A are altered by omitting “**Commissioner**” and substituting “**ASIC**”.

17 Paragraph 9B(1)(a)

18 Subsection 9B(5)

19 Subsection 9C(1)

20 Subsections 10(4) to (5)

21 Paragraph 19(1)(c)

22 Subsection 19(3)

23 Subsection 20(1)

24 Paragraphs 20(2A)(b) and (3)(a) to (b)

25 Subsections 21(1) to (2) and (3A) to (6)

26 Subsections 22(1) to (2)

27 Paragraphs 23(b) to (e)

28 Paragraphs 24(1)(a) to (b)

29 Subsections 24(2) to (4)

30 Subsections 25(1) to (1B), (3), (5) and (7)

31 Subsection 25A(1)

32 Paragraph 25A(2)(e)

- 33 Paragraphs 25B(1)(c) to (d)**
- 34 Subsection 26(3)**
- 35 Subsection 31B(2)**
- 36 Subsection 31C(1)**
- 37 Paragraphs 31C(3)(b) and (4)(a) to (b)**
- 38 Subsections 31D(1) to (2) and (4) to (5)**
- 39 Subsections 31E(1) to (2)**
- 40 Paragraphs 31F(b) to (d)**
- 41 Paragraphs 31G(1)(a) to (b)**
- 42 Subsections 31G(2) to (4)**
- 43 Subsections 31H(1) to (1A) and (7)**
- 44 Subsection 31J(1)**
- 45 Paragraph 31J(2)(e)**
- 46 Paragraphs 31K(1)(c) to (d)**
- 47 Subsection 34A(1)-(3) and (6)**
- 48 Paragraphs 34A(9)(a) to (b)**
- 49 Subsection 34A(10)**
- 50 Subsections 34B(1) to (2)**
- 51 Subsections 34C(1) and (3)**
- 52 Subsections 37A(1) to (2), (4) to (5) and (7) to (8)**
- 53 Subsections 41A(1) to (2)**
- 54 Section 41**

55 Subsection 42(1)

56 Subsection 43(1)

Part 3—Changing “Commissioner’s” to “ASIC’s”

57 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “the Commissioner’s” (wherever occurring) and substituting “ASIC’s”.

58 Subsection 34A(1)

59 Paragraph 34A(10)(b)

60 Subsection 37A(5)

Part 4—Amendments to take account of Schedule 1 to the Insurance Laws Amendment Act 1998

61 Paragraph 20(3)(a)

Repeal the paragraph, substitute:

- (a) make a false or misleading statement in, or omit material matter from, an approved form given to ASIC under subsection (1); or

62 Subsection 26(3)

Omit “the Commissioner”, substitute “ASIC”.

63 Paragraph 31C(4)(a)

Repeal the paragraph, substitute:

- (a) make a false or misleading statement in, or omit material matter from, an approved form given to ASIC under subsection (1); or

64 Subsection 34(3)

Omit “the Commissioner”, substitute “ASIC”.

Schedule 11—Repeal of the Insurance and Superannuation Commissioner Act 1987

1 The whole of the Act

Repeal the Act.

Schedule 12—Amendment of the Insurance Contracts Act 1984

Part 1—Changing the administration of the Act

1 Subsection 11(1)

Insert:

ASIC means the Australian Securities and Investments
Commission.

2 Subsection 11(1) (definition of *Commissioner*)

Repeal the definition.

3 Section 11A

Repeal the section, substitute:

11A ASIC responsible for general administration of Act

Subject to any directions of the Treasurer, ASIC has the general
administration of this Act.

4 Section 11F

Repeal the section.

5 Section 11G

Repeal the section.

6 Section 11H

Repeal the section.

7 Paragraph 66(a)

Omit “insurer’s”, substitute “insured’s”.

Part 2—Changing “Commissioner” to “ASIC”

8 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) or “the Commissioner” (wherever occurring) and in both cases substituting “ASIC”.

Note: The headings to sections 11B, 11C, 11D, 11E and 55A are altered by omitting “**Commissioner**” and substituting “**ASIC**”.

9 Section 11B

10 Subsections 11C(1) and (3)

11 Subsections 11D(1), (2) and (4)

12 Section 11E

13 Subsections 55A(1) to (3)

Schedule 13—Amendment of the Life Insurance Act 1995

Part 1—Changing the administration of the Act

1 Paragraph 3(2)(c)

Omit “the Insurance and Superannuation Commissioner”, substitute “APRA and ASIC”.

2 Section 7

Repeal the section, substitute:

7 General administration of Act

- (1) Subject to subsection (3):
 - (a) APRA has the general administration of:
 - (i) Parts 3 to 6; and
 - (ii) Parts 8 to 9; and
 - (iii) sections 206 to 210; and
 - (iv) Part 12; and
 - (b) ASIC has the general administration of Part 10 (other than sections 206 to 210).
- (2) Parts 1 to 2, 7 and 11 confer powers and duties on APRA for the purposes of APRA’s administration of its provisions and powers and duties on ASIC for the purposes of its administration of its provisions.

Note: Generally neither APRA nor ASIC is referred to in these provisions. Regulator is used instead. See the definition of *Regulator* in the Dictionary in the Schedule.
- (3) The Minister may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

3 Subsection 49(4)

Omit “he or she”, substitute “APRA”.

4 Subsection 53(4)

Omit “he or she”, substitute “APRA”.

5 Subsection 121(1)

Omit “him or her”, substitute “APRA”.

6 Subsection 127(1)

Repeal the subsection, substitute:

- (1) The Regulator may appoint:
- (a) a member of its own staff; or
 - (b) a member of the other Regulator’s staff;
- as an authorised person for the purposes of a specified provision of this Act.

7 Paragraph 127(3)(a)

Omit “the Commissioner”, substitute “the Regulator or an authorised person”.

8 Paragraph 127(3)(b)

Omit “the Commissioner”, substitute “the Regulator or an authorised person”.

9 Subsection 133(1)

Omit “the Commissioner” (first occurring), substitute “an authorised person”.

10 Subsection 133(1)

Omit “the Commissioner” (second occurring), substitute “the authorised person”.

11 Subsections 133(2) to (3)

Omit “the Commissioner” (wherever occurring), substitute “the authorised person”.

12 Subsection 134(3)

Omit “his or her”, substitute “its”.

13 Section 140

Omit “the Commissioner” (first occurring), substitute “the Regulator”.

14 Section 140

Omit “the Commissioner” (second occurring), substitute “an authorised person”.

15 Section 140

Omit “the Commissioner” (third occurring), substitute “the authorised person”.

16 Section 142

Omit “he or she”, substitute “the Regulator”.

17 Paragraph 142(b)

Omit “the Commissioner”, substitute “a specified authorised person”.

18 Paragraph 143(1)(b)

Omit “he or she”, substitute “the Regulator”.

19 Paragraph 144(2)(b)

Omit “the Commissioner or”.

20 Subsection 181(2)

Omit “him or her”, substitute “APRA”.

21 Paragraph 195(c)

Omit “the Australian Securities Commission”, substitute “ASIC”.

22 Subsection 198(2)

Omit “he or she”, substitute “ASIC”.

23 Subsection 216(15) (definition of *authorised officer*)

Repeal the definition, substitute:

authorised officer means a member of staff authorised by ASIC for the purposes of this section.

24 Section 231

Repeal the section.

25 Section 232

Repeal the section.

26 Section 238

Omit “the Australian Securities Commission”, substitute “ASIC”.

27 Paragraph 239(1)(a)

Omit “the Australian Securities Commission”, substitute “ASIC”.

28 Subsection 244(5)

Omit “he or she”, substitute “APRA”.

29 Section 251

Repeal the section.

30 Dictionary in the Schedule

Insert:

APRA means the Australian Prudential Regulation Authority.

31 Dictionary in the Schedule

Insert:

ASIC means the Australian Securities and Investments Commission.

32 Dictionary in the Schedule

Insert:

member of staff means:

- (a) in relation to APRA—a person who is an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*; and
- (b) in relation to ASIC—a person who is a staff member within the meaning of the *Australian Securities and Investments Commission Act 1989*.

33 Dictionary in the Schedule

Insert:

Prudential Rules means rules made by APRA under section 252.

34 Dictionary in the Schedule

Insert:

Regulator means:

- (a) APRA if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA; and
- (b) ASIC if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC.

Part 2—Changing “Commissioner” to “APRA”

35 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) and “the Commissioner” (wherever occurring) and in both cases substituting “APRA”. This does not apply to the references to the Commissioner of Taxation in subsection 40(3) or 342(12).

Note: The headings to sections 25, 33, 49, 88, 98, 169, 170, 181, 183, 184 and 238 are altered by omitting “Commissioner” and substituting “APRA”.

36 Subsections 12(2) to (3)

37 Subsections 14(5) to (6)

38 Subsections 15(4) to (5)

39 Subsection 20(1)

40 Paragraph 20(3)(b)

41 Subsections 21(1) to (3) and (5)

42 Subsections 22(1) to (5)

43 Subsection 25(1)

44 Subsections 26(1) to (3)

45 Subsections 27(1) to (2)

46 Section 28

47 Paragraph 30(e)

48 Paragraph 31(c)

49 Subsection 33(1)

50 Subsection 40(1)

- 51 Paragraph 40(2)(b)**
- 52 Subsections 40(3) to (4)**
- 53 Subsection 41A(2)**
- 54 Paragraphs 43(3)(c) and (6)(b)**
- 55 Subsection 44(4)**
- 56 Paragraph 44(7)(b)**
- 57 Section 46**
- 58 Paragraph 48(8)(b)**
- 59 Subsections 49(1) and (3) to (4)**
- 60 Paragraph 50(1)(a)**
- 61 Section 51**
- 62 Subsection 52(1)**
- 63 Paragraph 52(3)(b)**
- 64 Subsections 52(4) and (9)**
- 65 Subsection 53(1)**
- 66 Paragraph 53(3)(b)**
- 67 Subsection 53(4)**
- 68 Section 57**
- 69 Paragraphs 62(1)(c) and (3)(b)**
- 70 Subsections 62(4) to (4A)**
- 71 Subparagraph 63(1)(b)(ii)**
- 72 Subsections 63(2) to (2A)**

- 73 Subsection 65(3)**
- 74 Subsections 68(1) to (2) and (4) to (7)**
- 75 Subsection 70(2)**
- 76 Subsections 73(1) to (2) and (4) to (7)**
- 77 Subsections 77(3) and (6)**
- 78 Subsections 82(1) to (2) and (4)**
- 79 Paragraph 82(5)(c)**
- 80 Subsection 83(2)**
- 81 Subsections 85(1) to (2) and (4)**
- 82 Subsections 86(1) and (3)**
- 83 Subsections 87(1) and (3)**
- 84 Subsections 88(2) to(3)**
- 85 Paragraph 88(4)(a) to (b)**
- 86 Paragraph 91(1)(b)**
- 87 Subsection 91(2)**
- 88 Subsections 93(5) to (6)**
- 89 Subsections 94(2) to (3) and (5)**
- 90 Subsections 95(1) and (3)**
- 91 Subsections 98(2) to (4)**
- 92 Paragraphs 98(5)(a) to (b)**
- 93 Subsections 112(1) to (2)**
- 94 Subsection 115(3)**

- 95 Subsections 118(2) to (5)**
- 96 Subsections 119(1) to (2)**
- 97 Subsection 120(1)**
- 98 Paragraph 120(5)(a)**
- 99 Subsections 121(1), (3) and (6) to (7)**
- 100 Section 122**
- 101 Subsections 123(1) and (3)**
- 102 Subsection 124(1)**
- 103 Subsections 125(2) and (5)**
- 104 Subsections 134(1) and (3)**
- 105 Subsections 157(1) and (3) to (5)**
- 106 Paragraphs 167(4)(a) to (b)**
- 107 Subsection 167(5)**
- 108 Subsection 169(1)**
- 109 Subsection 170(1)**
- 110 Paragraphs 172(4)(a) to (b)**
- 111 Subsection 172(6)**
- 112 Paragraphs 175(6)(a) and (7)(b)**
- 113 Paragraph 176(1)(a)**
- 114 Subsections 181(1) to (2)**
- 115 Subsections 183(1) and (3)**
- 116 Subsections 184(1) to (2)**

- 117 Subsection 185(1)**
- 118 Subsection 191(1) (definition of *approved summary*)**
- 119 Paragraph 191(2)(a)**
- 120 Subsections 192(1) to (2)**
- 121 Subsection 193(3)**
- 122 Subsection 196(1)**
- 123 Subsections 197(1) to (2)**
- 124 Subsections 208(1) to (3)**
- 125 Section 238**
- 126 Subsection 239(2)**
- 127 Subsections 240(1) to (2)**
- 128 Subsection 241(1)**
- 129 Subsection 243(1)**
- 130 Subsections 244(1), (3) and (5) to (6)**
- 131 Subsections 246(2) and (4)**
- 132 Subsections 252(1) to (2)**
- 133 Section 256 (second reference only)**
- 134 Section 257 (second reference only)**

Part 3—Changing “Commissioner’s” to “APRA’s”

135 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner’s” (wherever occurring) and “the Commissioner’s” (wherever occurring) and in both cases substituting “APRA’s”.

