



# **General Insurance Reform Act 2001**

**No. 119, 2001**

**An Act to amend the *Insurance Act 1973*, and for related purposes**



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# General Insurance Reform Act 2001

No. 119, 2001

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## **An Act to amend the *Insurance Act 1973*, and for related purposes**

[Assented to 19 September 2001]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *General Insurance Reform Act 2001*.

### **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) Schedules 1 and 3 to this Act commence, or are taken to have commenced, on 1 July 2002.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Insurance Act 1973**

### **1 After section 2**

Insert:

#### **2A Main object of this Act**

- (1) The main object of this Act is to protect the interests of policyholders and prospective policyholders under insurance policies (issued by general insurers and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry.
- (2) This Act, and the prudential standards determined by APRA under this Act, achieve this mainly by:
  - (a) restricting who can carry on insurance business in Australia by requiring general insurers, and the directors and senior management of general insurers, to meet certain suitability requirements; and
  - (b) imposing primary responsibility for protecting the interests of policyholders on the directors and senior management of general insurers; and
  - (c) imposing on general insurers requirements to promote prudent management of their insurance business (including requirements concerning capital adequacy, the valuation of liabilities, reinsurance arrangements and the effectiveness of risk management strategies and techniques); and
  - (d) providing for the prudential supervision of general insurers by APRA.
- (3) Generally, the provisions of this Act apply to general insurers. However, there are a number of special provisions that apply only to Lloyd's underwriters.

#### **2 Subsection 3(1) (definition of *actuary*)**

Repeal the definition.

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

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Insert:

*authorised NOHC* means a body corporate:

- (a) authorised under section 18; and
- (b) that is a NOHC of a general insurer or general insurers.

**4 Subsection 3(1) (definition of *bank or banker*)**

Repeal the definition.

**5 Subsection 3(1) (definition of *floating charge*)**

Repeal the definition.

**6 Subsection 3(1)**

Insert:

*foreign general insurer* means a body corporate that:

- (a) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; and
- (b) is authorised to carry on insurance business in a foreign country; and
- (c) is authorised under section 12 to carry on insurance business in Australia.

**7 Subsection 3(1)**

Insert:

*general insurer* has the meaning given by section 11.

**8 Subsection 3(1)**

Insert:

*NOHC authorisation* has the meaning given by section 18.

**9 Subsection 3(1)**

Insert:

*NOHC or non-operating holding company*, in relation to a body corporate, means 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.

**10 Subsection 3(1) (definition of *outstanding claims provision*)**

Repeal the definition.

**11 Subsection 3(1) (definition of *premium*)**

Repeal the definition.

**12 Subsection 3(1)**

Insert:

*prudential matters*, concerning a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC, means matters relating to:

- (a) the conduct by the insurer, NOHC or subsidiary of any of its affairs in such a way as:
  - (i) to keep itself in a sound financial position; or
  - (ii) not to cause or promote instability in the Australian financial system; or
- (b) the conduct by the insurer, NOHC or subsidiary of any of its affairs with integrity, prudence and professional skill.

**13 Subsection 3(1)**

Insert:

*prudential standard* means a standard determined by APRA under section 32.

**14 Subsection 3(1)**

Insert:

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

**15 Subsection 3(1)**

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Insert:

*subsidiary* has the meaning given by section 4.

**16 Subsection 3(1) (definition of *supervised body corporate*)**

Repeal the definition.

**17 At the end of section 3**

Add:

- (4) A reference in this Act to a general insurer having no liabilities in respect of insurance business carried on by it in Australia includes a reference to a general insurer who has assigned, other than by an equitable assignment, all of its interests (including rights and benefits) under all contracts of insurance in respect of insurance business carried on by it in Australia to another general insurer.

**18 Section 3A**

Repeal the section.

**19 Section 4**

Omit “bodies corporate are related to each other”, substitute “a body corporate is a *subsidiary* of another body corporate”.

Note: The heading to section 4 is replaced by the heading “**Meaning of *subsidiary***”.

**20 Subsections 5(2) to (4)**

Repeal the subsections, substitute:

- (2) This Act does not apply to or with respect to insurance business carried on by:
- (a) the Commonwealth (including the Territories); or
  - (b) a body corporate prescribed by the regulations; or
  - (c) a body corporate, being insurance business of a kind prescribed by the regulations.

**21 Sections 6 and 7**

Repeal the sections, substitute:

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## **6 Act extends to external Territories**

This Act extends to every external Territory.

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

- (1) APRA may determine that all or specified provisions of this Act do not apply to a person while the determination is in force.
- (2) The determination may:
  - (a) be expressed to apply to a particular person or to a class of persons; and
  - (b) specify the period during which the determination is in force; and
  - (c) be made subject to specified conditions.
- (3) A copy of the determination must be published in the *Gazette* and, on *Gazette* publication, has effect according to its terms.
- (4) APRA may, by determination published in the *Gazette*, vary or revoke a determination under this section.

## **7A Breach of condition of a determination**

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

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **22 Part III**

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Repeal the Part, substitute:

## **Part III—Authorisation to carry on insurance business**

### **Division 1—Need to be authorised**

#### **9 Persons other than bodies corporate and Lloyd’s underwriters carrying on insurance business**

- (1) A person commits an offence if:
  - (a) the person carries on insurance business in Australia; and
  - (b) the person is not a body corporate or a Lloyd’s underwriter; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the person (the effect of which is to allow the person to carry on insurance business without being authorised under the Act to do so).

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **10 Bodies corporate and Lloyd’s underwriters carrying on insurance business**

- (1) A body corporate (other than a Lloyd’s underwriter) commits an offence if:
  - (a) the body corporate carries on insurance business in Australia; and
  - (b) the body corporate is not a general insurer; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the body corporate (the effect of which is to exempt the body corporate from being authorised under the Act to carry on insurance business).

Maximum penalty: 60 penalty units.

- (2) A Lloyd's underwriter commits an offence if:
- (a) the underwriter carries on any insurance business in Australia; and
  - (b) the underwriter does so at any time after section 93 has ceased to have effect; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the underwriter (the effect of which is to exempt the underwriter from being authorised under the Act to carry on insurance business).

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **11 Meaning of *general insurer***

A *general insurer* is a body corporate that is authorised under section 12 to carry on insurance business in Australia.

Note: General insurer includes a foreign general insurer (see the definition of *foreign general insurer* in subsection 3(1)).

## **Division 2—Authorisation to carry on insurance business**

### **12 Obtaining an authorisation**

- (1) A body corporate may apply in writing to APRA for an authorisation to carry on insurance business in Australia.

Note: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975*, the *Financial Sector (Shareholdings) Act 1998* and the *Insurance Acquisitions and Takeovers Act 1991*.

- (1A) APRA may require the body corporate to provide a statutory declaration in relation to information or documents provided in relation to the application.

- (2) APRA may authorise an applicant to carry on insurance business in Australia. The authorisation must be in writing.
- (3) Without limiting the circumstances in which APRA may refuse an application, APRA may refuse an application if the applicant is a subsidiary of a NOHC that is not an authorised NOHC.
- (4) If APRA authorises an applicant, APRA must:
  - (a) give written notice to the applicant; and
  - (b) ensure that notice of the authorisation is published in the *Gazette*.
- (5) The taking of an action is not invalid merely because of a failure to comply with subsection (4).
- (6) Part VI applies to a refusal of APRA to authorise an applicant under this section.

### 13 Conditions on an authorisation

- (1) APRA may, at any time, by giving written notice to a general insurer:
  - (a) impose conditions, or additional conditions, on the insurer's authorisation under section 12; or
  - (b) vary or revoke conditions imposed on the insurer's authorisation under section 12.The conditions must relate to prudential matters.
- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) Without limiting the conditions that APRA may impose on an authorisation, APRA may make the authorisation conditional on a body corporate, of which the general insurer is a subsidiary, being an authorised NOHC.
- (4) If APRA imposes, varies or revokes the conditions on a general insurer's authorisation, APRA must:
  - (a) give written notice to the insurer; and
  - (b) ensure that notice that the action has been taken is published in the *Gazette*.

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

#### **14 Breach of authorisation conditions**

- (1) A general insurer commits an offence if:
- (a) the insurer does an act or fails to do an act; and
  - (b) doing the act or failing to do the act results in a contravention of a condition of the insurer's authorisation under section 12; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the insurer.

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

### **Division 3—Revocation of an authorisation**

#### **15 When APRA may revoke an authorisation**

- (1) APRA may revoke (in writing) a general insurer's authorisation under section 12 if APRA is satisfied that the insurer has no liabilities in respect of insurance business carried on by it in Australia and that:
- (a) the insurer has failed to comply with:
    - (i) a requirement of this Act (including the requirement to comply with the prudential standards) or of an instrument made for the purposes of this Act; or
    - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
    - (iii) a direction to the insurer under this Act; or
    - (iv) a condition of the insurer's authorisation; or
  - (b) it would be contrary to the national interest for the authorisation to remain in force; or

- (c) the insurer has failed to pay:
    - (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
    - (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
  - (d) the insurer is insolvent and is unlikely to return to solvency within a reasonable period of time; or
  - (e) the insurer has inadequate capital and is unlikely to have adequate capital within a reasonable period of time; or
  - (f) the insurer has ceased to carry on insurance business in Australia; or
  - (g) the insurer has not, within the period of 12 months after it was granted an authority under this Part, carried on insurance business in Australia.
- (2) However, APRA may only revoke a general insurer's authorisation under this section if APRA has the Treasurer's written agreement to do so.
- (3) Before revoking a general insurer's authorisation, APRA must give written notice to the insurer advising it that:
- (a) APRA is considering revoking the authorisation for the reasons specified; and
  - (b) the insurer may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).
- (3A) To avoid doubt, APRA may give a notice under subsection (3) to a general insurer even if, at the time the notice is given, APRA is not satisfied that the insurer has no liabilities in respect of insurance business carried on by it in Australia.
- (3B) If APRA gives a notice under subsection (3) to a general insurer, APRA must not revoke the insurer's authorisation until after the date specified in the notice, and after consideration of any submission, as mentioned in paragraph (3)(b).
- (4) APRA may, with the Treasurer's written agreement, decide that subsection (3) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be contrary to the national interest.