Note: The heading to sections 51, 68, 73, 185 and 244 are altered by omitting “**Commissioner’s**” and substituting “**APRA’s**”.

136 Subsection 170(2)

Part 4—Changing “Commissioner’s rules” to “Prudential Rules”

137 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “Commissioner’s rules” (wherever occurring) and substituting “Prudential Rules”.

Note: The heading to section 252 is altered by omitting “**Commissioner’s rules**” and substituting “**Prudential Rules**”.

138 Subsection 15(3)

139 Subsections 24(6) to (7)

140 Subsection 34(4)

141 Subsection 44(6)

142 Paragraphs 44(7)(a) to (b)

143 Subsections 52(2) to (3)

144 Paragraph 52(5)(a)

145 Subsection 52(6)

146 Subsections 53(2) to (3)

147 Paragraphs 54(3)(a) to (b)

148 Subsections 55(2) to (3)

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

150 Paragraph 62(3)(c)

151 Subsection 62(5)

152 Paragraphs 82(5)(a) to (b)

153 Paragraph 117(2)(d)

154 Subsection 117(3)

155 Subsections 123(2) to (3)

156 Subsections 125(1) and (3)

157 Subsections 244(1) to (2)

158 Subsection 252(1)

159 Paragraph 253(1)(a)

160 Dictionary in the Schedule (definition of *this Act*)

Part 5—Changing “Commissioner” to “ASIC”

161 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) and “the Commissioner” (wherever occurring) and in both cases substituting “ASIC”.

162 Subsections 198(1) to (4)

163 Subsections 216(1), (3) to (4) and (6)

164 Paragraph 216(7)(b)

165 Subsections 216(10) and (13)

Part 6—Changing “Commissioner” to “Regulator”

166 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “Commissioner” (wherever occurring) and substituting “Regulator”.

This does not apply to the reference to the Commissioner of Taxation in the heading to subsection 344(7) or in subsection 344(7).

Note 1: The headings to sections 131, 149 and 150 are altered by omitting “Commissioner” and substituting “Regulator”.

Note 2: The heading to section 142 is altered by omitting “Commissioner’s” and substituting “Regulator’s”.

167 Section 130

168 Subsections 131(1) to (2) and (4)

169 Subsections 132(1) to (2)

170 Subsection 135(1)

171 Paragraph 135(2)(b)

172 Paragraph 136(g)

173 Subsections 137(1) to (2)

174 Section 138

175 Subsection 139(1)

176 Subsection 141(1)

177 Section 142 (other than paragraph (b))

178 Subsection 143(1)

179 Subsections 147(1) to (2)

180 Subsection 148(1)

181 Section 149

182 Subsections 150(1) and (4) to (7)

183 Subsection 151(1)

184 Paragraph 151(2)(b)

185 Subsection 151(4)

186 Subsections 235(3) and (6)

187 Subsections 236(2) to (3) and (5) to (8)

Part 7—Other amendments

188 After paragraph 21(3)(c)

Insert:

- (ca) in the case of a company that is limited only by shares and the value of whose eligible assets (other than assets that are assets of a statutory fund) exceeds the total amount of its liabilities by at least the subsection 23(4) amount but not by at least the subsection 23(4A) amount—that the total value of its eligible assets and its other assets does not exceed the total amount of its liabilities by at least the subsection 23(4A) amount;

189 Subsection 21(4)

Omit “paragraph (3)(c)”, substitute “this section”.

190 At the end of section 21

Add:

- (8) In this section:

subsection 23(4) amount means \$5,000,000 or, if a higher amount is fixed by the regulations for the purposes of subsection 23(4), that amount.

subsection 23(4A) amount means \$10,000,000 or, if a higher amount is fixed by the regulations for the purposes of subsection 23(4A), that amount.

191 After subsection 23(4)

Insert:

- (4A) If:

- (a) a life company is limited only by shares; and
- (b) the value of its eligible assets (other than assets that are assets of a statutory fund) does not exceed the total amount of its liabilities by at least \$10,000,000 or, if a higher amount is fixed by the regulations for the purposes of this subsection, that amount;

the company must at all times have other assets whose value, when added to the value of its eligible assets, exceeds the total amount of its liabilities by at least the minimum amount mentioned in paragraph (b).

192 Subsection 23(5)

Omit “subsection (4)”, substitute “this section”.

193 Paragraph 38(3)(b)

Repeal the paragraph, substitute:

- (b) in connection with the undertaking of a major development project and in accordance with section 40; or
- (c) for such other purposes, and subject to such other conditions, as are prescribed by the regulations.

194 Subsection 40(1)

Repeal the subsection, substitute:

- (1) A life company may mortgage or charge an asset of a statutory fund, otherwise than for a purpose of the kind referred to in paragraph 38(3)(a) or (c), if:
 - (a) the mortgage or charge is to be given in connection with the undertaking of a major development project; and
 - (b) the giving of the mortgage or charge has been approved by the Commissioner.

195 Dictionary in the Schedule (definition of *superannuation business*)

Omit “insurance”.

196 Dictionary in the Schedule (paragraph (b) of the definition of *superannuation policy*)

Repeal the paragraph, substitute:

- (b) a life policy of a kind prescribed by the regulations for the purposes of this paragraph.

197 Application

Section 23 of the *Life Insurance Act 1995*, as amended by this Part, applies:

- (a) to a life company registered before the commencement of this Part, whose current financial year ends before 31 December 1998, on and after the last day of the company's next financial year; and
- (b) to a life company registered before the commencement of this Part, whose current financial year ends on or after 31 December 1998, on and after the last day of that financial year; and
- (c) to all other life companies on and after the commencement of this Part.

Schedule 14—Amendment of the Reserve Bank Act 1959

1 Subsection 5(1)

Insert:

APRA means the Australian Prudential Regulation Authority.

2 Subsection 5(1)

Insert:

APRA Board member means a member of APRA’s Board of management, including its Chair and its Chief Executive Officer.

3 Subsection 5(1)

Insert:

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

4 Subsection 5(1) (definition of *the Board*)

Repeal the definition.

5 Subsection 5(1) (definition of *Deputy Governor*)

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

6 Subsection 5(1)

Insert:

monetary and banking policy means monetary and banking policy for the purposes of the Bank’s functions or powers under this Act or any other Act, but does not include payments system policy.

7 Subsection 5(1)

Insert:

officer of the Reserve Bank Service means an officer appointed under Part VII.

8 Subsection 5(1)

Insert:

payment system has the same meaning as in the *Payment Systems (Regulation) Act 1998*.

9 Subsection 5(1)

Insert:

payments system policy means policy for the purposes of the Bank's functions or powers under the *Payment Systems (Regulation) Act 1998* and the *Payment Systems and Netting Act 1998*.

10 Subsection 5(2)

Repeal the subsection, substitute:

- (2) Unless the contrary intention appears, a reference in this Act to an Act includes a reference to regulations made under that Act.

11 Before section 7

Insert:

Division 1—Constitution of the Reserve Bank

12 At the end of section 7A

Add:

- (2) For the purposes of the *Commonwealth Authorities and Companies Act 1997*, the members of the Reserve Bank Board (rather than the members of the Payments System Board) are the directors of the Bank.
- (3) However, sections 21 to 27 of the *Commonwealth Authorities and Companies Act 1997*, and Schedule 2 to that Act, apply to the members of the Payments System Board as though they were directors of the Bank.

Note: The heading to section 7A is replaced by the heading “**Special provisions relating to how the *Commonwealth Authorities and Companies Act 1997* applies to the Bank**”.

13 Section 8

After “for the purposes of this Act”, insert “and any other Act conferring functions on the Bank”.

14 Section 8

After “by this Act”, insert “and such other Acts”.

15 After section 8

Insert:

Division 2—Policy and management of the Reserve Bank

8A The Boards of the Bank

- (1) The Bank has 2 Boards:
 - (a) the Reserve Bank Board; and
 - (b) the Payments System Board.
- (2) The Reserve Bank Board is responsible for the Bank’s monetary and banking policy, and the Bank’s policy on all other matters, except for its payments system policy (see section 10).
- (3) The Payments System Board is responsible for the Bank’s payments system policy (see section 10B).
- (4) Disagreements between the Boards are to be resolved in accordance with section 10C.
- (5) For how the *Commonwealth Authorities and Companies Act 1997* applies in relation to the 2 Boards, see subsections 7A(2) and (3).

16 Subsection 10(1)

Omit “Board”, substitute “Reserve Bank Board”.

17 Subsection 10(1)

After “the policy of the Bank in relation to any matter”, insert “, other than its payments system policy,”.

18 Subsection 10(2)

Omit “Board” (wherever occurring), substitute “Reserve Bank Board”.

19 Subsection 10(2)

Omit “, the *Banking Act 1959* and the regulations under that Act”, substitute “and any other Act, other than the *Payment Systems*”.

(Regulation) Act 1998 and the Payment Systems and Netting Act 1998,”.

20 After section 10

Insert:

10A Establishment of Payments System Board

There is to be a Payments System Board of the Reserve Bank which is to be constituted as provided in Part IIIA.

10B Functions of Payments System Board

- (1) The Payments System Board has power to determine the Bank’s payments system policy.
- (2) The Payments System Board has power to take whatever action is necessary to ensure that the Bank gives effect to the policy it determines.
- (3) It is the duty of the Payments System Board to ensure, within the limits of its powers, that:
 - (a) the Bank’s payments system policy is directed to the greatest advantage of the people of Australia; and
 - (b) the powers of the Bank under the *Payment Systems (Regulation) Act 1998* and the *Payment Systems and Netting Act 1998* are exercised in a way that, in the Board’s opinion, will best contribute to:
 - (i) controlling risk in the financial system; and
 - (ii) promoting the efficiency of payments system; and
 - (iii) promoting competition in the market for payment services, consistent with the overall stability of the financial system.

10C Resolving differences between the Boards

- (1) If a policy determined by the Reserve Bank Board and a policy determined by the Payments System Board are inconsistent:
 - (a) the Reserve Bank Board’s policy prevails; and
 - (b) the Payments System Board’s policy has effect as if it were modified to remove the inconsistency.

- (2) If there is a disagreement between the Reserve Bank Board and the Payments System Board as to:
- (a) whether there is an inconsistency of policy to which subsection (1) applies, or the extent of such an inconsistency; or
 - (b) the effect of paragraph (1)(b) on a policy of the Payments System Board;
- the disagreement is to be resolved as determined by the Governor.
- (3) If there is a disagreement between the Reserve Bank Board and the Payments System Board as to which of the Boards is responsible for determining the Bank's policy on a matter, the disagreement is to be resolved as determined by the Governor.

21 Subsection 11(1)

Repeal the subsection, substitute:

- (1) The Government is to be informed of the Bank's policy as follows:
- (a) the Reserve Bank Board is to inform the Government, from time to time, of the Bank's monetary and banking policy;
 - (b) the Payments System Board is to inform the Government, from time to time, of the Bank's payments system policy.

Note: The heading to section 11 is altered by inserting "**with Government**" after "**opinion**".

22 Subsection 11(2)

Omit "the Board whether that policy", substitute "one of the Boards (the *relevant Board*) about whether a policy determined by the relevant Board".

23 Subsection 11(2)

Before "Board" (last occurring), insert "relevant".

24 Subsections 11(3), (5), (6) and (7)

Before "Board" (wherever occurring), insert "relevant".

25 Subsection 12(1)

Omit "2 Deputy Governors", substitute "a Deputy Governor".

26 Subsection 12(2)

Omit "subsection 10(1)", substitute "sections 10 and 10B".

27 Subsection 12(3)

Omit “A Deputy Governor”, substitute “The Deputy Governor”.

28 Subsection 12(3)

Omit “designated by the Treasurer”.

29 Paragraph 14(1)(b)

Omit “Governors”, substitute “Governor”.

Note: The heading to section 14 is altered by inserting “**Reserve Bank**” before “**Board**”.

30 Paragraph 14(1)(d)

Omit “7”, substitute “6”.

31 Paragraph 14(1)(d)

After “appointed”, insert “in writing”.

32 Subsection 14(2)

Omit “7”, substitute “6”.

33 Paragraph 14(4)(a)

Repeal the paragraph, substitute:

- (a) is to be appointed for a period, not exceeding 5 years, specified in the instrument of appointment; and

34 Subsection 14(5)

Repeal the subsection.

35 Sections 15, 16, 17, 18, 18A, 20, 21, 21A, 22 and 24A

Before “Board” (wherever occurring), insert “Reserve Bank”.

Note: The headings to sections 21 and 22 are altered by inserting “**Reserve Bank**” before “**Board**”.

36 Subsection 15(4)

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

37 At the end of section 16

Add:

- (2) However, the member does not have to do so if he or she is also a member of the Payments System Board and has made an oath or affirmation, and a declaration of secrecy, under section 25E.

38 Section 19

Repeal the section.

39 Subsection 20(1)

Omit “designated by the Governor”.

40 Subsection 21(3)

Omit “6”, substitute “5”.

41 Subsection 21A(1)

Omit “Governors”, substitute “Governor”.

42 Subsection 21A(1)

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

43 Subsection 21A(2)

Omit “Governors”, substitute “Governor”.

44 After section 22

Insert:

22A Conduct of meetings

The Reserve Bank Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with this Part.

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

22B Resolutions without meetings

A resolution is taken to have been passed at a meeting of the Reserve Bank Board if:

- (a) the Reserve Bank Board has determined:

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

45 Section 24

Omit “Governors”, substitute “Governor”.

46 Section 24A

Omit “Governors”, substitute “Governor”.

47 Section 25

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

48 After Part III

Insert:

Part IIIA—The Payments System Board

Division 1—The members of the Payments System Board

25A Membership of Payments System Board

The Payments System Board consists of the following members:

- (a) the Governor;
- (b) one representative of the Bank;
- (c) one representative of APRA;
- (d) up to 5 other members.

25B Appointment of members

- (1) The member who is the representative of the Bank referred to in paragraph 25A(b) is to be appointed by the Governor. The person appointed must be a member of the Reserve Bank Board or an officer of the Reserve Bank Service.
- (2) The member who is the representative of APRA referred to in paragraph 25A(c) is to be appointed by APRA's Chief Executive Officer. The person appointed must be an APRA Board member or an APRA staff member.

Note: The CEO may appoint himself or herself.
- (3) Each other member referred to in paragraph 25A(d) is to be appointed by the Governor-General for a period specified in the instrument of appointment. The period specified must not exceed 5 years.
- (4) All appointments under this section are to be in writing.
- (5) All appointments under this section are to be on a part-time basis.

Note 1: Members appointed under subsection (1) or (2) are not appointed for a specified period, however, their appointments can be terminated at any time (see section 25K).

Note 2: The Governor is an ex officio member of the Payments System Board (and so is not separately appointed to the Board).

25C Chair of the Payments System Board

The Governor is the Chair of the Payments System Board.

25D Deputy Chair of the Payments System Board

- (1) The member of the Payments System Board referred to in paragraph 25A(b) is the Deputy Chair of the Board.
- (2) The Deputy Chair is to act as the Chair during any period when:
 - (a) the office of Governor is vacant; or
 - (b) the Governor is absent from Australia or is, for any reason, unable to perform the duties of Chair of the Payments System Board.

- (3) The Deputy Chair has, when acting as the Chair, all the powers, duties, rights and entitlements of the Chair of the Payments System Board.

25E Declaration by members

- (1) Each member of the Payments System Board must, before first starting to act as a member of the Board:

- (a) make an oath or affirmation of allegiance; and
- (b) make a declaration of secrecy.

However, the member does not have to do so if he or she is also a member of the Reserve Bank Board and has made an oath or affirmation, and a declaration of secrecy, under section 16.

- (2) The oath or affirmation of allegiance:
 - (a) is to be in accordance with the form set out in the Schedule to the Constitution; and
 - (b) is to be made before a Justice of the Peace or a Commissioner for taking Affidavits.
- (3) The declaration of secrecy:
 - (a) is to be in the prescribed form; and
 - (b) is to be made before a Justice of the Peace or a Commissioner for taking Affidavits.

Division 2—Meetings

25F Meetings

- (1) The Payments System Board is to meet at times and places as determined by the Payments System Board or as directed by the Chair.
- (2) The Chair is to preside at all meetings of the Payments System Board at which he or she is present. In the Chair's absence, the Deputy Chair is to preside.
- (3) Five Members of the Payments System Board form a quorum at a meeting of the Payments System Board.

- (4) Questions arising at a meeting of the Payments System Board are to be decided by a majority of the votes of the members present and voting.
- (5) The member presiding at a meeting of the Payments System Board:
 - (a) has a deliberative vote; and
 - (b) if necessary, also has a casting vote.

25G Conduct of meetings

The Payments System Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with this Part.

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

25H Resolutions without meetings

A resolution is taken to have been passed at a meeting of the Payments System Board if:

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

Division 3—Other administrative provisions

25I Remuneration

- (1) A member of the Payments System Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If

no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

- (2) A member of the Payments System Board is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

25J Leave of absence

The Payments System Board may grant leave of absence to another member of the Payments System Board on the terms and conditions that it determines.

25K Resignation

A member of the Payments System Board (other than the Governor) may resign his or her appointment by giving a written resignation to:

- (a) if he or she is the member referred to in paragraph 25A(b)—the Governor; or
- (b) if he or she is the member referred to in paragraph 25A(c)—APRA's Chief Executive Officer; or
- (c) if he or she is a member referred to in paragraph 25A(d)—the Governor-General.

25L Termination of appointment

- (1) The following provisions apply to the member of the Payments System Board referred to in paragraph 25A(b):
 - (a) the Governor may, at any time, terminate the member's appointment;
 - (b) the member's appointment is terminated automatically if he or she ceases to be a member of the Reserve Bank Board or an officer of the Reserve Bank Service.
- (2) The following provisions apply to the member of the Payments System Board referred to in paragraph 25A(c):
 - (a) APRA's Chief Executive Officer may, at any time, terminate the member's appointment;

- (b) the member's appointment is terminated automatically if he or she ceases to be an APRA Board member or an APRA staff member.
- (3) The Governor-General may terminate the appointment of a member of the Payments System Board referred to in paragraph 25A(d) for misbehaviour or physical or mental incapacity.
- (4) The Governor-General must terminate the appointment of a member of the Payments System Board referred to in paragraph 25A(d) if:
 - (a) the member becomes permanently incapable of performing his or her duties; or
 - (b) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (c) is absent, except on leave of absence granted by the Payments System Board, from:
 - (i) 2 or more consecutive meetings of the Payments System Board; or
 - (ii) 3 or more meetings of the Payments System Board in any period of 12 months; or
 - (d) fails to comply with his or her obligations under section 21 of the *Commonwealth Authorities and Companies Act 1997*.

49 Subsections 29(2) and 30(1)

Before "Board" (wherever occurring), insert "Reserve Bank".

50 Section 31

Repeal the section.

51 Section 37

Omit "bank", substitute "Bank".

52 Section 35

Omit “or Fifty dollars”, substitute “, Fifty dollars or One hundred dollars”.

53 Subsection 44(1)

Omit “10 penalty units”, substitute “50 penalty units”.

54 Section 45

Repeal the section.

55 Subsection 79A(1) (paragraph (a) of the definition of officer)

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

56 Subsection 79A(1) (paragraph (a) of the definition of officer)

Before “Board”, insert “Reserve Bank”.

57 Subsection 79A(1) (after paragraph (a) of the definition of officer)

Insert:

(aa) a member of the Payments System Board; or

58 Subsection 79A(1) (definition of *protected document*)

Omit “the *Banks (Shareholdings) Act 1972*”, substitute “the *Payment Systems (Regulation) Act 1998*, the *Payment Systems and Netting Act 1998*, the repealed *Banks (Shareholdings) Act 1972*”.

59 Subsection 79A(1) (definition of *protected information*)

Omit “the *Banks (Shareholdings) Act 1972*”, substitute “the *Payment Systems (Regulation) Act 1998*, the *Payment Systems and Netting Act 1998*, the repealed *Banks (Shareholdings) Act 1972*”.

60 Subsection 79A(2)

Omit “the *Banks (Shareholdings) Act 1972*”, substitute “the *Payment Systems (Regulation) Act 1998*, the *Payment Systems and Netting Act 1998*, the repealed *Banks (Shareholdings) Act 1972*”.

61 Paragraph 79A(5)(b)

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

62 Paragraph 79A(6)(a)

Omit “a Deputy Governor”, substitute “the Deputy Governor”.

63 Paragraph 79A(6)(a)

Before “Board”, insert “Reserve Bank”.

64 After paragraph 79A(6)(a)

Insert:

(aa) a member of the Payments System Board; or

65 Subsection 79A(8)

Omit “the *Banks (Shareholdings) Act 1972*”, substitute “the *Payment Systems (Regulation) Act 1998*, the *Payment Systems and Netting Act 1998*, the repealed *Banks (Shareholdings) Act 1972*”.

66 Section 81

Repeal the section.

67 Section 85

Add at the end:

(2) The Bank’s seal is to be kept in such custody as the Reserve Bank Board directs, and is not to be used except as authorised by the Reserve Bank Board.

Note: The heading to section 85 is replaced by the heading “**The Reserve Bank’s seal**”.

68 Section 89

Omit “\$100”, substitute “10 penalty units”.

Schedule 15—Amendment of the Retirement Savings Accounts Act 1997

Part 1—Changing the administration of the Act

1 Section 3

Repeal the section, substitute:

3 General administration of Act

- (1) Subject to subsection (3):
 - (a) APRA has the general administration of:
 - (i) Part 3; and
 - (ii) sections 40 to 44; and
 - (iii) Parts 6, 9 and 11; and
 - (iv) sections 183, 193 and 194; and
 - (b) APRA also has the general administration of sections 37 to 39 and section 49 to the extent that it is not conferred on ASIC by paragraph (d); and
 - (c) ASIC has the general administration of:
 - (i) Part 5 (other than section 49); and
 - (ii) Parts 7 and 8; and
 - (iii) section 184; and
 - (d) ASIC also has the general administration of sections 37 to 39 and section 49 to the extent to which they relate to:
 - (i) the keeping and retaining of records in relation to RSA's; or
 - (ii) the disclosure of information to holders of RSA's; or
 - (iii) the disclosure of information about RSA's (including disclosure of information to ASIC but not including disclosure of information to APRA); or
 - (iv) any other matter prescribed by the regulations for the purposes of this paragraph.
- (2) The following provisions (amongst other things) confer powers and duties on APRA for the purposes of APRA's administration of the provisions it administers and on ASIC for the purposes of ASIC's administration of the provisions it administers:

- (a) Parts 1 and 2;
- (b) Part 10;
- (c) Parts 12 to 15;
- (d) Part 16 (other than sections 183, 184, 193 and 194).