- (5) If APRA revokes a general insurer's authorisation, APRA must:
  - (a) give written notice to the insurer; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.
- (6) A revocation is not invalid merely because of a failure to comply with subsection (5).

## **16 When APRA must revoke a general insurer's authorisation**

- (1) APRA must revoke (in writing) a general insurer's authorisation under section 12 if:
  - (a) the insurer asks (in writing) APRA to do so; and
  - (b) APRA is satisfied that:
    - (i) the insurer has no liabilities in respect of insurance business carried on by it in Australia; and
    - (ii) revoking the authorisation would not be contrary to the national interest.
- (2) If APRA revokes a general insurer's authorisation, APRA must:
  - (a) give written notice to the insurer; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.
- (3) A revocation is not invalid merely because of a failure to comply with subsection (2).

## **17 Assignment of liabilities to enable revocation**

- (1) If APRA considers that it would, under section 15, revoke a general insurer's authorisation if the insurer had no liabilities in respect of insurance business carried on by it in Australia, APRA may direct the insurer to arrange, subject to APRA's approval, to assign those liabilities to one or more other general insurers. The insurer must effect the assignment of the liabilities within the period specified in the direction and comply with such conditions relating to the assignment as are specified by APRA in the direction.
- (2) Subsection (1) has effect despite subsection 17B(1).

Note: A general insurer who has asked APRA for a revocation under section 16 may, for the purpose of obtaining the revocation, make an

application to the Federal Court under Division 3A for an order transferring the insurer's insurance business to another general insurer.

- (3) A general insurer must not assign its liabilities under this section, and a purported assignment under this section is of no effect, unless the assignment is approved by APRA under subsection (4).
- (4) APRA may only approve a proposed assignment of a general insurer's liabilities under this section if APRA is satisfied that the assignment is appropriate, having regard to:
  - (a) the interests of the insurer's policyholders; and
  - (b) the interests of the policyholders of the general insurer or insurers to whom the liabilities are to be assigned; and
  - (c) the national interest; and
  - (d) any other matter APRA considers relevant.

The approval must be in writing and may be made subject to specified conditions.

- (4A) Where a general insurer (the *first general insurer*) accepts an assignment of liabilities from another general insurer (the *second general insurer*) approved by APRA under subsection 17(4), the following are taken to have occurred:
  - (a) policies in respect of which liability is accepted by the first general insurer (the *transferring policies*) are to be treated for all purposes as if each policy had been transferred by novation from the second general insurer to the first general insurer;
  - (b) a policyholder of a transferring policy is taken to have the same rights against the first general insurer as the person would have against that insurer had the person's policy been transferred by novation to the first general insurer;
  - (c) the rights of the first general insurer against policyholders of transferring policies are the same as they would be had the transferring policies been transferred by novation to the first general insurer from the second general insurer.
- (5) If APRA approves an assignment, the general insurer must:
  - (a) comply with the conditions on the approval; and
  - (b) give reasonable notice (in writing) of the assignment to the insurer's policyholders; and

- (c) give APRA such written evidence of the assignment as APRA reasonably requires.
- (6) An assignment of liabilities under this section may include the assignment of any rights or benefits in connection with contracts of insurance in respect of the insurance business carried on in Australia by the general insurer concerned.
- (7) A direction under subsection (1) has effect despite anything in the *Insurance Acquisitions and Takeovers Act 1991*.
- (8) A general insurer commits an offence if:
  - (a) the insurer does, or fails to do, an act; and
  - (b) by doing or failing to do the act, the insurer fails to comply with a direction under this section.

Maximum penalty: 60 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **Division 3A—Transfer and amalgamation of insurance business**

### **17A Interpretation**

A reference in this Division to a body corporate affected by a scheme is a reference to a body corporate that is a party or proposed party to an agreement or deed by which the transfer or amalgamation provided for by the scheme is, or is to be, carried out.

### **17B Transfer or amalgamation of insurance business**

- (1) No part of the insurance business of a general insurer may be:
  - (a) transferred to another general insurer; or
  - (b) amalgamated with the business of another general insurer;

except under a scheme confirmed by the Federal Court.

Note: A transfer or amalgamation of an insurance business may also require approval under the *Insurance Acquisitions and Takeovers Act 1991*.

- (2) The reference in paragraph (1)(a) to a general insurer includes a reference to a body corporate that is authorised under this Act but has not begun to carry on insurance business in Australia.
- (3) A scheme must set out:
  - (a) the terms of the agreement or deed under which the proposed transfer or amalgamation is carried out; and
  - (b) particulars of any other arrangements necessary to give effect to the scheme.
- (4) Subsection (1) does not require that a transfer or amalgamation of insurance business be made under a scheme approved by the Federal Court if:
  - (a) immediately before the transfer or amalgamation, the insurance business is carried on outside Australia; and
  - (b) the transfer or amalgamation will result in the insurance business being carried on outside Australia.

### **17C Steps to be taken before application for confirmation**

- (1) In this section:

***affected policyholder*** means the holder of a policy affected by a scheme.

***approved summary*** means a summary approved by APRA.

- (2) An application for confirmation of a scheme may not be made unless:
  - (a) a copy of the scheme and any actuarial report on which the scheme is based have been given to APRA in accordance with the prudential standards; and
  - (b) notice of intention to make the application has been published by the applicant in accordance with the prudential standards; and
  - (c) an approved summary of the scheme has been given to every affected policyholder.

- (3) Without limiting the provision that may be made by the prudential standards for the purposes of paragraph (2)(b), the notice referred to in that paragraph must include, in relation to each body corporate affected by the scheme, details of the place and time at which an affected policyholder may obtain a copy of the scheme.
- (4) An affected policyholder is entitled, on the person's request, to be provided by the company with one copy of the scheme free of charge.
- (5) The Federal Court may dispense with the need for compliance with paragraph (2)(c) in relation to a particular scheme if it is satisfied that, because of the nature of the scheme or the circumstances attending its preparation, it is not necessary that the paragraph be complied with.

#### **17D Actuarial report on scheme**

- (1) When a copy of a scheme has been given to APRA for the purpose of paragraph 17C(2)(a), APRA may arrange for an independent actuary to make a written report on the scheme.
- (2) APRA may give a copy of the report to each body corporate affected by the scheme.

#### **17E Application to Court**

- (1) Any of the bodies corporate affected by a scheme may apply to the Federal Court for confirmation of the scheme.
- (2) An application for confirmation must be made in accordance with the prudential standards.
- (3) APRA is entitled to be heard on an application.

#### **17F Confirmation of scheme**

- (1) The Federal Court may:
  - (a) confirm a scheme without modification; or
  - (b) confirm the scheme subject to such modifications as it thinks appropriate; or
  - (c) refuse to confirm the scheme.

- (2) The Federal Court may make such orders as it thinks fit in relation to reinsurance.

### **17G Effect of confirmation etc.**

When a scheme is confirmed:

- (a) it becomes binding on all persons; and
- (b) it has effect in spite of anything in the constitution of any body corporate affected by the scheme; and
- (c) the body corporate on whose application the scheme was confirmed must cause a copy of the scheme to be lodged at an office of ASIC in every State and Territory in which a company affected by the scheme carried on business.

### **17H Costs of actuary's report**

- (1) When a scheme is confirmed, the body corporate that applied for the confirmation becomes liable to pay to the Commonwealth an amount equal to the expenses reasonably incurred by APRA in obtaining a report under section 17D in relation to the scheme.
- (2) An amount due under subsection (1) may be recovered by the Commonwealth as a debt in any court of competent jurisdiction.

### **17I Documents to be lodged in case of transfer or amalgamation**

- (1) If any part of the insurance business carried on by a general insurer is transferred to, or amalgamated with, the insurance business of another body corporate, the latter body corporate must give APRA such documents as are required by the prudential standards.
- (2) The documents must be lodged within the time fixed by the prudential standards or within such further time as APRA, in accordance with the prudential standards, allows.

## **Division 4—Authorisation to be a NOHC of a general insurer**

### **18 Authorisation to be a NOHC**

- (1) A body corporate may apply in writing to APRA for an authorisation (a *NOHC authorisation*) under this section. The

authorisation operates as an authorisation in relation to the body corporate and any general insurers that are subsidiaries of the body corporate from time to time.

Note 1: The body corporate may want the authority because APRA may refuse to grant a subsidiary of the body corporate a section 12 authorisation unless the body corporate holds a NOHC authorisation (see subsection 12(3)).

Note 2: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975*, the *Financial Sector (Shareholdings) Act 1998* and the *Insurance Acquisitions and Takeovers Act 1991*.

- (2) APRA may require the body corporate to provide a statutory declaration in relation to information or documents provided in relation to the application.
- (3) APRA may authorise an applicant if it considers it is appropriate to do so. The authorisation must be in writing.
- (4) If APRA authorises an applicant, APRA must:
  - (a) give written notice to the applicant; and
  - (b) ensure that notice of the authorisation is published in the *Gazette*.
- (5) The taking of an action is not invalid merely because of a failure to comply with subsection (4).
- (6) Part VI applies to a refusal of APRA to authorise an applicant under this section.

## **19 Conditions on a NOHC authorisation**

- (1) APRA may, at any time, by giving written notice to an authorised NOHC:
  - (a) impose conditions, or additional conditions, on the NOHC authorisation; and
  - (b) vary or revoke conditions imposed on the NOHC authorisation.

The conditions must relate to prudential matters.