Note: Generally neither APRA nor ASIC are referred to in these provisions, Regulator is used instead. See the definition of *Regulator* in section 16.

- (3) The Minister may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

2 Section 16

Insert:

APRA means the Australian Prudential Regulation Authority.

3 Section 16

Insert:

ASIC means the Australian Securities and Investments Commission.

4 Section 16 (definition of *authorised person*)

Repeal the definition, substitute:

authorised person means a person authorised by the Regulator under section 129A for the purposes of the provision in which the expression occurs.

5 Section 16 (definition of *Commissioner*)

Repeal the definition.

6 Section 16

Insert:

member of the staff of APRA has the same meaning as that given to the expression *APRA staff member* in section 3 of the *Australian Prudential Regulation Authority Act 1998*.

7 Section 16

Insert:

member of the staff of ASIC has the same meaning as that given to the expression *staff member* in subsection 5(1) of the *Australian Securities and Investments Commission Act 1989*.

8 Section 16 (definition of *protected document*)

Repeal the definition.

9 Section 16 (definition of *protected information*)

Repeal the definition.

10 Section 16

Insert:

Regulator means:

- (a) APRA if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA; and
- (b) ASIC if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC.

11 Section 16 (definition of *RSA standards officer*)

Repeal the definition.

12 Subsections 26(2) and (3)

Omit “he or she”, substitute “it”.

13 Section 30

Omit “his or her”, substitute “its”.

Note: The heading to section 30 is altered by omitting “**his or her**” and substituting “**its**”.

14 Paragraph 31(3)(a)

Omit “he or she”, substitute “it”.

15 Division 3 of Part 10 (heading)

Repeal the heading, substitute:

Division 3—Investigations by the Regulator

16 Subsection 67(5)

Omit “The Commissioner’s” (wherever occurring), substitute “APRA’s”.

17 Subsection 95(1)

Repeal the subsection, substitute:

- (1) If it appears to the Regulator that a contravention of this Act or the regulations may have occurred, or be occurring, in relation to an RSA provider, the Regulator may, by written notice, tell the RSA provider that the Regulator proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.
- (1A) If it appears to ASIC that an RSA provider has refused or failed to give effect to a determination of the Superannuation Complaints Tribunal under sections 37D to 37G of the *Superannuation (Resolution of Complaints) Act 1993*, ASIC may, by written notice, tell the RSA provider that ASIC proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.

18 Subsection 95(2)

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

19 Subsection 96(1)

Omit “by signed writing”, substitute “in writing”.

20 Paragraph 96(1)(b)

Repeal the paragraph, substitute:

- (b) a member of the staff of the other Regulator; or

21 Subsection 97(1)

Repeal the subsection, substitute:

- (1) An inspector appointed by a particular Regulator may, in writing, delegate to a staff member of that Regulator any of the inspector’s powers under this Part.

22 Section 98

Omit “he or she”, substitute “the Regulator”.

23 At the end of subsection 114(3)

Add:

; and (d) must give a copy of the report to the other Regulator.

24 At the end of Division 8 of Part 10

Add:

129A Authorisation of members of staff

- (1) The Regulator may authorise in writing a member of the staff of the Regulator, or a member of the staff of the other Regulator, for the purposes of a specified provision of this Act.
- (2) The authorisation may be restricted to a particular function or power under the provision.

25 Subsection 168(3)

Omit “he or she”, substitute “it”.

26 Paragraph 168(3)(b)

Omit “his or her”, substitute “its”.

27 Section 187

Repeal the section.

28 Section 191

Repeal the section.

29 Section 192

Repeal the section.

30 Subsection 193(4)

Omit “the ISC’s”, substitute “APRA’s”.

Note: The headings to subsections 193(4) and (5) are altered by omitting “*the ISC’s*” and substituting “*APRA’s*”.

31 Subsection 193(11)

Omit “the Commissioner’s”, substitute “APRA’s”.

32 Section 198

Repeal the section.

33 Section 199

Repeal the section.

Part 2—Changing “Commissioner” to “APRA”

34 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) or “the Commissioner” (wherever occurring) and in both cases substituting “APRA”.

Note 1: The headings to sections 30, 68, 193 and 194 are altered by omitting “**Commissioner**” and substituting “**APRA**”.

Note 2: The headings to subsections 66(6) and (8) are altered by omitting “*Commissioner*” and substituting “*APRA*”.

35 Paragraph 15(4)(d)

36 Section 16 (paragraphs (a) to (f), (i), (j) and (p) of the definition of *reviewable decision*)

37 Subsection 23(1)

38 Subsections 24(1) to (3)

39 Subsections 25(1) to (5)

40 Subsections 26(1) to (3), (5) and (6)

41 Subsections 28(1), (3) to (5)

42 Subsections 29(1) to (6)

43 Section 30

44 Subsections 31(1) and (3)

45 Section 32

46 Subsections 33(1) to (4)

47 Subsection 34(4)

48 Subsection 35(1)

- 49 Section 37**
- 50 Subsections 44(1) and (3)**
- 51 Subparagraph 66(4)(a)(ii)**
- 52 Subsection 66(6)**
- 53 Paragraph 66(7)(b)**
- 54 Subsection 66(8)**
- 55 Subsections 67(1), (3) to (7), (9) and (10)**
- 56 Subsections 68(1) to (4)**
- 57 Subsection 135(1)**
- 58 Subsection 136(1)**
- 59 Subsection 138(2)**
- 60 Paragraph 139(a)**
- 61 Subsection 142(1)**
- 62 Subsections 193(1) to (5) and (9) to (11)**
- 63 Subsections 194(1) to (3)**

Part 3—Changing “Commissioner” to “ASIC”

64 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) or “the Commissioner” (wherever occurring) and in both cases substituting “ASIC”.

65 Section 16 (paragraphs (g) and (h) of the definition of *reviewable decision*)

66 Paragraph 45(2)(c)

67 Subsection 51(3)

68 Section 57

69 Section 59

Part 4—Changing “Commissioner” to “Regulator”

70 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “Commissioner” (wherever occurring) and substituting “Regulator”.

This does not apply to the reference to the Commissioner of Taxation in section 192.

Note 1: The headings to sections 17, 92, 93, 98, 128, 168 and 182 are altered by omitting “**Commissioner**” and substituting “**Regulator**”.

Note 2: The headings to subsections 104(8) and 189(4) are altered by omitting “*Commissioner*” and substituting “*Regulator*”.

71 Section 16 (definition of *approved form*)

72 Section 16 (definition of *lodge*)

73 Section 16 (paragraphs (k) to (o) of the definition of *reviewable decision*)

74 Section 17

75 Paragraphs 38(2)(l) and (m)

76 Paragraph 49(1)(b)

77 Paragraphs 91(a) and (b)

78 Section 92

79 Subsections 93(1) to (3)

80 Subsections 96(1) to (3)

81 Section 98

82 Paragraph 101(a)

83 Subsection 104(8)

84 Subsection 107(3)

- 85 Paragraph 108(2)(b)**
- 86 Subsections 111(1) and (2)**
- 87 Subsection 114(3)**
- 88 Section 115**
- 89 Section 116**
- 90 Subsections 119(1) to (3)**
- 91 Section 125**
- 92 Section 128**
- 93 Paragraphs 155(1)(e) and (f)**
- 94 Paragraphs 156(1)(c) and (d)**
- 95 Paragraph 160(4)(c)**
- 96 Paragraphs 161(1)(b), (2)(a) and (2)(b)**
- 97 Subsection 163(2)**
- 98 Paragraph 163(3)(a)**
- 99 Subsection 163(9)**
- 100 Subsections 168(1) to (3)**
- 101 Section 172**
- 102 Section 174**
- 103 Subsection 176(2)**
- 104 Section 177**
- 105 Section 179**
- 106 Section 180**

107 Subsections 182(1), (2), (4) and (6)

108 Subsections 189(1), (2), (4) to (7)

109 Paragraphs 190(1)(a) and (b)

110 Subsection 190(2)

111 Subsection 200(2)

Part 5—Changing “Commissioner’s” to “Regulator’s”

112 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “Commissioner’s” (wherever occurring) and substituting “Regulator’s”.

Note 1: The headings to sections 174, 175, 177 and 178 are altered by omitting “**Commissioner’s**” and substituting “**Regulator’s**”.

Note 2: The heading to subsections 189(6) and (7) are altered by omitting “*Commissioner’s*” and substituting “*Regulator’s*”.

113 Paragraph 113(2)(a)

114 Paragraph 114(3)(b)

115 Subsection 162(1)

Schedule 16—Amendment of the Superannuation Industry (Supervision) Act 1993

Part 1—Changing the administration of the Act

1 Subsection 3(1)

Omit “the Insurance and Superannuation Commissioner”, substitute
“APRA and ASIC”.

2 Section 6

Repeal the section, substitute:

6 General administration of Act

- (1) Subject to subsection (3):
 - (a) APRA has the general administration of:
 - (i) Part 2; and
 - (ii) Parts 4 to 5; and
 - (iii) section 60A; and
 - (iv) Part 7 (other than section 64A); and
 - (v) Parts 8 to 11; and
 - (vi) Part 12 (other than sections 101, 103 and 105); and
 - (vii) Parts 13 to 16; and
 - (viii) Part 17 (other than section 140); and
 - (ix) Part 21; and
 - (x) Parts 23 to 24A; and
 - (xi) Division 3 of Part 25; and
 - (xii) Part 25A; and
 - (xiii) Part 32; and
 - (b) APRA also has the general administration of Parts 3 and 6 (other than section 60A) and section 105 to the extent that that administration is not conferred on ASIC by paragraph (d); and
 - (c) ASIC has the general administration of:
 - (i) section 64A; and

- (ii) sections 101 and 103; and
 - (iii) section 140; and
 - (iv) Parts 18 to 20; and
 - (v) Part 22; and
- (d) ASIC also has the general administration of Parts 3 and 6 (other than section 60A) and section 105 to the extent to which they relate to:
- (i) the keeping of reports to members of, or beneficiaries in, funds; or
 - (ii) disclosure of information to members of, or beneficiaries in, funds; or
 - (iii) disclosure of information about funds (including disclosure of information to ASIC but not including disclosure of information to APRA); or
 - (iv) any other matter prescribed by the regulations for the purposes of this paragraph.
- (2) Powers and duties are also conferred by Parts 1, 25 (other than Division 3) and 26 to 31 on:
- (a) APRA for the purposes of APRA's administration of the provisions it administers; and
 - (b) ASIC for the purposes of ASIC's administration of the provisions it administers.
- Note: Generally neither APRA nor ASIC are referred to in these provisions, Regulator is used instead. See the definition of **Regulator** in section 16.
- (3) The Minister may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

3 Subsection 10(1)

Insert:

APRA means the Australian Prudential Regulation Authority.

4 Subsection 10(1)

Insert:

ASIC means the Australian Securities and Investments Commission.

5 Subsection 10(1) (definition of *authorised person*)

Repeal the definition, substitute:

authorised person means a person authorised by the Regulator under section 298A for the purposes of the provision in which the expression occurs.