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

- (3) If APRA imposes, varies or revokes the conditions on a NOHC authorisation, APRA must:
  - (a) give written notice to the authorised NOHC; and
  - (b) ensure that notice of the imposition, variation or revocation of the conditions is published in the *Gazette*.
- (4) The taking of an action is not invalid merely because of a failure to comply with subsection (3).

## 20 Breach of conditions on a NOHC authorisation

- (1) An authorised NOHC commits an offence if:
  - (a) the NOHC does an act or fails to do an act; and
  - (b) doing the act or failing to do the act results in a contravention of a condition of the NOHC authorisation; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the NOHC.

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## 21 When APRA may revoke a NOHC authorisation

- (1) APRA may revoke, in writing, a NOHC authorisation if APRA is satisfied that:
  - (a) the authorised NOHC has failed to comply with:
    - (i) a requirement of this Act (including the requirement to comply with the prudential standards) or of an instrument made for the purposes of this Act; or
    - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
    - (iii) a direction to the authorised NOHC under this Act; or
    - (iv) a condition of the authorisation; or



- (b) it would be contrary to the national interest for the authorisation to remain in force; or
  - (c) the authorised NOHC has failed to pay:
    - (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
    - (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
  - (d) it would be contrary to the interests of the policyholders of any general insurer who is a subsidiary of the authorised NOHC for the authorisation to remain in force; or
  - (e) the authorised NOHC has ceased to be a NOHC of any general insurer.
- (2) However, APRA may only revoke a NOHC authorisation under this section if APRA has the Treasurer's written agreement to do so.
- (3) Before revoking a NOHC authorisation, APRA must give written notice to the authorised NOHC advising it that:
- (a) APRA is considering revoking the authorisation for the reasons specified; and
  - (b) the authorised NOHC may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).
- APRA must consider any submissions made by the authorised NOHC by that date.
- (4) APRA may, with the Treasurer's written agreement, decide that subsection (3) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be:
- (a) contrary to the national interest; or
  - (b) contrary to the interests of the policyholders of any general insurer who is a subsidiary of the authorised NOHC concerned.
- (5) If APRA revokes a body corporate's NOHC authorisation, APRA must:
- (a) give written notice to the body corporate; and

- (b) ensure that notice of the revocation is published in the *Gazette*.
- (6) A revocation is not invalid merely because of a failure to comply with subsection (5).

## **22 When APRA must revoke a NOHC authorisation**

- (1) APRA must revoke (in writing) a body corporate's NOHC authorisation if:
  - (a) the body corporate asks (in writing) APRA to do so; and
  - (b) APRA is satisfied that revoking the authorisation would not be contrary to either:
    - (i) the national interest; or
    - (ii) the interests of the policyholders of any general insurer who is a subsidiary of the body corporate.
- (2) If APRA revokes a body corporate's NOHC authorisation, APRA must:
  - (a) give written notice to the body corporate; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.
- (3) A revocation is not invalid merely because of a failure to comply with subsection (2).

## **23 Publication of list of authorised NOHCs**

APRA may, from time to time, cause a list of authorised NOHCs to be published in the *Gazette* or in any other way that APRA considers appropriate.

## **Division 5—Directors, senior managers and other representatives of general insurers and authorised NOHCs**

### **24 Disqualified persons must not act for general insurers or authorised NOHCs**

- (1) A disqualified person must not be or act as:

- (a) a director or senior manager of a general insurer (other than a foreign general insurer); or
  - (b) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer; or
  - (c) a director or senior manager of an authorised NOHC.
- (2) A person commits an offence if the person contravenes subsection (1).  
Maximum penalty: Imprisonment for 2 years.
- (3) A person commits an offence if the person contravenes subsection (1). This is an offence of strict liability.  
Maximum penalty: 60 penalty units.
- (4) A body corporate must not allow a disqualified person to be or act as:
  - (a) if the body corporate is a general insurer (other than a foreign general insurer)—a director or senior manager of the insurer; or
  - (b) if the body corporate is a foreign general insurer—a senior manager, or agent in Australia for the purpose of section 118, of the insurer; or
  - (c) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC.
- (5) A body corporate commits an offence if it contravenes subsection (4).  
Maximum penalty: 250 penalty units.
- (6) A body corporate commits an offence if it contravenes subsection (4). This is an offence of strict liability.  
Maximum penalty: 60 penalty units.
- (7) In a prosecution under subsection (5), it is a defence if the defendant:
  - (a) contacted APRA within a reasonable period before allowing the person to be or act as a director, senior manager or agent (as the case may be); and
  - (b) was advised by APRA that the person was not a disqualified person.

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

- (8) A failure to comply with this section does not affect the validity of an appointment or transaction.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## 25 Who is a *disqualified person*?

- (1) A person is a *disqualified person* if, at any time:

- (a) the person has been convicted of an offence against or arising out of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
- (b) the person has been convicted of an offence against or arising out of a law in force in Australia, or the law of a foreign country, if the offence concerns dishonest conduct or conduct relating to a financial sector company (within the meaning of the *Financial Sector (Shareholdings) Act 1998*); or
- (c) the person has been or becomes bankrupt; or
- (d) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
- (e) the person has compounded with his or her creditors.

Note: APRA may determine that a person is not a disqualified person (see section 26).

- (2) A reference in subsection (1) to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:

- (a) section 19B of the *Crimes Act 1914*; or
- (b) a corresponding provision of a law of a State, a Territory or a foreign country.

- (3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**26 APRA may determine that a person is not a *disqualified person***

- (1) Despite section 25, APRA may determine (in writing) that a person is not a *disqualified person*. APRA may do so on its own initiative or on the application of the person.
- (2) However, APRA may only make the determination if it is satisfied that the person is highly unlikely to be a prudential risk to any general insurer or authorised NOHC.
- (3) The determination takes effect on the day on which it is made and APRA must as soon as practicable give a copy of the determination to the person concerned and to any affected general insurer or authorised NOHC.
- (4) If a person applies for a determination under this section, APRA must:
  - (a) either make, or refuse to make, the determination; and
  - (b) give the person written notice of the decision including, in the case of a refusal, the reasons for the refusal.
- (5) APRA may revoke a determination under this section by giving written notice to the person concerned and must give a copy of the notice to any affected general insurer or authorised NOHC.
- (6) Part VI applies to a refusal of APRA to make a determination under this section.

**27 APRA may remove a director or senior manager of a general insurer or authorised NOHC**

- (1) This section applies to a person who is:
  - (a) a director or senior manager of a general insurer (not including a foreign general insurer); or
  - (b) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer; or
  - (c) a director or senior manager of an authorised NOHC.
- (2) APRA may direct (in writing) that the general insurer or authorised NOHC remove the person from the position if APRA is satisfied that the person:
  - (a) is a disqualified person; or

- (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.
- (3) Before directing a general insurer or authorised NOHC to remove a person, APRA must give written notice to:
  - (a) the person; and
  - (b) the insurer or NOHC;giving each of them a reasonable opportunity to make submissions on the matter.
- (4) A direction takes effect on the day specified in it, which must be at least 7 days after it is made.
- (5) If APRA directs a general insurer or authorised NOHC to remove a person, APRA must give a copy of the direction to the person and insurer or NOHC.
- (6) Part VI applies to a direction made by APRA under this section.
- (7) A general insurer commits an offence if:
  - (a) the insurer does, or fails to do, an act; and
  - (b) by doing or failing to do the act, the insurer fails to comply with a direction under this section.

Maximum penalty: 60 penalty units.

- (8) An offence against subsection (7) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## Division 6—Other matters

### 28 General insurer must hold sufficient assets

- A general insurer commits an offence if:
- (a) it does not hold assets in Australia (excluding goodwill and any other amount excluded by the prudential standards for the purposes of this section) of a value that is equal to or greater than the total amount of its liabilities in Australia; and
-

- (b) APRA has not authorised the insurer to hold assets of a lesser value; and
- (c) there is no determination in force under subsection 7(1) determining that this subsection does not apply to the insurer.

Maximum penalty: 200 penalty units.

Note 1: Certain amounts are taken to be assets in Australia, and certain liabilities are taken to be liabilities in Australia, under section 116A.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **29 Change of name of a general insurer or authorised NOHC**

- (1) A general insurer who changes its name must place a notice in a daily newspaper or newspapers circulating generally in each State or Territory in which the insurer carries on insurance business.
- (2) The notice must state the old and new names of the insurer and when the change took effect.
- (3) If APRA is satisfied that a general insurer or authorised NOHC has changed its name, APRA must ensure that notice of that fact is published in the *Gazette* (whether or not the insurer has also placed a notice under subsection (1)).
- (4) The authorisation of the insurer under section 12, or NOHC under section 18, (as the case may be) has effect after the *Gazette* publication as if it had been given under the changed name.

## **30 General insurer or authorised NOHC ceasing to exist**

- (1) If APRA is satisfied that a general insurer or authorised NOHC has ceased to exist, APRA must ensure that notice of that fact is published in the *Gazette*.
- (2) The authorisation under section 12 or 18 (as the case may be) of the insurer or NOHC is taken to be revoked when the *Gazette* notice is published.

### **31 Effect of authorisation as a general insurer**

Nothing in this Part authorises the carrying on by a body corporate of any business that it would not otherwise have been authorised to carry on.

## **Part IIIA—Prudential supervision and monitoring of general insurers, authorised NOHCs and their subsidiaries**

### **Division 1—The prudential standards**

#### **32 APRA may determine *prudential standards***

- (1) APRA may determine (in writing) standards (*prudential standards*) relating to prudential matters that must be complied with by:
  - (a) all general insurers; or
  - (b) all authorised NOHCs; or
  - (c) the subsidiaries of general insurers or authorised NOHCs; or
  - (d) a specified class of general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs.
- (2) A prudential standard may impose different requirements to be complied with:
  - (a) by different classes of general insurers, authorised NOHCs, or subsidiaries of general insurers or authorised NOHCs; or
  - (b) in different situations; or
  - (c) in respect of different activities.
- (3A) APRA may modify a prudential standard to replace particular requirements in the standard with an in-house capital adequacy model proposed by a general insurer, authorised NOHC or subsidiary of a general insurer for the purpose of setting its capital requirements. The in-house capital adequacy model proposed by the general insurer, authorised NOHC or subsidiary must comply with criteria set out in the prudential standards.



- (3B) In modifying a prudential standard, APRA must have regard to the particular business and circumstances of the general insurer, authorised NOHC or subsidiary concerned.
- (3C) If APRA modifies a prudential standard in respect of a particular general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC under subsection (3A), APRA must give written notice of the modification to the general insurer, authorised NOHC or subsidiary concerned.
- (3D) The prudential standards may provide for APRA to exercise powers and discretions under the standards, including but not limited to discretions to approve, impose, adjust or exclude specific prudential requirements in relation to the following:
  - (a) a particular general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC;
  - (b) specified general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs;
  - (c) a class of general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs.
- (3E) APRA must obtain the Treasurer's written agreement before modifying a prudential standard under subsection (3A).
- (4) A prudential standard takes effect on the day on which the determination of the standard is made or such later day as is specified in the determination.
- (5) A determination of a prudential standard, or a variation or revocation of a prudential standard, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Despite section 49A of the *Acts Interpretation Act 1901*, the standards may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

### **33 Requirement to consult beforehand**

- (1) Before making or varying a prudential standard APRA must consult:

- (a) the general insurers or authorised NOHCs to whom the standard applies or will apply; and
  - (b) if the standard applies or will apply to subsidiaries of general insurers or authorised NOHCs—those insurers or NOHCs.
- (2) APRA may also consult with such associations or other bodies representing the insurers, NOHCs or subsidiaries as APRA considers appropriate.
  - (3) If APRA is satisfied that the delay involved in undertaking consultation under subsection (1) would materially prejudice the interests of the policyholders of any general insurers, APRA may, with the Treasurer's written agreement, decide that subsection (1) does not apply.
  - (4) APRA is not required to consult on a variation of a prudential standard if the variation is only of a minor technical nature.
  - (5) A prudential standard is not invalid merely because of a failure to comply with this section.

### **34 Notification of prudential standards**

- (1) APRA must ensure that a notice is published in the *Gazette* as soon as practicable after APRA makes, varies or revokes a prudential standard.
- (2) The notice must:
  - (a) specify whether APRA made, varied or revoked a prudential standard; and
  - (b) in the case of the making or varying of a prudential standard—summarise the purpose and effect of the prudential standard or variation.
- (3) APRA must take reasonable steps to ensure that copies of the current text of the prudential standards are available for inspection and purchase.
- (4) An action is not invalid merely because of a failure to comply with this section.

### **35 Obligation to comply with the prudential standards**

A general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC to whom a prudential standard applies must comply with the standard.

## **Division 2—Direction to comply with the prudential standards**

### **36 Power to make a direction**

- (1) If APRA is satisfied that a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC:
  - (a) has breached a prudential standard; or
  - (b) is likely to breach a prudential standard in a way that is likely to give rise to a prudential risk;APRA may (in writing) direct the insurer, NOHC or subsidiary to comply with all or a part of the standard within a specified time.
- (2) The general insurer, authorised NOHC or subsidiary must comply with the direction despite anything in its constitution or in any contract or arrangement to which it is a party.
- (3) APRA may revoke a direction that APRA considers is no longer necessary or appropriate by giving written notice to the insurer, NOHC or subsidiary concerned.

### **37 Offence for failing to comply with a direction**

- (1) A general insurer commits an offence if the insurer contravenes a direction given to it under section 36 to comply with all or a part of a prudential standard within a specified time.

Maximum penalty: 60 penalty units.
- (2) An authorised NOHC commits an offence if the authorised NOHC contravenes a direction given to it under section 36 to comply with all or a part of a prudential standard within a specified time.

Maximum penalty: 60 penalty units.
- (3) A subsidiary of a general insurer or authorised NOHC commits an offence if the subsidiary contravenes a direction given to it under

section 36 to comply with all or a part of a prudential standard within a specified time.

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **Division 3—Monitoring of prudential matters**

### **38 APRA to monitor prudential matters**

The functions of APRA include:

- (a) collecting and analysing information on prudential matters concerning general insurers, authorised NOHCs and the subsidiaries of general insurers and authorised NOHCs; and
- (b) encouraging and promoting the carrying out of sound practices in relation to prudential matters by general insurers, authorised NOHCs and the subsidiaries of general insurers and authorised NOHCs; and
- (c) evaluating the effectiveness and carrying out of those practices.

### **23 Part IV**

Repeal the Part, substitute:

## **Part IV—Auditors, actuaries and accounts**

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

#### **39 Requirement for general insurers to have an auditor and actuary**

- (1) A general insurer must have:
  - (a) an auditor appointed by the insurer; and
  - (b) an actuary appointed by the insurer.

Note: A general insurer may be given an exemption from the requirement to have an actuary (see section 47).

- (2) Within 6 weeks after a person stops being the appointed auditor or actuary of a general insurer, the general insurer must appoint another person to be its auditor or actuary.
- (3) A person may only hold an appointment as an auditor or actuary of a general insurer if:
  - (a) APRA has approved the appointment under section 40; and
  - (b) the approval is current.
- (4) An appointment of a person as a general insurer's auditor or actuary cannot take effect while an appointment of another person in that position is current.

#### **40 Approval of an appointment of an auditor or actuary**

- (1) A general insurer may request in writing that APRA approve:
  - (a) the appointment of a person as the general insurer's auditor; or
  - (b) the appointment of a person as the general insurer's actuary.
- (2) APRA can only approve an appointment of a person as a general insurer's auditor or actuary if:
  - (a) APRA is satisfied that the person meets the eligibility criteria for such an appointment set out in the prudential standards; and
  - (b) there is no determination current under section 44 disqualifying the person from holding such an appointment.
- (3) APRA must give the insurer notice of its decision:
  - (a) to approve the person's appointment; or
  - (b) to refuse to approve the person's appointment, including the reasons for the refusal.
- (4) Part VI applies to a refusal of APRA to approve a person's appointment.

#### **41 Compliance with prudential standards**

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

#### **42 Revocation of approval**

- (1) APRA may revoke an approval of a person's appointment under section 40 if APRA is satisfied that the person:
  - (a) has failed to perform adequately and properly the functions and duties of the appointment under this Act or the prudential standards; or
  - (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards; or
  - (c) does not meet the eligibility criteria for such an appointment as set out in the prudential standards.
- (2) The revocation must be in writing and takes effect on the day on which it is made.
- (3) APRA must give a copy of the revocation to the person and to the general insurer who made the appointment.
- (4) Part VI applies to a revocation under this section.

#### **43 When a person stops holding an appointment**

A person stops holding an appointment as a general insurer's auditor or actuary if:

- (a) the person no longer meets the eligibility criteria for such an appointment set out in the prudential standards; or
- (b) the approval of the person's appointment is revoked under section 42; or
- (c) a determination under section 44 takes effect disqualifying the person from holding such an appointment; or
- (d) the person resigns the appointment by giving written notice to the insurer; or
- (e) the insurer ends the appointment by giving written notice to the person.

#### **44 Disqualification of a person as an auditor or actuary**

- (1) APRA may determine (in writing) that:
  - (a) a person is disqualified from holding any appointment as an auditor of a general insurer; or
  - (b) a person is disqualified from holding any appointment as an actuary of a general insurer.
- (2) APRA may only do so if the person:
  - (a) has failed to perform adequately and properly the functions and duties of such an appointment under this Act or the prudential standards; or
  - (b) otherwise does not meet one or more of the criteria for fitness and propriety set out in the prudential standards; or
  - (c) does not meet the eligibility criteria for such an appointment as set out in the prudential standards.
- (3) A determination takes effect on the day specified in it. That day must be no more than 28 days after the determination is made.
- (4) As soon as practicable after making a determination disqualifying a person, APRA must give a copy of the determination to the person and any affected general insurer.
- (5) Part VI applies to a determination made by APRA under this section.

#### **45 When a disqualification may be revoked**

- (1) APRA may revoke (in writing) a determination under section 44 disqualifying a person on its own initiative or on the application of the person.
- (2) If a person applies for a determination to be revoked, APRA must:
  - (a) either revoke, or refuse to revoke, the determination; and
  - (b) give the person written notice of the decision.
- (3) APRA must not revoke a determination disqualifying a person unless it is satisfied that the person:
  - (a) is likely to carry out and perform adequately and properly the functions and duties of an appointed auditor or actuary (as the case may be) under this Act and the prudential standards; and

- (b) meets all of the criteria for fitness and propriety set out in the prudential standards; and
  - (c) meets the eligibility criteria for such an appointment as set out in the prudential standards.
- (4) As soon as practicable after revoking a determination, APRA must give a copy of the revocation to the person to whom it relates.
  - (5) If APRA refuses to revoke a determination, APRA must give written notice of the refusal, including the reasons for the refusal, to the person concerned.
  - (6) Part VI applies to a refusal of APRA to revoke a determination under this section.

#### **46 Notification of appointment as an auditor or actuary**

- (1) Within 14 days after a general insurer appoints a person as its auditor or actuary, the insurer must give APRA written notice of these matters:
  - (a) the person's name;
  - (b) details of the person's qualifications and experience;
  - (c) the date of the appointment;
  - (d) any other matter specified for the purposes of this section by the prudential standards.
- (2) Within 14 days after a person stops being the appointed auditor or actuary of a general insurer, the insurer must give APRA written notice of that event (including the date on which it happened and the reasons for and circumstances of the event).