6 Subsection 10(1)

Insert:

member of staff means:

- (a) in relation to APRA—a person who is an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*; and
- (b) in relation to ASIC—a person who is a staff member within the meaning of the *Australian Securities and Investments Commission Act 1989*.

7 Subsection 10(1) (definition of *protected document*)

Repeal the definition.

8 Subsection 10(1) (definition of *protected information*)

Repeal the definition.

9 Subsection 10(1)

Insert:

Regulator means:

- (a) APRA if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA; and
- (b) ASIC if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC.

10 Subsection 10(1) (definition of *superannuation standards officer*)

Repeal the definition.

11 Subsection 10(1) (definition of *taxation officer*)

Repeal the definition.

12 Section 27C

Omit “his or her”, substitute “its”.

13 Paragraph 27D(3)(a)

Omit “he or she”, substitute “it”.

14 Part 4 (heading)

Repeal the heading, substitute:

**Part 4—Trustee of superannuation entity to lodge
annual returns with APRA**

15 Division 2 of Part 5 (heading)

Repeal the heading, substitute:

**Division 2—APRA may give notices about complying fund
status.**

16 Paragraph 126D(3)(a)

Omit “he or she”, substitute “it”.

17 Part 22 (heading)

Repeal the heading, substitute:

**Part 22—Payment of unclaimed superannuation
money to ASIC**

18 Division 3 of Part 25 (heading)

Repeal the heading, substitute:

**Division 3—APRA may require trustee of superannuation
entity to appoint an individual, or a committee, to
investigate the financial position of the entity**

19 Division 4 of Part 25 (heading)

Repeal the heading, substitute:

Division 4—Investigations by Regulator

20 Subsection 265(1)

Omit “by signed writing, appoint a member of the staff of the Commissioner”, substitute “in writing, appoint a member of the staff of the Regulator, or a member of the staff of the other Regulator.”.

21 Section 284

Add at the end:

- (4) APRA and ASIC must give each other a copy of any reports they prepare under this section.

22 After section 298

Insert:

298A Authorisation of members of staff

- (1) The Regulator may authorise in writing a member of staff of the Regulator, or a member of staff of the other Regulator, for the purposes of a specified provision of this Act.
- (2) The authorisation may be restricted to a particular function or power under the provision.

23 Paragraph 320(3)(b)

Omit “his or her”, substitute “its”.

24 Section 340

Repeal the section.

25 Section 346

Repeal the section.

26 Section 347

Omit “or a superannuation standards officer”.

27 Section 347

Omit “or a taxation officer”.

28 Subsection 347A(4)

Omit “ISC’s”, substitute “APRA’s”.

Note: The headings to subsections 347A(4) and (5) are altered by omitting “ISC” and substituting “APRA’s”.

29 Section 351

Repeal the section.

30 Section 352

Repeal the section.

Part 2—Changing “Commissioner” to “APRA”

31 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) and “the Commissioner” (wherever occurring) and in both cases substituting “APRA”. This does not apply to the references to the Commissioner of Taxation in subsection 40(3) or 342(12).

Note 1: The headings to sections 27C, 40, 41, 63, 70A, 106, 131A, 134, 141, 142, 201, 259, 347A, 348, 360 and 365 are altered by omitting “**Commissioner**” and substituting “**APRA**”.

Note 2: The headings to subsections 18(11), 117(6), 129(4) and (6) and 130(3) and (5) are altered by omitting “*Commissioner*” and substituting “*APRA*”.

32 Subsection 10(1) (paragraph (d) of the definition of *approved purposes*)

33 Subsection 10(1) (paragraphs (a) to (u) and (ze) to (zg) of the definition of *reviewable decision*)

34 Subsections 18(3), (6), (7), (7B), (7C), (10), (11) and (12)

35 Subsection 19(4)

36 Subsection 23(1)

37 Subsections 24(1) to (3)

38 Subsections 25(1) to (5)

39 Subsections 26(1), (2), (4) to (5)

40 Subsections 27A(1), (3) to (5)

41 Subsections 27B(1) to (6)

42 Section 27C

43 Subsections 27D(1) and (3)

- 44 Section 27E**
- 45 Subsections 28(1) to (3)**
- 46 Subsection 29(1)**
- 47 Paragraph 29(2)(d)**
- 48 Section 35**
- 49 Subsections 36(1) and (3)**
- 50 Subsections 40(1) to (3)**
- 51 Paragraphs 40(4)(a) to (b)**
- 52 Subsections 41(1) to (2)**
- 53 Subparagraphs 42(1A)(a)(ii) and (b)(iv) and (1AA)(b)(ii) and (c)(ii)**
- 54 Paragraphs 42(1AC)(b) to (c)**
- 55 Subparagraph 42(1AC)(d)(ii)**
- 56 Sub-subparagraphs 43(b)(ii)(B) and (iii)(B)**
- 57 Subparagraph 43(b)(iv)**
- 58 Sub-subparagraphs 44(b)(ii)(B) and (iii)(B)**
- 59 Subparagraph 44(b)(iv)**
- 60 Paragraphs 45(1)(a) to (b)**
- 61 Paragraphs 47(1)(a) to (b)**
- 62 Paragraphs 48(1)(a) to (b)**
- 63 Paragraphs 50(1)(c), (2)(c) to (d) and (f) and (5)(a)**
- 64 Subsection 60A(1) (including the note)**

- 65 Subparagraph 62(1)(b)(v)**
- 66 Subsection 62(3)**
- 67 Subsections 63(1), (3), (5) and (8)**
- 68 Subparagraph 67(3)(b)(ii)**
- 69 Subsection 67(4)**
- 70 Subsections 70A(1) to (2)**
- 71 Paragraphs 71(1)(e) to (f)**
- 72 Paragraph 71(4)(b)**
- 73 Subsections 92(7) to (12)**
- 74 Subsections 93A(2) to (6)**
- 75 Subsections 95(1) to (2)**
- 76 Subparagraph 95(3)(b)(ii)**
- 77 Subsection 95(4)**
- 78 Subparagraph 97(3)(b)(ii)**
- 79 Subsection 97(4)**
- 80 Subsection 106(1)**
- 81 Subsection 117(6)**
- 82 Subparagraph 120(2A)(b)(i)**
- 83 Subsection 121(3)**
- 84 Paragraph 123(2)(a)**
- 85 Subparagraph 123(2)(b)(ii)**
- 86 Paragraph 123(3)(a)**

- 87 Subparagraph 123(3)(c)(ii)**
- 88 Subsection 126B(1)**
- 89 Paragraph 126B(3)(e)**
- 90 Subsection 126B(4)**
- 91 Paragraph 126B(6)(b)**
- 92 Subsection 126B(7)**
- 93 Subsections 126C(1) to (5)**
- 94 Subsections 126D(1), (3) to (4)**
- 95 Paragraphs 126E(2)(a) to (b) and (3)(e)**
- 96 Subsections 126F(1) to (5)**
- 97 Subparagraph 129(3A)(a)(ii)**
- 98 Subsection 129(4)**
- 99 Paragraph 129(5)(b)**
- 100 Subsection 129(6)**
- 101 Subparagraph 130(2A)(a)(ii)**
- 102 Subsection 130(3)**
- 103 Paragraph 130(4)(b)**
- 104 Subsection 130(5)**
- 105 Subsections 131(1), (3) to (7) and (9) to (10)**
- 106 Subsections 131A(1) to (4)**
- 107 Subsections 133(1) to (5)**
- 108 Subsections 134(1) to (4)**

- 109 Subsections 135(1) to (2)**
- 110 Section 136**
- 111 Section 137**
- 112 Subsections 138(1) to (3)**
- 113 Subsection 141(1)**
- 114 Subsections 142(1), (4) to (7)**
- 115 Subsection 197(1)**
- 116 Paragraphs 200(a) to (b)**
- 117 Subsections 201(1) to (2)**
- 118 Paragraph 201(4)(b)**
- 119 Subsections 254(1) and (3)**
- 120 Section 257**
- 121 Subsections 259(1) to (3)**
- 122 Subsection 260(2)**
- 123 Subsection 299E(1)**
- 124 Subsection 299F(1)**
- 125 Subsection 299G(1)**
- 126 Subsection 299M(2)**
- 127 Subsection 299N(2)**
- 128 Paragraph 299P(a)**
- 129 Paragraph 299S(1)(b)**
- 130 Subsections 342(1) to (2) and (4)**

- 131 Paragraph 342(5)(b)**
- 132 Subsection 342(6)**
- 133 Paragraph 342(8)(a)**
- 134 Subsections 342(9) to (10) and (12)**
- 135 Subsections 347A(1) to (5), (7) and (9) to (11)**
- 136 Subsections 348(1) to (3)**
- 137 Subsection 357(4)**
- 138 Subsections 359(2) to (4)**
- 139 Subsection 360(1)**
- 140 Paragraph 361(1)(a)**
- 141 Subsections 362(1) and (3)**
- 142 Subsection 363(5)**
- 143 Subsections 364(2) to (3)**
- 144 Subsections 365(1) to (3)**
- 145 Subsection 367(1)**
- 146 Subsection 369(1)**
- 147 Paragraph 370(2)(b)**
- 148 Paragraphs 371(2)(b) to (c)**
- 149 Paragraph 372(3)(b)**

Part 3—Changing “Commissioner’s” to “APRA’s”

150 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner’s” (wherever occurring) and “the Commissioner’s” (wherever occurring) and in both cases substituting “APRA’s”.

Note 1: The heading to section 126F is altered by omitting “**Commissioner’s**” and substituting “**APRA’s**”.

Note 2: The heading to subsection 71(4) is altered by omitting “*Commissioner’s*” and substituting “*APRA’s*”.

151 Paragraph 126B(3)(e)

152 Subsection 131(5)

153 Subsections 258(1) to (3)

154 Subsection 260(1)

155 Subsections 261(1) to (2)

Part 4—Changing “Commissioner” to “ASIC”

156 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) and “the Commissioner” (wherever occurring) and in both cases substituting “ASIC”.

Note 1: The headings to sections 187 and 225 are altered by omitting “**Commissioner**” and substituting “**ASIC**”.

Note 2: The heading to subsection 225(5) is altered by omitting “*Commissioner*” and substituting “*ASIC*”.

157 Section 4 (table item relating to Part 22)

158 Subsection 10(1) (paragraphs (v) to (x) of the definition of *reviewable decision*)

159 Paragraph 53(5)(a)

160 Subsection 140(2)

161 Subsection 153(4)

162 Subsection 159(2)

163 Subsection 164(1)

164 Section 166

165 Section 187

166 Subsections 225(2) to (8)

167 Section 226

168 Subsection 377(2)

Part 5—Changing “Commissioner” to “Regulator”

169 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “Commissioner” (wherever occurring) and substituting “Regulator”.

This does not apply to the reference to the Commissioner of Taxation in subsection 344(7) or section 347.

Note 1: The headings to sections 11, 254, 255, 264, 267, 298 and 320 are altered by omitting “Commissioner” and substituting “Regulator”.

Note 2: The headings to subsections 264(1), 273(8) and 344(4) are altered by omitting “Commissioner” and substituting “Regulator”.