#### **47 Exemption from requirement to appoint actuary**

- (1) APRA may determine in writing that one or more general insurers is exempt from the requirement under paragraph 39(1)(b) to appoint an actuary.
- (1A) An exemption under subsection (1) may be subject to one or more conditions specified by APRA in the determination.
- (2) APRA must give a copy of a determination under subsection (1) to each general insurer to whom it applies.



- (2A) APRA must obtain the Treasurer's written agreement before making a determination under subsection (1).
- (3) The prudential standards may specify that a class of general insurers is exempt from the requirement in paragraph 39(1)(b) to appoint an actuary.
- (4) An exemption under subsection (3) may be subject to one or more conditions specified in the prudential standards.
- (5) A general insurer commits an offence if:
  - (a) the insurer does, or fails to do, an act; and
  - (b) doing or failing to do the act results in a contravention of a condition of the insurer's exemption under subsection (1) or (3).

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

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

- (1) This section applies if APRA:
  - (a) revokes under section 42 its approval of a person's appointment as an auditor or actuary of a general insurer; or
  - (b) makes a determination under section 44 disqualifying a person from holding an appointment as an auditor or actuary of a general insurer.
- (2) APRA may refer details of the matter to the following:
  - (a) the Companies Auditors and Liquidators Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;
  - (b) those members of the professional association of the auditor or actuary whom APRA believes will be involved in

considering or taking any disciplinary or other action concerning the matter against the auditor or actuary.

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

## **Division 2—Provision of information to APRA**

### **49 Duty of auditors and actuaries to give information when required**

- (1) APRA may give written notice to a person who is or was an auditor or actuary of:
- (a) a general insurer (whether or not the person was appointed under section 39); or
  - (b) an authorised NOHC; or
  - (c) a subsidiary of a general insurer or authorised NOHC;
- to give APRA information about the insurer, NOHC or subsidiary if APRA considers that the provision of the information will assist APRA in performing its functions under this Act.
- (2) The person must comply with the notice and, in doing so, must not give APRA information that is false or misleading.
- (3) A person commits an offence if the person contravenes subsection (2).

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

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

Maximum penalty: 60 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **49A Additional duty of auditors and actuaries to give information**

- (1) This section applies to a person who is or was an auditor or actuary of:
-

- 
- (a) a general insurer (whether or not the person was appointed under section 39); or
  - (b) an authorised NOHC; or
  - (c) a subsidiary of a general insurer or authorised NOHC.
- (2) If the person has reasonable grounds for believing that:
- (a) the insurer, NOHC or subsidiary is insolvent, or there is a significant risk that it will become insolvent; or
  - (b) the insurer, NOHC or subsidiary has failed to comply with the prudential standards or:
    - (i) in the case of an insurer—the insurer has failed to comply with a condition of its authorisation under section 12; or
    - (ii) in the case of an authorised NOHC—the NOHC has failed to comply with a condition of its authorisation under section 18; or
  - (c) the insurer, NOHC or subsidiary has failed to comply with a requirement or direction under this Act or a requirement under the *Financial Sector (Collection of Data) Act 2001*; or
  - (d) an existing or proposed state of affairs may materially prejudice the interests of:
    - (i) in the case of an auditor or actuary of a general insurer or of a subsidiary of a general insurer—the insurer’s policyholders; or
    - (ii) in the case of an auditor or actuary of an authorised NOHC or of a subsidiary of an authorised NOHC—the policyholders of any general insurer who is a subsidiary of the NOHC; or
  - (e) the general insurer, NOHC or subsidiary:
    - (i) has contravened this Act or any other law; and
    - (ii) the contravention is of such a nature that it may affect significantly the interest of policyholders of the general insurer or of a general insurer that is a subsidiary of the NOHC;
- the person must give APRA information (in writing) about the matter unless there is a determination in force under subsection 7(1) that this subsection does not apply to the person.
- (3) A person commits an offence if the person contravenes subsection (2).
-

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

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

Maximum penalty: 60 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **49B Auditor or actuary may give information to APRA**

A person who is or was an auditor or actuary of:

- (a) a general insurer (whether or not the person was appointed under section 39); or
  - (b) an authorised NOHC; or
  - (c) a subsidiary of a general insurer or authorised NOHC;
- may give information to APRA about the insurer, NOHC or subsidiary if the person considers that giving the information will assist APRA in performing its functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.

#### **49C Indemnity**

A person who, in good faith and without negligence, gives information to APRA in accordance with this Division is not subject to any action, claim or demand by, or any liability to, any other person in respect of the information.

#### **49D Self incrimination**

- (1) An individual is not excused from complying with a requirement under section 49 or 49A to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.
- (2) The information given by the individual in compliance with such a 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, if:

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

### **Division 3—Actuarial investigation required by APRA**

#### **49E Actuarial investigation of liabilities**

- (1) APRA may give written notice to a general insurer requiring it to appoint, at the insurer's expense, an actuary (other than the actuary appointed in accordance with section 39) to:
  - (a) investigate all or a specified part of the insurer's liabilities as at a particular time; and
  - (b) produce a written report.

Note: Only certain persons can be appointed as an actuary for the purposes of this section (see section 49G).

- (2) The actuary must not be an officer (within the meaning of the Corporations Law) of the general insurer.
- (3) Within 7 days after the general insurer is given the notice, it must appoint the actuary and advise APRA (in writing) of the actuary's name.
- (4) Within 7 days after being notified of an actuary's name, APRA may give written notice to the general insurer that the actuary is not acceptable to APRA. The insurer must then, within 7 days:
  - (a) appoint a different actuary; and
  - (b) advise APRA (in writing) of the name of that actuary.
- (5) Subsection (4) applies whether the notification of the actuary's name is under subsection (3) or paragraph (4)(b).
- (6) The general insurer must ensure that the actuary's report is given to APRA:
  - (a) within 30 days after APRA gave the notice under subsection (1) requiring an actuary to be appointed; or
  - (b) within such further time as APRA allows in writing.

- (7) The actuary's report must be signed by the actuary and contain a statement of the actuary's opinion about each of the following:
- (a) the adequacy of all or part of the amount specified in the general insurer's accounts in respect of its liabilities, and the amount that the actuary considers would be adequate in the circumstances;
  - (b) the accuracy of any relevant valuations made by the actuary;
  - (c) the assumptions used by the actuary in making those valuations;
  - (d) the relevance, appropriateness and accuracy of the information on which those valuations were based;
  - (e) any other matter in respect of which the prudential standards require a statement of the actuary's opinion to be included in the report.

**49F Offence for contravening section 49E**

- (1) A general insurer commits an offence if:
- (a) APRA requires the insurer to appoint an actuary under section 49E; and
  - (b) the insurer:
    - (i) fails to do so within the time required by that section; or
    - (ii) if the insurer is required under subsection 49E(4) to appoint a different actuary—fails to appoint that actuary within the time required by that subsection.

Maximum penalty: 100 penalty units.

- (2) A general insurer commits an offence if:
- (a) APRA requires the insurer to appoint an actuary under section 49E; and
  - (b) the insurer:
    - (i) fails to do so within the time required by that section; or
    - (ii) if the insurer is required under subsection 49E(4) to appoint a different actuary—fails to appoint that actuary within the time required by that subsection.

This is an offence of strict liability.

Maximum penalty: 60 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

#### **49G Who can be appointed as a section 49E actuary**

- (1) A person can only be appointed as an actuary for the purposes of section 49E if the person is ordinarily resident in Australia and:
  - (a) the person is a Fellow of The Institute of Actuaries of Australia; or
  - (b) APRA has approved (in writing) the person as an actuary for the purposes of section 49E.
- (2) APRA may only approve a person if APRA is satisfied that the person has actuarial qualifications and experience that make the person fit to perform the functions of an actuary for the purposes of section 49E.

#### **49H Delegate's decision to extend time for providing actuary's report**

- (1) If a delegate of APRA decides to allow, or refuse to allow, further time under paragraph 49E(6)(b), the general insurer concerned may request that APRA reconsider the delegate's decision.
- (2) The request must:
  - (a) be in writing and include the reasons for making the request; and
  - (b) be made within 7 days after the day on which the insurer is notified of the decision.
- (3) Within 7 days of receiving the request, APRA must reconsider the decision and may confirm, revoke or vary the decision. APRA must give written notice to the insurer of the result of the reconsideration.
- (4) If APRA does not confirm, revoke or vary the decision before the end of the 7 day period, APRA is taken to have confirmed the decision.

## **Division 4—Role of auditor and actuary of a general insurer**

### **49J Auditor's role**

- (1) The auditor of a general insurer appointed in accordance with section 39 must:
  - (a) audit the insurer's yearly statutory accounts; and
  - (b) perform for the insurer the functions of an auditor set out in the prudential standards; and
  - (c) prepare, and give to the insurer, the reports (if any) required by the prudential standards to be prepared by the auditor.
- (2) The general insurer must make the arrangements that are necessary to enable the auditor to do those things.
- (3) The auditor must give the general insurer a certificate relating to the yearly statutory accounts. The certificate must contain statements of the auditor's opinion on the matters required by the prudential standards to be dealt with in the certificate.
- (4) The reports that the prudential standards require the auditor to prepare must deal with all of the matters required by the prudential standards to be dealt with in the reports.

### **49K Actuary's role**

- (1) The actuary of a general insurer appointed in accordance with section 39 must:
  - (a) perform for the insurer the functions of an actuary set out in the prudential standards; and
  - (b) prepare, and give to the insurer, the reports (if any) required by the prudential standards to be prepared by the actuary.
- (2) The general insurer must make the arrangements that are necessary to enable the actuary to do those things.
- (3) The reports that the prudential standards require the actuary to prepare must deal with all of the matters required by the prudential standards to be dealt with in the reports.



#### **49L Lodgment of auditor's certificate and actuary's reports**

- (1) A general insurer must, in accordance with the prudential standards, lodge with APRA:
  - (a) a section 49J certificate relating to the yearly statutory accounts for each financial year of the insurer; and
  - (aa) the reports referred to in section 49J; and
  - (b) the reports referred to in section 49K.

Maximum penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

### **Division 5—Accounts**

#### **49M Direction to provide amount for liabilities**

- (1) APRA may give a written direction to a general insurer to provide, or further provide, in its accounts for the purposes of this Act (including the prudential standards):
  - (a) a specified amount; or
  - (b) an amount determined in a specified way;in respect of its liabilities.
- (2) However, APRA may only give a direction if APRA has the Treasurer's written agreement to do so.
- (3) The direction must specify:
  - (a) a period for providing the amount in its accounts (which must be at least 21 days after the direction is given to the insurer); and
  - (b) whether it applies on an interim basis or otherwise.
- (4) APRA may vary or revoke the direction, by giving written notice to the general insurer, if:

- (a) APRA considers that the direction should be varied or is no longer necessary; and
  - (b) the Treasurer gives his or her written agreement.
- APRA may do so on its own initiative or on the application of the insurer.
- (5) If a general insurer applies for a direction to be varied or revoked, APRA must:
    - (a) either vary or revoke, or refuse to vary or revoke, the direction; and
    - (b) give the person written notice of APRA's decision about varying or revoking the direction.
  - (6) A direction ceases to have effect on the commencement of the winding up of the general insurer concerned.
  - (7) To avoid doubt, this section has effect for the purposes of this Division, the prudential standards and the *Financial Sector (Collection of Data) Act 2001*.

#### **49N Direction concerning value of assets**

- (1) If APRA is not satisfied that a general insurer has worked out the value of an asset of the insurer in accordance with the prudential standards, APRA may give a written direction to the insurer that the asset's value is instead the value specified in the direction.
- (2) However, APRA may only give a direction if APRA has the Treasurer's written agreement to do so.
- (3) APRA may vary or revoke the direction, by giving written notice to the general insurer, if:
  - (a) APRA considers that the direction should be varied or is no longer necessary; and
  - (b) the Treasurer gives his or her written agreement.APRA may do so on its own initiative or on the application of the insurer.
- (4) If a general insurer applies for a direction to be varied or revoked, APRA must:
  - (a) either vary or revoke, or refuse to vary or revoke, the direction; and

- (b) give the insurer written notice of APRA's decision about varying or revoking the direction.
- (5) To avoid doubt, this section has effect for the purposes of this Division, the prudential standards and the *Financial Sector (Collection of Data) Act 2001*.

#### **49P Failure to comply with directions**

- (1) A general insurer commits an offence if the insurer contravenes a direction given to it under section 49M or 49N.

Maximum penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

#### **49Q Keeping of accounting records**

- (1) The accounting records that a general insurer keeps for the purposes of this Act (including the prudential standards) must be kept:
  - (a) in Australia; and
  - (b) in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language.
- (2) A general insurer commits an offence if the insurer contravenes this section.

Maximum penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

### **24 Part IVA**

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Repeal the Part.

**25 Subsection 50(1) (definition of *affairs*)**

After “body corporate” (first occurring), insert “that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC”.

**26 Subsection 50(1) (definition of *prescribed person*)**

After “body corporate” (first occurring), insert “that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC, or a body corporate associated with another body corporate”.

**27 Subsection 50(1) (paragraph (b) of the definition of *prescribed person*)**

Omit “banker,”.

**28 Paragraph 50(2)(a)**

Omit “carries on insurance business”, substitute “is a general insurer or authorised NOHC”.

**29 Subsection 50(3)**

Repeal the subsection.

**30 Subsection 51(1)**

Omit all the words from and including “Where” to and including “may:”, substitute:

Where:

- (aa) it appears to APRA that a body corporate that is a general insurer or authorised NOHC:
  - (i) is, or is likely to become, unable to meet its liabilities; or
  - (ii) has contravened or failed to comply with a provision of this Act or a condition or direction applicable under this Act; or
- (ab) it appears to APRA that there is, or there may be, a risk to the security of the general insurer’s or authorised NOHC’s assets; or

(ac) it appears to APRA that there is, or there may be, a sudden deterioration in the general insurer's or authorised NOHC's financial condition; or

(ad) the Treasurer agrees, in writing, to the giving of a notice under this subsection;

APRA may:

**32 Subsection 51(2)**

Omit "connected with", substitute "a subsidiary of".

**33 Paragraph 51(2)(c)**

Omit "connected body corporate" (twice occurring), substitute "subsidiary".

**34 Paragraph 51(2)(d)**

Omit "connected body corporate", substitute "subsidiary".

**35 Subsections 51(3) and (4)**

Repeal the subsections.

**36 Subsection 52(1)**

Omit all the words from and including "Where" to and including "this Act;", substitute:

Where:

(aa) it appears to APRA that a body corporate that is a general insurer or authorised NOHC:

(i) is, or is likely to become, unable to meet its liabilities;  
or

(ii) has contravened or failed to comply with a provision of this Act or a condition or direction applicable to it under this Act; or

(ab) it appears to APRA that there is, or there may be, a risk to the security of a general insurer's or authorised NOHC's assets;  
or

(a) it appears to APRA that there is, or there may be, a sudden deterioration in a general insurer's or authorised NOHC's financial condition; or

(b) the Treasurer agrees, in writing, to the giving of a notice under this subsection;

Note: The heading to section 52 is altered by omitting “**body corporate**” and substituting “**general insurer, authorised NOHC or subsidiary**”.

**36A Subsection 52(1)**

Omit “, on specified grounds”.

**36B After subsection 52(1)**

Insert:

(1AA) A notice under subsection (1) must specify which of paragraphs 1(aa), (ab), (a) or (b) is being relied on to give the notice.

(1AB) Despite subsection (1), APRA may specify a period of less than 14 days in a notice under that subsection if the Treasurer has agreed, in writing, to the lesser period being specified.

**37 Subsection 52(1A)**

Omit “connected with”, substitute “a subsidiary of”.

**38 Subsection 52(1B)**

Omit “connected with a body corporate authorised under this Act to carry on insurance business”, substitute “a subsidiary of a body corporate that is a general insurer or authorised NOHC”.

**39 Subsection 52(1B)**

Omit “first-mentioned body corporate”, substitute “subsidiary”.

**40 Subsection 54(1)**

Omit “with which the body corporate is connected”, substitute “that is a subsidiary of the body corporate”.

**41 Paragraph 54(1)(a)**

Omit “other body corporate”, substitute “subsidiary”.

**41A Subsection 55(1)**

After “body corporate” (first occurring), insert “that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC”.

Note: The heading to section 55 is altered by omitting “**the**” (wherever occurring).

**41B Subsection 55(1)**

Omit “the whole or part of the affairs of which APRA or the inspector is investigating”.

**41C After subsection 55(1)**

Insert:

- (1A) APRA or the inspector may give a notice to a prescribed person in relation to a body corporate only if:
- (a) APRA or the inspector is investigating the whole or part of the affairs of the body corporate or a body corporate that is associated with that body corporate; or
  - (b) the notice is given for the purposes of APRA’s monitoring functions under section 38.

**41D Paragraph 59(1)(b)**

Repeal the paragraph, substitute:

- (b) an inspector may by signed instrument delegate his or her powers to:
  - (i) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*; or
  - (ii) a person included in a class of persons approved in writing by APRA for the purposes of this subparagraph.

**42 Paragraph 60(2)(b)**

Omit “authorised under this Act to carry on insurance business”, substitute “a general insurer or authorised NOHC”.

**43 Subparagraph 60(2)(c)(i)**

Repeal the subparagraph, substitute:

- (i) if the body corporate is a general insurer or authorised NOHC—whether it should continue to be a general insurer or authorised NOHC; and

**44 Subsection 62(1)**

Omit “authorised under this Act to carry on insurance business”, substitute “a general insurer or authorised NOHC”.

**45 Paragraph 62(1)(g)**

Omit “in respect of unearned premiums or claims or in respect of both unearned premiums and claims”, substitute “in its accounts for liabilities in respect of insurance business carried on in Australia”.

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

Omit “(the *connected body*) that is connected with a body corporate (the *authorised body*) for the purposes of Part IVA”, substitute “that is a subsidiary of a body corporate that is a general insurer or authorised NOHC”.

**47 Subparagraph 62(1A)(b)(i)**

Omit “authorised body”, substitute “insurer or NOHC”.

**48 Subparagraph 62(1A)(b)(ii)**

Omit “connected body”, substitute “subsidiary”.

**49 After subparagraph 62(1A)(b)(ii)**

Omit “served on the connected body”, substitute “served on the subsidiary”.

**50 Paragraphs 62(1A)(c) to (f)**

Omit “the body” (wherever occurring), substitute “the subsidiary”.

**51 Subsection 62(6)**

Omit “body corporate”, substitute “general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC”.

**52 Subsection 63(1) (definition of *person affected by a reviewable decision of the Treasurer or APRA*)**

Repeal the definition, substitute:

*person affected by a reviewable decision of the Treasurer or APRA*, in relation to a reviewable decision of the Treasurer or APRA, means:

- (a) in the case of a determination under subsection 93(3)—  
Lloyd’s or any Lloyd’s underwriter; or
- (b) in any other case—the person in relation to whom the decision was made.



**52A Paragraph 93(10)(c)**

Omit “*Acts Interpretation Act 1901-1966*”, substitute “*Acts Interpretation Act 1901*”.

**53 Section 94**

Omit “section 21”, substitute “section 9 or 10”.