170 Subsection 10(1) (definition of *approved form*)

171 Subsection 10(1) (definition of *lodge*)

172 Subsection 10(1) (paragraphs (z) to (zd) of the definition of *reviewable decision*)

173 Section 11

174 Paragraphs 31(2)(q) to (r)

175 Paragraphs 32(2)(j) to (k)

176 Paragraphs 33(2)(h) to (i)

177 Paragraph 58(2)(b)

178 Paragraph 105(1)(b)

179 Paragraphs 253(a) to (c)

180 Subsection 254(2)

181 Subsections 255(1) to (3)

182 Subsection 263(1)

183 Subsections 264(1) to (4) and (6)

- 184 Subsections 265(1) to (3)**
- 185 Subsection 266(1)**
- 186 Section 267**
- 187 Paragraph 270(a)**
- 188 Subsection 273(8)**
- 189 Subsection 277(3)**
- 190 Paragraph 278(2)(b)**
- 191 Subsections 281(1) to (2)**
- 192 Subsection 284(3)**
- 193 Section 285**
- 194 Section 286**
- 195 Subsections 289(1) to (3)**
- 196 Section 295**
- 197 Section 298**
- 198 Paragraphs 307(1)(e) to (f)**
- 199 Paragraphs 308(1)(c) to (d)**
- 200 Paragraph 312(4)(c)**
- 201 Paragraphs 313(1)(b) and (1A)(a) to (b)**
- 202 Subsection 315(2)**
- 203 Paragraph 315(3)(a)**
- 204 Subsection 315(9)**
- 205 Subsections 320(1) to (3)**

- 206 Subsection 326(1)**
- 207 Section 328**
- 208 Section 329**
- 209 Subsection 331(2)**
- 210 Section 332**
- 211 Subsection 333(1)**
- 212 Section 335**
- 213 Section 336**
- 214 Subsections 344(1) to (2), (4) to (8)**
- 215 Paragraphs 345(1)(a) to (b)**
- 216 Subsection 345(2)**
- 217 Section 347**
- 218 Subsection 353(2)**

Part 6—Changing “Commissioner’s” to “Regulator’s”

219 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “Commissioner’s” (wherever occurring) and substituting “Regulator’s”.

Note 1: The headings to sections 328, 329, 330, 332, 333 and 334 are altered by omitting “**Commissioner’s**” and substituting “**Regulator’s**”.

Note 2: The heading to subsections 344(6) and (8) are altered by omitting “*Commissioner’s*” and substituting “*Regulator’s*”.

220 Paragraph 283(2)(a)

221 Paragraph 284(3)(b)

222 Subsection 314(1)

Part 7—Amendments to take account of Part 1 of Schedule 2 to the Superannuation Legislation Amendment Act 1998

223 Subsection 28(3)

Repeal the subsection, substitute:

- (3) Except in a case covered by paragraph (2)(aa), APRA must not make a decision under subsection (1) without the written consent of the Minister.

224 Subsection 131(4)

Omit “the Commissioner”, substitute “APRA”.

225 Subsection 131(4A)

Omit “the Commissioner’s”, substitute “APRA’s”.

226 Subsection 131(4A)

Omit “the Commissioner” (twice occurring), substitute “APRA”.

227 Paragraph 131(4B)(a)

Omit “the Commissioner’s”, substitute “APRA’s”.

228 Subsection 131(4B)

Omit “the Commissioner” (twice occurring), substitute “APRA”.

229 Subsection 131(10)

Omit “the Commissioner” (twice occurring), substitute “APRA”.

230 Subsection 255(4)

Omit “Commissioner”, substitute “Regulator”.

231 Subsections 264(2) to (4A) (including the notes to subsections 264(3) and (4))

Omit “Commissioner” (wherever occurring), substitute “Regulator”.

**Part 8—Amendments to take account of Schedule 1
to the Superannuation Legislation
Amendment (Choice of Superannuation
Funds) Act 1998**

232 Subparagraph 6(1)(a)(vii)

Repeal the subparagraph, substitute:

- (vii) Part 13; and
- (viiia) Part 14 (other than Division 2); and
- (viiib) Parts 15 and 16; and

233 After subparagraph 6(1)(c)(ii)

Insert:

- (iia) Division 2 of Part 14; and

234 Subsection 114D(2)

Omit “the Commissioner”, substitute “ASIC”.

235 Subsection 148D(1)

Omit “the Commissioner” (twice occurring), substitute “ASIC”.

236 Section 148F

Omit “the Commissioner” (twice occurring), substitute “ASIC”.

Schedule 17—Amendment of the Superannuation (Resolution of Complaints) Act 1993

Part 1—Amendments relating to changing “Commissioner” to “ASIC”

1 Subsection 3(2) (note 2)

Repeal the note, substitute:

Note 2: For definitions of *APRA*, *ASIC*, *approved deposit fund*, *excluded approved deposit fund*, *excluded fund*, *excluded superannuation fund*, *function*, *regulated superannuation fund* and *Regulator*, see subsection 10(1) of the Supervision Act.

2 Subsection 3(2) (subparagraph (a)(ii) of the definition of *death benefits*)

Omit “the Commissioner”, substitute “APRA”.

3 Subsection 31(2)

Omit “Commissioner” (wherever occurring), substitute “Regulator”.

4 Subsections 63(3A) and (3B)

Omit “Commissioner’s” (wherever occurring), substitute “ASIC’s”.

Part 2—Changing “Commissioner” to “ASIC”

5 Amendment of the Act

The provisions of the Act specified in this Part are amended by omitting “The Commissioner” (wherever occurring) or “the Commissioner” (wherever occurring) and in both cases substituting “ASIC”.

Note: The headings to sections 64 and 64A are altered by omitting “**Commissioner**” and substituting “**ASIC**”.

6 Section 61

7 Subsection 62(2)

8 Paragraphs 63(1)(b) and (3)(a)

9 Paragraph 64(b)

10 Paragraph 64A(b)

11 Paragraph 65(1)(b)

**Part 3—Amendment to take account of Schedule 3 to
the Superannuation Legislation Amendment
Act 1998**

12 Subsection 63(3B)

Omit “the Commissioner’s”, substitute “ASIC’s”.

Schedule 18—Amendment and repeal of other Acts

Part 1—Amendment and repeal of levy Acts

General Insurance Supervisory Levy Act 1989

1 The whole of the Act

Repeal the Act.

Insurance Supervisory Levies Collection Act 1989

2 The whole of the Act

Repeal the Act.

Life Insurance Supervisory Levy Act 1989

3 The whole of the Act

Repeal the Act.

Retirement Savings Accounts Supervisory Levy Act 1997

4 The whole of the Act

Repeal the Act.

Superannuation Entities (Taxation) Act 1987

5 Title

Omit “approved deposit funds, retirement savings accounts and pooled superannuation trusts”.

6 Section 1

Omit “*Superannuation Entities (Taxation) Act 1987*”, substitute “*Superannuation (Excluded Funds) Taxation Act 1987*”.

7 Section 3

Insert:

APRA means the Australian Prudential Regulation Authority.

8 Section 3 (definition of *Commissioner*)

Repeal the definition.

9 Section 3 (definition of *reviewable decision*)

Repeal the definition, substitute:

reviewable decision means a decision of APRA under section 15DF.

10 Section 3 (definition of *RSA provider*)

Repeal the definition.

11 Section 3 (the second definition of *year of income*)

Repeal the definition.

12 Part III (heading)

Repeal the heading, substitute:

Part III—Functions of APRA

13 Section 9

Omit “the Commissioner”, substitute “APRA”.

14 Part IIIAAA

Repeal the Part.

15 Part IIIAA (heading)

Repeal the heading, substitute:

**Part IIIAA—Collection of Superannuation
(Excluded Funds) Supervisory Levy**

16 Section 15DAA

Insert:

excluded superannuation fund has the meaning given by subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*.

17 Section 15DAA (definitions of *basic levy amount* and *levy*)

Omit “*Superannuation Supervisory Levy Act 1991*”, substitute “*Superannuation (Excluded Funds) Supervisory Levy Imposition Act 1991*”.

18 Section 15DA

Omit “trustee”, substitute “trustee of an excluded superannuation fund”.

19 Subsection 15DB(1)

Omit “the Commissioner”, substitute “APRA”.

20 Section 15DE

Omit “the Commissioner”, substitute “APRA”.

21 Section 15DF

Omit “The Commissioner”, substitute “APRA”.

22 Section 15DG

Omit “the Commissioner” (wherever occurring), substitute “APRA”.

23 Part IIIAB

Repeal the Part.

24 Subsection 16(1AA)

Repeal the subsection.

25 Subsections 16(1), (3), (4), (5) and (6)

Omit “the Commissioner” (wherever occurring), substitute “APRA”.

26 Subsection 16(1)

Omit “, or an RSA provider that is affected by such a decision,”.

27 Subsection 16(1)

Omit “, or the RSA provider,”.

28 Subsection 17(1)

Omit “, or an RSA provider affected by such a decision,”.

29 Subsections 17(1) and (2)

Omit “, or the RSA provider,” (wherever occurring).

30 Paragraph 17(1)(a)

Omit “the Commissioner or the Minister, as the case may be,”,
substitute “APRA”.

31 Paragraph 17(1)(b)

Omit “the Commissioner”, substitute “APRA”.

32 Subsection 17(2)

Omit “the Commissioner or the Minister”, substitute “APRA”.

33 Section 20

Repeal the section.

34 Section 21

Repeal the section.

35 Subsection 22(2) (definition of *levy*)

Repeal the definition, substitute:

levy means levy imposed by the *Superannuation (Excluded Funds) Supervisory Levy Imposition Act 1991*.

Superannuation Supervisory Levy Act 1991

36 Section 1

Omit “*Superannuation Supervisory Levy Act 1991*”, substitute
“*Superannuation (Excluded Funds) Supervisory Levy Imposition Act 1991*”.

37 Section 4

Insert:

APRA means the Australian Prudential Regulation Authority.

38 Section 5

Omit “*Superannuation Entities (Taxation) Act 1987*”, substitute
“*Superannuation (Excluded Funds) Taxation Act 1987*”.

39 Subsection 7(2)

Omit “the Commissioner” (wherever occurring), substitute “APRA”.

Part 2—Amendment of other Acts

Acts Interpretation Act 1901

40 Section 40A

After “*Securities*”, insert “*and Investments*”.

Australian Prudential Regulation Authority Act 1998

41 Subsection 38(3)

Repeal the subsection.

42 Section 46

Omit “officers and employees of Departments of the Australian Public Service”, substitute “persons appointed or engaged under the *Public Service Act 1998*”.

Corporations Act 1989

43 Subsection 4(1) (definition of ASC Law)

After “*Securities*”, insert “*and Investments*”.

44 Subsection 39(1)

After “*Securities*”, insert “*and Investments*”.

Crimes Act 1914

45 Paragraph 4AB(3)(b)

After “*Securities*”, insert “*and Investments*”.

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

46 Paragraphs 12(a) and (b)

Repeal the paragraphs, substitute:

- (a) APRA, or a member of APRA’s board of management; or

- (b) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

Financial Transactions Reports Act 1988

47 Paragraph 27(9)(b)

After “*Securities*”, insert “*and Investments*”.

Schedule 19—Transitional provisions

Part 1—Transitional provisions relating to amendments of the Banking Act 1959

1 Interpretation

In this Part:

amended Act means the *Banking Act 1959* as in force immediately after the APRA commencement.

APRA means the Australian Prudential Regulation Authority.

APRA commencement means the commencement of the *Australian Prudential Regulation Authority Act 1998*.

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

2 Treatment of section 9 authorities

- (1) This item applies to an authority that, immediately before the APRA commencement, was:
 - (a) in force under section 9 of the old Act; or
 - (b) deemed by subsection 9(1) of the old Act to be an authority under section 9 of that Act.
- (2) The authority is to be taken, after that commencement, to be an authority under subsection 9(3) of the amended Act.
- (3) Any conditions to which the authority was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions imposed under subsection 9(4) of the amended Act.

3 Treatment of undetermined applications for section 9 authorities

An application for an authority under section 9 of the old Act made, but not determined, before the APRA commencement is to be treated, after that commencement, as if it were an application for an authority under subsection 9(3) of the amended Act.

4 Treatment of obligations to publish notices in relation to section 9 authorities

An obligation under section 9 of the old Act to publish notice of a matter in relation to, or to the holder of, an authority, being an obligation that is undischarged as at the APRA commencement, becomes, on that commencement, an obligation that APRA is to discharge.