**54 Section 99**

Repeal the section, substitute:

**99 Operation of State and Territory laws on section 10**

- (1) It is the intention of the Parliament that section 10 (which provides that a body corporate or Lloyd’s underwriter commits an offence in certain circumstances) is not to apply to the exclusion of a law of a State or Territory.
- (2) However, section 10 applies to the exclusion of a law of a State or Territory to the extent that the effect of the law is to authorise:
  - (a) a body corporate or a Lloyd’s underwriter to carry on insurance business generally; or
  - (b) a body corporate that is not a general insurer to carry on specified insurance business or to carry on insurance business included in a specified class of insurance business.

**55 Section 102**

Omit “Part IV”, substitute “this Act”.

Note: The heading to section 102 is replaced by the heading “**Laws about accounts or accounting records**”.

**56 Section 114**

Repeal the section.

**57 Subsections 115(1) and (2)**

Repeal the subsections, substitute:

- (1) For the purposes of this Act, APRA or a person authorised (in writing) by APRA for the purposes of this section may:
  - (a) require an officer of a general insurer, authorised NOHC or the subsidiary of an authorised insurer or authorised NOHC

to produce to APRA or the person information, books, accounts or documents in respect of the general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC; and

(b) inspect, take extracts from and make copies of any such books, accounts or documents.

(2) For the purpose of considering an application made (whether before or after the commencement of this subsection) by a body corporate for an authorisation to carry on insurance business or NOHC authorisation, APRA or a person authorised (in writing) by APRA for the purposes of this section may:

(a) require an officer of the body corporate to produce to APRA any information, books, accounts or documents in respect of the body corporate; and

(b) inspect, take extracts from and make copies of any such books, accounts or documents.

Note: The heading to section 115 is altered by omitting “books” and substituting “information, books, accounts or documents”.

### **58 Subsection 115A(1)**

Omit “authorised under this Act to carry on insurance business, or a body corporate with which a body corporate so authorised is connected for the purposes of Part IVA,”, substitute “that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC”.

### **59 Paragraph 115A(2)(a)**

Omit “authorised under this Act to carry on insurance business, or a body corporate with which a body corporate so authorised is connected for the purposes of Part IVA,”, substitute “that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC”.

### **60 Section 116**

Repeal the section, substitute:

### **116 General insurer not to carry on insurance business after start of winding up**

(1) If a general insurer is started to be wound up:

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- (a) the insurer must not carry on insurance business after the start of the winding up; and
  - (b) APRA must ensure that a notice is published in the *Gazette* stating that the insurer is no longer allowed to carry on insurance business because of the start of the winding up.
- (2) A general insurer doesn't contravene subsection (1) merely because it is carrying on business for the purpose of discharging liabilities assumed by it before the start of the winding up.
- (3) In the winding up of a general insurer, the insurer's assets in Australia must not be applied in the discharge of its liabilities other than its liabilities in Australia unless it has no liabilities in Australia.
- Note: Section 116A deals with assets and liabilities in Australia.
- (4) Nothing in this section affects the validity of a contract entered into by a general insurer after it is started to be wound up.
- (5) This section has effect and must be complied with despite anything in any law of a State or Territory.

#### **116A Assets and liabilities in Australia**

- (1) For the purposes of section 28 (General insurer must hold sufficient assets), an amount is taken to be an asset in Australia of a general insurer if:
- (a) the insurer expects to recover the amount under a contract of reinsurance entered into with a person who is outside Australia; and
  - (b) the amount relates to claims in respect of liabilities in Australia of the insurer, whether or not the claims have been paid by the insurer; and
  - (c) under the terms of the contract, payments by way of reinsurance are to be made in Australia.
- (2) For the purposes of section 116 (General insurer not to carry on insurance business after start of winding up) and section 28, a liability is taken to be a liability in Australia of a general insurer if it is undertaken by the insurer under a contract of insurance (including reinsurance) made in Australia or in respect of which a

proposal was accepted or a policy issued in Australia, other than a contract:

- (a) that relates only to a liability contingent on an event that can happen only outside Australia, not being a liability that the body corporate has undertaken to satisfy in Australia; or
  - (b) if the insurer carries on insurance business both in and outside Australia—that relates only to a liability that the insurer has undertaken to satisfy outside Australia.
- (3) For the purposes of section 28, a liability is also taken to be a liability in Australia of a general insurer if it is undertaken by the insurer under a contract of insurance (including reinsurance) made outside Australia or in respect of which a proposal was accepted or a policy issued outside Australia, if the contract:
- (a) relates to a liability contingent on an event that can happen only in Australia; or
  - (b) if the insurer carries on insurance business both in and outside Australia—relates to a liability that the insurer has undertaken to satisfy in Australia;

and any part of the negotiations or arrangements leading to the making of the contract, the acceptance of the proposal or the issue of the policy took place or were made in Australia.

- (4) For the purposes of section 116 and section 28, unless the contrary intention appears, a reference to liabilities of a body corporate includes a reference to provision for liabilities made in its accounts, or directed in accordance with section 49M to be made, but does not include:
- (a) a liability in respect of share capital; or
  - (b) where the body corporate is registered under the *Life Insurance Act 1995*, a liability that is, in accordance with that Act:
    - (i) referable to a class of life insurance business carried on by the body corporate in respect of which it has established a statutory fund under that Act; or
    - (ii) charged on any of the assets of such a statutory fund.
- (5) The whole or such part as APRA determines of an amount owed to a body corporate by way of portions of premiums retained under a contract of reinsurance by a person outside Australia are, for the

purposes of section 28, to be taken to be an asset in Australia of the body corporate.

- (6) Where:
- (a) a determination has been made under subsection (5); and
  - (b) it appears at any time to APRA that the determination is no longer necessary or should be varied;
- APRA must, by notice in writing served on the body corporate concerned, revoke or vary the determination, as the case may be.

## **61 Section 117**

Repeal the section, substitute:

### **117 Address for service in Australia**

- (1) A body corporate that is not incorporated in Australia and:
- (a) is a foreign general insurer; or
  - (b) is a subsidiary of a foreign general insurer;
- must, at all times, have an address for service in Australia for the purposes of this Act.
- (2) An address becomes the address for service for the insurer or subsidiary when written notice of the address is given to APRA. (The address continues to be the address for service until APRA is given written notice of another address.)

## **62 Section 117A**

Repeal the section.

## **63 Subsection 118(1)**

Repeal the subsection, substitute:

- (1) A body corporate that is not incorporated in Australia and:
- (a) is a foreign general insurer; or
  - (b) is a subsidiary of a foreign general insurer;
- must, at all times while it is such an insurer or subsidiary, be represented for the purposes of this Act by an individual resident in Australia and appointed by it as its agent for the purposes of this Act.

## **64 Section 119**

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Repeal the section.

**65 Section 120**

Omit “subsection 21(3)”, substitute “subsection 10(2)”.

**65A Subsection 122(1)**

Omit “Authorized Insurers”, substitute “General Insurers and Authorised NOHCs”.

**65B Paragraph 123(1)(a)**

Omit “Authorized Insurers”, substitute “General Insurers and Authorised NOHCs”.

**66 Paragraph 123(1)(aa)**

Omit “section 48”, substitute “section 49L”.

**66A After section 125**

Insert:

**126 Acceptance and enforcement of undertakings**

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with APRA’s consent.
- (3) If APRA considers that the person who gave the undertaking has breached any of its terms, APRA may apply to the Federal Court for an order under subsection (4).
- (4) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Federal 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 Federal 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 Federal Court considers appropriate.

**66B Before section 128**

Insert:

**127 Severability**

- (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act has, by force of this subsection, the effect it would have if reference to a NOHC in relation to a body corporate were expressly limited to a reference to a NOHC of a general insurer.
- (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 a general insurer were expressly limited to a reference to such 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 a general insurer were expressly limited to a reference to such a subsidiary that carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.
- (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 such 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 such a subsidiary of an authorised NOHC, being a NOHC that carries on banking with respect to which the Parliament

has the power to make laws under paragraph 51(xiii) of the Constitution.

## **67 Subsections 128(1) and (3)**

Repeal the subsections.

Note: The heading to section 128 is replaced by the heading “**Signing of documents**”.

## **68 After section 128**

Insert:

### **128A Continuing offences**

- (1) This section applies to an offence under section 7A, 9, 10, 14, 20, 28, 37 or 49P.
- (2) If APRA considers that a person has done an act or failed to do an act in circumstances that give rise to the commission of an offence to which this section applies, APRA may give the person a written notice that APRA considers the person may have committed the offence.
- (3) A person:
  - (a) who does an act or fails to do an act in circumstances that give rise to the commission of an offence to which this section applies; and
  - (b) receives a notice under subsection (2) in respect of the offence;

also commits the offence in respect of each day, after the person receives the notice, on which the circumstances that gave rise to the commission of the offence continue (including the day of conviction for the offence or any later day).

Note 1: This section does not affect the application of section 4K of the *Crimes Act 1914* to offences against this Act or the regulations.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 3: If a body corporate is convicted of an offence against this section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **69 Subsection 129A**

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Omit “subsection 21(1), (2) or (3), 31(3F), 62(9), 106(2) or 109(3)”, substitute “section 9, 10 or 49M or subsection 62(9)”.

**70 Subsections 129C(1) and (1A)**

Omit “body corporate authorised to carry on insurance business under this Act”, substitute “general insurer”.

Note: The heading to section 129C is altered by omitting “**Bodies corporate**” and substituting “**General insurers**”.

**71 Subsection 129D(1)**

Omit “body corporate authorised to carry on insurance business under this Act”, substitute “general insurer”.

**72 Subsection 129D(1)**

Omit “of Australia”.

**73 Paragraphs 129D(1)(a) and (b)**

Omit “body corporate” (twice occurring), substitute “insurer”.

**74 Subsection 129D(2)**

Omit “body corporate authorised to carry on insurance business under this Act”, substitute “general insurer”.