5 Treatment of bodies covered by State and Territory Financial Institutions Codes

- (1) Subject to subitem (2), APRA may, in writing, determine that a specified FIC body, or each body in a specified class of FIC bodies, is taken to be granted an authority under subsection 9(3) of the amended Act on a specified date.
- (2) APRA's power to make a determination under subitem (1) that covers a particular FIC body (whether individually or as a member of a class of bodies) is subject to the following qualifications:
 - (a) APRA must not make a determination covering the FIC body unless the Treasurer and the relevant State or Territory Minister have agreed that the body, or a class of bodies that includes the body, should be covered by the amended Act from a specified date; and
 - (b) the date specified in the determination as mentioned in subitem (1) must be the specified date referred to in paragraph (a).
- (3) The determination may specify conditions to which an authority that is taken to have been granted because of subitem (1) is subject.
- (4) The determination has effect accordingly.
- (5) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Subsection 9(7) of the amended Act does not apply to:
 - (a) a grant of an authority that is taken to have occurred under subitem (1); or
 - (b) the imposition of conditions on an authority under subitem (3).
- (7) In this item:

FIC body means a body that is a financial institution for the purposes of any of the Financial Institutions Codes.

Financial Institutions Code means any of the following Codes of a State or Territory:

- (a) the Financial Institutions (NSW) Code of New South Wales;
- (b) the Financial Institutions (Victoria) Code of Victoria;
- (c) the Financial Institutions (Queensland) Code of Queensland;
- (d) the Financial Institutions (Western Australia) Code of Western Australia;
- (e) the Financial Institutions (South Australia) Code of South Australia;
- (f) the Financial Institutions (Tasmania) Code of Tasmania;
- (g) the Financial Institutions (ACT) Code of the Australian Capital Territory;
- (h) the Financial Institutions (NT) Code of the Northern Territory.

relevant State or Territory Minister, in relation to a body that is a financial institution under the Financial Institutions Code of a particular State or Territory, means the State or Territory Minister with responsibility for the administration of that Financial Institutions Code.

6 Treatment of exemptions under section 11

- (1) An order in force immediately before the APRA commencement under section 11 of the old Act continues to have effect after that commencement as if it were an order under subsection 11(1) of the amended Act.
- (2) Any conditions to which the order was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions applying under subsection 11(2) of the amended Act.

7 Treatment of subsection 11E(2) approvals

An approval by the Governor of the Reserve Bank in force under subsection 11E(2) of the old Act immediately before the APRA commencement is to be taken, after that commencement, to be an approval by APRA under subsection 11E(2) of the amended Act.

8 Treatment of matters under depositor protection provisions

- (1) The following provisions apply in relation to matters under provisions of Division 2 of Part II of the old Act (including matters under those provisions as applying for the purpose of subsection 65(3) of the old Act):
 - (a) an obligation to provide information to the Reserve Bank, or to inform the Reserve Bank of a matter, under a provision of the Division, being an obligation that is undischarged as at the APRA commencement, becomes, on the APRA commencement, an obligation to provide the information to APRA, or to inform APRA of the matter;
 - (b) an appointment of an investigator under a provision of the Division, being an appointment that is still in force immediately before the APRA commencement, has effect after that commencement as if it were an appointment by APRA under section 13 or 13A of the amended Act;
 - (c) if the Reserve Bank is, immediately before the APRA commencement, in control of an institution's business under a provision of the Division, the Reserve Bank is to transfer the control of the institution's business to APRA, and the provisions of Division 2 of Part II of the amended Act apply in relation to APRA being in control of the institution's business;
 - (d) proceedings under subsection 14(6) of the old Act that have not been completed by the APRA commencement lapse;
 - (e) an obligation on the Reserve Bank under a provision of the Division to publish notice of a matter, being an obligation that is undischarged as at the APRA commencement, becomes, on that commencement, an obligation that APRA is to discharge;
 - (f) an authorisation that is in force under subsection 16(2) of the old Act immediately before the APRA commencement has effect, after that commencement, as if it were an authorisation under subsection 13A(4) of the amended Act.
- (2) The regulations may make provision dealing with how the transfer of control of an institution's business as mentioned in paragraph (1)(c) is to occur, or otherwise relating to such a transfer.
- (3) Section 15 of the old Act continues to have effect (despite its repeal) after the APRA commencement in relation to things done or omitted to be done before that commencement.

9 Treatment of instruments under Division 3 of Part II

An instrument in force immediately before the APRA commencement under a provision of Division 3 of Part II of the old Act, being a provision that is amended by this Act, continues to have effect after that commencement (as far as practicable and subject to later instruments) as if it covered ADIs in the same way as it covers banks.

10 Reserve Bank to repay non-callable deposits on repeal of Division 3 of Part II

On the repeal of Division 3 of Part II of the *Banking Act 1959*, the Reserve Bank is to repay to an ADI the amount then standing to the credit of the ADI's Non-callable Deposit Account. The repayment is to be made as soon as practicable after the repeal takes effect.

Note: Schedule 2 provides for the repeal of the Division. The repeal takes effect on a separate day to be Proclaimed (rather than on the APRA commencement).

11 Treatment of regulations under Part V

Regulations in force immediately before the APRA commencement under section 50 of the old Act continue to have effect after that commencement (as far as practicable and subject to later regulations) as if they covered ADIs in the same way as they cover banks.

12 Treatment of regulations under Part VI

Regulations in force immediately before the APRA commencement under section 51 of the old Act continue to have effect after that commencement (as far as practicable and subject to later regulations) as if they covered ADIs in the same way as they cover banks.

13 Treatment of investigations under section 61

An appointment of an investigator under section 61 of the old Act, being an appointment that is still in force immediately before the APRA commencement, has effect after that commencement as if it were an appointment by APRA under section 61 of the amended Act.

14 Treatment of obligations under section 62

An obligation to provide information to the Reserve Bank under section 62 of the old Act, being an obligation that is undischarged as at the APRA commencement, becomes, on the APRA commencement, an obligation to provide the information to APRA.

15 Assumption of control of business under section 65

- (1) An order in force in relation to an institution immediately before the APRA commencement under section 65 of the old Act continues to have effect after that commencement as if it authorised APRA to assume control of, and to carry on, the institution's business.
- (2) If the Reserve Bank is, immediately before the APRA commencement, in control of an institution's business under section 65 of the old Act, the Reserve Bank is to transfer the control of the institution's business to APRA, and the provisions of Subdivision B of Division 2 of the amended Act apply in relation to APRA being in control of the institution's business in accordance with subsection 65(3) of that Act.
- (3) The regulations may make provision dealing with how the transfer of control of an institution's business as mentioned in subitem (2) is to occur, or otherwise relating to such a transfer.

16 Treatment of consents under section 66

- (1) A consent in force immediately before the APRA commencement under section 66 of the old Act continues to have effect after that commencement as if it were a consent under section 66 of the amended Act.
- (2) Any conditions to which the consent was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions applying under section 66 of the amended Act.

17 Continued use of words by banks

- (1) This item applies to an institution that, immediately before the APRA commencement was a bank that was assuming or using a bank-related word in relation to a financial business (within the meaning of section 66 of the old Act).
- (2) The institution is taken, on the APRA commencement, to have been granted a consent under section 66 of the amended Act covering the assumption or use of the word.

18 Treatment of consents under section 67

- (1) A consent in force immediately before the APRA commencement under section 67 of the old Act continues to have effect after that

commencement as if it were a consent under section 67 of the amended Act.

- (2) Any conditions to which the consent was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions applying under section 67 of the amended Act.

19 Treatment of regulations under section 71

Regulations in force immediately before the APRA commencement under section 71 of the old Act continue to have effect after that commencement (as far as practicable and subject to later regulations) as if:

- (a) they covered ADIs in the same way as they cover banks; and
- (b) references in them to the Reserve Bank were instead references to APRA.

Part 2—Transitional provisions relating to amendments of the Financial Corporations Act 1974

20 Interpretation

In this Part:

amended Act means the *Financial Corporations Act 1974* as in force immediately after the APRA commencement.

APRA commencement means the commencement of the *Australian Prudential Regulation Authority Act 1998*.

old Act means the *Financial Corporations Act 1974* as in force immediately before the APRA commencement.

21 Treatment of exemptions and determinations under paragraph 8(2)(l)

An exemption or determination in force immediately before the APRA commencement under paragraph 8(2)(l) of the old Act continues to have effect after that commencement as if it were an exemption or determination under paragraph 8(2)(l) of the amended Act.

22 Treatment of matters under section 10

The following provisions apply in relation to matters under section 10 of the old Act:

- (a) the list under subsection 10(1) of the old Act, being that list as is in force immediately before the APRA commencement, has effect after that commencement as if it were prepared by the Governor of the Reserve Bank under subsection 10(1) of the amended Act;
- (b) an obligation on the Treasurer to publish notice of a matter, or to notify a person of a matter, being an obligation that is undischarged as at the APRA commencement, becomes, on that commencement, an obligation that the Governor of the Reserve Bank is to discharge;
- (c) a determination in force under a provision of section 10 of the old Act immediately before the APRA commencement continues to have effect, after that commencement as if it

were a determination under that provision of section 10 of the amended Act;

- (d) a request under subsection 10(7) of the old Act that has not been dealt with by the APRA commencement is, after that commencement, to be dealt with as if it were a request under subsection 10(7) of the amended Act.

23 Treatment of exemptions under subsection 11(14)

An exemption in force immediately before the APRA commencement under subsection 11(14) of the old Act continues to have effect after that commencement as if it were an exemption under subsection 11(14) of the amended Act.

Part 3—Transitional provisions relating to the establishment of APRA and the repeal of the Insurance and Superannuation Commissioner Act 1987

Division 1—Interpretation

24 Interpretation

(1) In this Part:

APRA means the Australian Prudential Regulation Authority.

APRA Act means the *Australian Prudential Regulation Authority Act 1998*.

APRA commencement means the commencement of the *Australian Prudential Regulation Authority Act 1998*.

APRA employee means a person appointed under section 45 of the APRA Act.

ASIC means the Australian Securities and Investments Commission.

ISC employee means a member of the staff assisting the Insurance and Superannuation Commissioner.

person's transfer time has the meaning given by subitem 25(1) or subitem 25(3), as the case requires.

RBA employee means a person appointed under Part VII of the *Reserve Bank Act 1959*.

Reserve Bank means the Reserve Bank of Australia.

(2) A reference in this Part to the Commonwealth includes a reference to the Insurance and Superannuation Commissioner.

Division 2—Transfer of staff

25 Transfer of staff from the Reserve Bank and the ISC

- (1) The Governor of the Reserve Bank, in consultation with APRA's Chief Executive Officer, may, in writing, determine that, at a specified time (the *person's transfer time*), not being a time before the APRA commencement, a specified RBA employee:
 - (a) ceases to be an RBA employee; and
 - (b) becomes an APRA employee.
- (2) The determination has effect accordingly.
- (3) An ISC employee may, at a particular time (the *person's transfer time*), become an APRA employee because of a declaration under section 81C of the *Public Service Act 1922*.

26 Terms and conditions of transferred staff

- (1) APRA is to determine the terms and conditions applying to a person who becomes an APRA employee as mentioned in subitem 25(1) or (3) as if the person had actually been appointed under section 45 of the APRA Act. The terms and conditions relating to remuneration must not be less favourable than those that applied to the person immediately before the person's transfer time.
- (2) The person is entitled to retain, as an APRA employee, all the benefits that had accrued to the person in respect of his or her length of service as an RBA employee or an ISC employee up to the person's transfer time, as if those benefits had accrued in respect of the person's position as an APRA employee.
- (3) The person's service as an APRA employee is taken, for all purposes, to have been continuous with the person's service, immediately before the person's transfer time, as an RBA employee or an ISC employee.
- (4) The person is not entitled to receive any payment or other benefit merely because he or she stopped being an RBA employee or an ISC employee as a result of this Part.
- (5) This item does not prevent the terms and conditions applying to the person as an APRA employee being varied (including by omitting

existing terms and conditions or adding new terms and conditions) after the person's transfer time:

- (a) in accordance with those terms and conditions; or
- (b) by or under a law, award, determination or agreement.

27 Statement of accrued benefits

- (1) Before a person becomes an APRA employee as mentioned in subitem 25(1) or (3), the Reserve Bank or the Insurance and Superannuation Commissioner, as the case requires, must give the person a written statement setting out particulars of the benefits to which the person has an accrued entitlement.
- (2) In any proceedings relating to subitem 26(2), the statement is prima facie evidence of the matters set out in the statement.
- (3) Item 25 has effect in relation to the person even if the Reserve Bank or the Insurance and Superannuation Commissioner fails to give the required statement.

Division 3—Transfer of assets and liabilities

28 Transfer of assets

- (1) The Treasurer may, in writing, make any or all of the following declarations:
 - (a) a declaration that a specified asset of the Commonwealth vests in APRA, or in ASIC, at a specified time, not being before the APRA commencement, without any conveyance, transfer or assignment;
 - (b) a declaration that a specified instrument in relation to a specified asset continues to have effect after the asset vests in APRA, or in ASIC, as if a reference in the instrument to the Commonwealth were a reference to APRA or ASIC, as the case requires;
 - (c) a declaration that APRA or ASIC becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in APRA or ASIC.
- (2) A declaration has effect accordingly.
- (3) Subitem (1) does not prevent the Commonwealth from transferring an asset to APRA or ASIC otherwise than under that subitem.
- (4) A declaration under this item is not to be taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1998*.

29 Transfer of liabilities

- (1) The Treasurer may, in writing, make any or all of the following declarations:
 - (a) a declaration that a specified liability of the Commonwealth ceases to be a liability of the Commonwealth and becomes a liability of APRA, or of ASIC, at a specified time, not being before the APRA commencement;
 - (b) a declaration that a specified instrument in relation to a specified liability continues to have effect after the liability becomes a liability of APRA, or of ASIC, as if a reference in the instrument to the Commonwealth were a reference to APRA or ASIC, as the case requires;

- (c) a declaration that APRA or ASIC becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of APRA or ASIC.
- (2) A declaration has effect accordingly.
- (3) Subitem (1) does not prevent the Commonwealth from transferring a liability to APRA or ASIC otherwise than under that subitem.
- (4) A declaration under this item is not to be taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1998*.

30 References in instruments to Reserve Bank or ISC become references to APRA

- (1) APRA may, in writing, declare that a specified instrument that:
 - (a) was made before the APRA commencement; and
 - (b) contains one or more references to the Reserve Bank or to the Insurance and Superannuation Commissioner;has effect, from a specified date, as if all, or specified, references in the instrument to the Reserve Bank or the Commissioner were references to APRA.

Note: An instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subitem (1) has effect accordingly.
- (3) In this item:

instrument includes a document.

31 Transfer of records

- (1) The Treasurer may transfer to APRA, or to ASIC, records that relate to the functions of APRA or ASIC.
- (2) This item does not authorise a Commonwealth record to be transferred, or otherwise dealt with, except in accordance with the *Archives Act 1983*.
- (3) In this item:

Commonwealth record and *record* have the same meanings as in the *Archives Act 1983*.

32 Exemption from stamp duty and other taxes

Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

- (a) the vesting or transfer of an asset or liability under this Division; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, the vesting or transfer of an asset or liability under this Division.

33 Delegation

The Treasurer may, by instrument in writing, delegate all or any of the Treasurer's powers under this Division to an officer of the Department.

Division 4—Other general transitional provisions

34 Definitions

In this Division:

ASIC means the Australian Securities and Investments Commission.

Commissioner means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* as in force prior to the APRA commencement.

Insurance Act means the *Insurance Act 1973*.

Life Insurance Act means the *Life Insurance Act 1995*.

RSA Act means the *Retirement Savings Accounts Act 1997*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

35 Instruments made and things done before the APRA commencement by the Commissioner under the Insurance Act, the Life Insurance Act, the RSA Act and the SIS Act

- (1) An instrument made or issued by the Commissioner under a provision of the Insurance Act, the Life Insurance Act, the RSA Act or the SIS Act and in force immediately before the APRA commencement, continues to have effect after the APRA commencement as if it were made or issued by:
- (a) APRA, to the extent that the instrument could, on the APRA commencement, be made or issued by APRA under its powers and functions in the Act under which the instrument was made or issued; and
 - (b) ASIC, to the extent that the instrument could, on the APRA commencement, be made or issued by ASIC under its powers and functions in the Act under which the instrument was made or issued.

- (2) If an instrument was, when made, to have effect only for a limited period, it has effect only for so much of the period as has not already expired before the APRA commencement.
- (3) Anything done before the APRA commencement in relation to the Commissioner (for example, lodging an application with the Commissioner) under a provision of the Insurance Act, the Life Insurance Act, the RSA Act or the SIS Act has effect after the APRA commencement as if it had been done in relation to:
 - (a) APRA to the extent to which the provision is administered by APRA after the APRA commencement; and
 - (b) ASIC to the extent to which the provision is administered by ASIC after the APRA commencement.
- (4) A reference in this item to an instrument in force includes a reference to an instrument that has been made but that is not yet in operation.

36 Instruments made and things done before the APRA commencement by the Commissioner under Acts now administered by ASIC

- (1) An instrument made or issued by the Commissioner under a provision of:
 - (a) the *Insurance (Agents and Brokers) Act 1984*; or
 - (b) the *Insurance Contracts Act 1984*; or
 - (c) the *Superannuation (Resolution of Complaints) Act 1993*;and in force immediately before the APRA commencement, continues to have effect after the APRA commencement as if it were made or issued, on the APRA commencement, by ASIC under the Act under which it was made or issued.
- (2) If an instrument was, when made, to have effect only for a limited period, it has effect only for so much of the period as has not already expired before the APRA commencement.
- (3) Anything done before the APRA commencement in relation to the Commissioner (for example, lodging an application with the Commissioner) under a provision of:
 - (a) the *Insurance (Agents and Brokers) Act 1984*; or
 - (b) the *Insurance Contracts Act 1984*; or
 - (c) the *Superannuation (Resolution of Complaints) Act 1993*;

has effect after the APRA commencement as if it had been done in relation to ASIC.

37 Proceedings etc. by or against the ISC

- (1) If, immediately before the APRA commencement, the Commissioner was a party to a legal proceeding in a court or tribunal then:
 - (a) to the extent that the proceeding relates to a function of APRA—APRA is substituted as a party to the proceeding and has the same rights in the proceeding as the Commissioner had; and
 - (b) to the extent that the proceeding relates to a function of ASIC—ASIC is substituted as a party to the proceeding and has the same rights in the proceeding as the Commissioner had.
- (2) Subitem (1) does not limit a power of a court or tribunal to make orders or give directions about:
 - (a) whether one or both of APRA or ASIC continue as a party or parties to the proceeding; and
 - (b) the rights in the proceeding of any of the parties to the proceeding.

38 Continued operation of Part IX of the Insurance Act

- (1) Despite the repeal of Part IX of the Insurance Act, that Part, as in force immediately before the APRA commencement, continues to apply to bodies corporate to which it applied immediately before the APRA commencement as if references in that Part to the Commissioner were instead references to APRA.
- (2) The regulations may provide that Part IX of the Insurance Act, as it continues to apply under subitem (1), has effect with specified modifications.

39 Modified operation of item 27 of Schedule 2 to the Insurance Laws Amendment Act 1998

Item 27 of Schedule 2 to the *Insurance Laws Amendment Act 1998* has effect as if the reference to the Commissioner were instead a reference to the Commissioner or to APRA.

Part 4—Transitional provisions relating to amendments of the Reserve Bank Act 1959

40 Interpretation

In this Part:

amended Act means the *Reserve Bank Act 1959* as in force immediately after the APRA commencement.

APRA commencement means the commencement of the *Australian Prudential Regulation Authority Act 1998*.

old Act means the *Reserve Bank Act 1959* as in force immediately before the APRA commencement.

41 Effect of amendments reducing number of Deputy Governors

If, on the APRA commencement, there are 2 people holding office as Deputy Governors of the Reserve Bank of Australia, the following provisions have effect during the period starting on the APRA commencement and ending at the first time at which one of those people ceases to hold office as a Deputy Governor:

- (a) subsection 12(1) of the old Act continues to have effect as if it referred to there being 2 Deputy Governors of the Reserve Bank of Australia;
- (b) subsection 21(3) of the old Act continues to have effect as if it referred to the quorum for a meeting of the Reserve Bank Board being 6 members;
- (c) a reference to the Deputy Governor of the Reserve Bank of Australia in the amended Act, or in any other law of the Commonwealth, has effect as if it were a reference to either of the 2 Deputy Governors.

42 Continued effect of subsection 14(5)

The period of appointment of a member of the Reserve Bank Board to whom subsection 14(5) of the old Act applied immediately before the APRA commencement remains the same, despite the repeal of that subsection.

43 Treatment of investigations under section 81

Section 81 of the old Act continues to have effect (despite its repeal) after the APRA commencement in relation to investigations, to the extent they were completed or in progress before that commencement.

Part 5—Transitional provisions relating to the Payment Systems (Regulation) Act 1998

44 Certain corporations are taken to have been granted authorities under section 23

A corporation that, on the commencement of the *Payment Systems (Regulation) Act 1998*:

- (a) is the holder of the stored value of purchased payment facilities in a class of purchased payment facilities, within the meaning of that Act; and
- (b) is not an authorised deposit-taking institution, within the meaning of the *Banking Act 1959*;

is taken, on that commencement, to have been granted an authority under section 23 of the *Payment Systems (Regulation) Act 1998* in relation to that class of purchased payment facilities.

Part 6—Transitional provisions relating to levies

45 Regulations may deal with transitional matters arising out of changes to levy legislation

- (1) The regulations may deal with transitional matters arising out of:
 - (a) the repeal of the following Acts:
 - (i) the *General Insurance Supervisory Levy Act 1989*;
 - (ii) the *Insurance Supervisory Levies Collection Act 1989*;
 - (iii) the *Life Insurance Supervisory Levy Act 1989*;
 - (iv) the *Retirement Savings Accounts Supervisory Levy Act 1997*; and
 - (b) the amendment of the following Acts:
 - (i) the *Superannuation Entities (Taxation) Act 1987*;
 - (ii) the *Superannuation Supervisory Levy Act 1991*; and
 - (c) the enactment of the following Acts:
 - (i) the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998*;
 - (ii) the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*;
 - (iii) the *Life Insurance Supervisory Levy Imposition Act 1998*;
 - (iv) the *General Insurance Supervisory Levy Imposition Act 1998*;
 - (v) the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*;
 - (vi) the *Superannuation Supervisory Levy Imposition Act 1998*;
 - (vii) the *Financial Institutions Supervisory Levies Collection Act 1998*.
- (2) Without limiting subitem (1), the regulations may provide for:
 - (a) the crediting of an amount paid by way of one kind of levy against a liability to pay an amount of another kind of levy; and
 - (b) the waiver of an amount of levy that is due and payable; and
 - (c) the refund of an amount of levy that has been paid.

Part 7—Regulations dealing with transitional matters

46 Regulations may deal with other transitional matters

The regulations may deal with other transitional matters relating to the amendments and repeals made by the Schedules to this Act, or relating to the establishment of the Australian Prudential Regulation Authority.

47 Power to make regulations

The Governor-General may make regulations, not inconsistent with this Schedule, prescribing matters required or permitted by this Schedule to be prescribed.

*[Minister's second reading speech made inó
House of Representatives on 26 March 1998
Senate on 13 May 1998]*

(39/98)