**75 Subsection 129D(2)**

Omit “the body corporate” (twice occurring), substitute “the insurer”.

**76 Subsection 129D(2)**

Omit “of Australia”.

**77 Subsection 129D(7)**

Omit “body corporate” (first occurring), substitute “general insurer”.

**78 Paragraphs 129D(7)(a) and (b)**

Omit “the body corporate” (twice occurring), substitute “the insurer”.

**79 Subsection 129D(8)**

Omit “body corporate” (first occurring), substitute “general insurer”.

**80 Subsection 129D(8)**

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Omit “the body corporate”, substitute “the insurer”.

**81 Section 131**

Omit “or 105”.

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## Schedule 2—Transitional provisions

### 1 Definitions

In this Schedule:

**commencement** means the commencement of the amendments of the *Insurance Act 1973* made by Schedule 1.

**new Act** means the *Insurance Act 1973* as in force immediately after the commencement.

**old Act** means the *Insurance Act 1973* as in force immediately before the commencement.

**transition period** means the period starting on the commencement and ending 2 years after the commencement.

### 2 Early applications for authorisation to carry on insurance business

- (1) For the purpose of allowing applications for an authorisation to carry on insurance business to be made and dealt with before the commencement:
  - (a) Division 2 of Part III of the new Act; and
  - (b) any other provisions of the new Act so far as they relate to making or dealing with such applications;apply after this Act receives the Royal Assent as if those provisions had come into operation at that time.
- (2) An authorisation given before the commencement takes effect on the day specified (in writing) by APRA. That day must not be before the commencement.

### 3 Early approvals of auditors and actuaries

- (1) For the purpose of allowing a general insurer to appoint an auditor or actuary, and APRA to approve such an appointment, under the new Act before the commencement:
  - (a) Division 1 of Part IV of the new Act; and
  - (b) any other provisions of the new Act so far as they relate to such appointments;

apply after this Act receives the Royal Assent as if those provisions had come into operation at that time.

- (2) An appointment made or approval given before the commencement takes effect on the day specified (in writing) by APRA. That day must not be before the commencement.

### **3A Effect of authority under old Act**

- (1) An authority to carry on insurance business granted to a body corporate under section 23 or 24 of the old Act ceases to be in force immediately after an authority is granted to the body corporate under section 12 of the new Act.
- (2) However, subitem (1) is subject to any determination under item 4 in respect of the body corporate.

### **4 Application of the old Act during the transition period**

- (1) APRA may determine that all or specified provisions of the old Act continue to apply to a person or class of persons for a specified period during the transition period.
- (2) The determination may include a different specified period in respect of:
  - (a) different provisions of the old Act; or
  - (b) different persons or classes of persons.
- (3) The determination may be made subject to specified conditions.
- (4) A copy of the determination must be published in the *Gazette* and, on *Gazette* publication, has effect according to its terms.

### **5 Application of the new Act during the transition period**

- (1) APRA may determine that all or specified provisions of the new Act do not apply to a person or class of persons for a specified period during the transition period.
- (2) The determination may include a different specified period in respect of:
  - (a) different provisions of the old Act; or
  - (b) different persons or classes of persons.

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- (3) The determination may be made subject to specified conditions.
  - (4) A copy of the determination must be published in the *Gazette* and, on *Gazette* publication, has effect according to its terms.

## **6 Body corporate covered by both the old Act and the new Act**

- (1) This item applies if during the transition period:
  - (a) a body corporate:
    - (i) is authorised under the old Act to carry on insurance business; or
    - (ii) is a general insurer under the new Act; and
  - (b) the effect of determinations under items 4 and 5 is that provisions of both the old Act and the new Act apply to the body corporate.
- (2) While the determinations have that effect:
  - (a) if the body corporate is not authorised under the old Act to carry on insurance business—it is taken to be so authorised for the purposes of the provisions of the old Act that apply to the body corporate; and
  - (b) if the body corporate is not a general insurer under the new Act—it is taken to be a general insurer for the purposes of the provisions of the new Act that apply to the body corporate.

## **7 Direction to assign liabilities**

- (1) This item applies to a body corporate if:
    - (a) during the transition period, the body corporate is authorised under the old Act to carry on insurance business because of a determination under item 4; and
    - (b) APRA considers it appropriate to vary or revoke the determination so that the body corporate will no longer be so authorised; and
    - (c) the body corporate is not a general insurer under the new Act; and
    - (d) the body corporate has liabilities in respect of insurance business carried on by it in Australia.
  - (2) This item also applies to a body corporate if:
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- (a) during the transition period, the body corporate is authorised under the old Act to carry on insurance business because of a determination under item 4; and
  - (b) as at 3 months before the end of the transition period, the body corporate is not a general insurer under the new Act; and
  - (c) the body corporate has liabilities in respect of insurance business carried on by it in Australia.
- (3) Section 17 of the new Act (which allows APRA to direct the assignment of liabilities) is taken to apply to the body corporate as though:
- (a) the body corporate's authorisation under the old Act to carry on insurance business were an authorisation under the new Act to carry on insurance business; and
  - (b) APRA considered that it would revoke the authorisation if the body corporate had no liabilities in respect of insurance business carried on by it in Australia.

## **8 Auditors may be taken to be appointed under the new Act**

- (1) APRA may determine (in writing) that a person who was, immediately before the commencement, acting in accordance with the old Act as a body corporate's auditor, is:
- (a) on and after the commencement; or
  - (b) on and after a specified day during the transition period;
- taken to have been appointed as the body corporate's auditor in accordance with section 39 of the new Act.
- (2) APRA may only make the determination with the person's written agreement.
- (3) APRA must give a copy of the determination to the person and the body corporate to which the person is taken to have been appointed.

## **9 Actuarial investigation under the old Act**

If APRA has given a body corporate notice under subsection 48A(2) of the old Act, and a report under section 48A has not been given to APRA before the commencement, sections 48A and 48B of the old Act continue to apply to the body corporate on and after the commencement until the report is given to APRA.

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**10 Directions to deal with the transition**

- (1) For the purpose of dealing with the transition from the old Act to the new Act, APRA may give written directions during the transition period to:
  - (a) a person to whom some or all of the old Act continues to apply during the transition period because of a determination under item 4; or
  - (b) a person to whom some or all of the new Act does not apply during the transition period because of a determination under item 5; or
  - (c) a person to whom some or all of the new Act applies.
- (2) A person to whom a direction is given under subitem (1) must comply with the direction within the time specified in the direction.

**10A Application of the old and new Act to certain insurers after the end of the transition period**

- (1) Items 4, 5, 6, 7, 8, 9 and 10 continue to apply (with the modifications mentioned in subitem (2)) to a body corporate at a time after the end of the transition period if:
  - (a) the body corporate:
    - (i) is authorised under the old Act to carry on insurance business; or
    - (ii) is a general insurer under the new Act; and
  - (b) APRA is satisfied at that time that the body corporate is carrying on insurance business in Australia for the sole purpose of discharging liabilities that arose before the end of the transition period.
- (2) Items 4, 5, 6, 7, 8, 9 and 10 continue to apply to the body corporate as if:
  - (a) a reference in those items to the transition period included a reference to times after the end of the transition period; and
  - (b) a reference in those items to a specified period included a reference to an indefinite period.

**11 Regulations**

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**Schedule 2** Transitional provisions

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The Governor-General may make regulations providing for matters of a transitional nature arising from the amendments made by Schedule 1 to this Act.



## **Schedule 3—Consequential amendment of other Acts**

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

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

Repeal the paragraph, substitute:

- (c) a general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC, within the meaning of the *Insurance Act 1973*;

#### **1A After subsection 56(6)**

Insert:

- (6A) It is not an offence if the disclosure of protected information or the production of a protected document is to:
  - (a) an auditor who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC; or
  - (b) an actuary who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC;and the disclosure is for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or Territory.

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

#### **2 Subsections 216(3) and (6)**

After "ASIC" (wherever occurring), insert "or APRA".

#### **3 Paragraphs 218(3)(a) and (c)**

After "ASIC" (wherever occurring), insert "or APRA".

#### **4 Paragraph 223(1)(d)**

After "ASIC", insert "or APRA".

**5 Subsections 223(2) and (3)**

After “ASIC” (wherever occurring), insert “or APRA”.

**6 Subsection 223(4)**

After “ASIC’s costs” (wherever occurring), insert “or APRA’s costs”.

**7 Subsection 223(5)**

After “ASIC” (wherever occurring), insert “or APRA”.

***Corporations Act 2001***

**8 Paragraph 462(3)(b)**

Repeal the paragraph, substitute:

- (b) the company’s liabilities, worked out for the purpose of the prudential standards (within the meaning of that Act), exceed the company’s assets worked out for that purpose.

**9 Subsections 1292(1), (7), (9) and (10)**

After “ASIC” (wherever occurring), insert “or APRA”.

**10 Subsection 1294(2)**

After “ASIC”, insert “and APRA”.

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

**11 Paragraph 5(4)(b)**

Repeal the paragraph.

***Financial Transactions Reports Act 1988***

**12 Subsection 3(1) (definition of *insurer*)**

Omit all the words after “business”.

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

**13 Section 4 (paragraph (a) of the definition of *book outstanding claims provision*)**

Omit “outstanding claims provision”, substitute “outstanding claims liability (within the meaning of the prudential standards determined under that Act)”.

**14 Section 4 (paragraph (a) of the definition of *book unearned premiums provision*)**

Omit “unearned premiums provision”, substitute “premiums liability (within the meaning of the prudential standards determined under that Act)”.

***Seafarers Rehabilitation and Compensation Act 1992***

**15 Section 3 (definition of *authorised insurer*)**

Omit “insurance company”, substitute “insurer or Lloyd’s underwriter”.

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*[Minister’s second reading speech made in—  
House of Representatives on 28 June 2001  
Senate on 27 August 2001]*

(140/01)