



# **Financial Sector Legislation Amendment Act (No. 1) 2002**

**No. 37, 2002**

**An Act to amend certain laws relating to the  
financial sector, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## **An Act to amend certain laws relating to the financial sector, and for related purposes**

[Assented to 26 June 2002]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Financial Sector Legislation  
Amendment Act (No. 1) 2002*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after the day on which this Act receives the Royal Assent	27 June 2002
2. Schedules 1 to 3	The day after the day on which this Act receives the Royal Assent	27 June 2002
3. Schedule 4, items 1 to 17	Immediately after the commencement of Schedule 1 to the <i>General Insurance Reform Act 2001</i> .	1 July 2002
4. Schedule 4, item 18	Immediately after the commencement of Schedule 2 to the <i>General Insurance Reform Act 2001</i> .	19 September 2001
5. Schedules 5 to 9	The day after the day on which this Act receives the Royal Assent.	27 June 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Australian Prudential Regulation Authority Act 1998**

### **1 Section 50**

Repeal the section, substitute:

#### **50 APRA's share of levy money**

- (1) The Treasurer is to make, for each financial year, either of the following determinations:
  - (a) a determination specifying the amount (the *retainable amount*), of the levy money payable to the Commonwealth in respect of levy for that financial year, that is to be available to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions;
  - (b) a determination, in respect of each class of levy that is payable to the Commonwealth for that financial year, specifying the amount (the *retainable amount*), of the levy money payable to the Commonwealth in respect of that class of levy for that financial year, that is to be available to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions.
- (2) Subject to subsection (6), if the Treasurer makes a determination in respect of a financial year of a kind mentioned in paragraph (1)(a), an amount equal to so much of the levy money payable to the Commonwealth for that financial year as exceeds the retainable amount referred to in that paragraph for the levy for that financial year is payable by the Commonwealth to APRA.
- (3) Subject to subsection (6), if the Treasurer makes a determination in respect of a financial year of a kind mentioned in paragraph (1)(b), an amount equal to so much of the levy money payable to the Commonwealth for that financial year in respect of a class of levy as exceeds the retainable amount referred to in that paragraph for

that class of levy for that financial year is payable by the Commonwealth to APRA.

- (4) A determination under subsection (1) is to be in writing and is to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Consolidated Revenue Fund is appropriated for the purpose of payments under subsection (2) or (3).
- (6) If:
  - (a) the Commonwealth waives, writes off or refunds any levy money; and
  - (b) apart from this subsection an amount equal to that levy money would be payable by the Commonwealth to APRA; that amount is not payable by the Commonwealth to APRA.
- (7) In this section:

**levy** means either of the following classes of levy:

- (a) levy payable under the *Financial Institutions Supervisory Levies Collection Act 1998*, other than levy imposed by the *Superannuation (Financial Assistance Funding) Levy Act 1993*;
- (b) levy payable under the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*.

**levy money:**

- (a) in relation to levy, means any amount payable to the Commonwealth in respect of levy; or
- (b) in relation to a particular class of levy, means any amount payable to the Commonwealth in respect of that class of levy.

## 2 Application

The amendment made by item 1 applies for the financial year that began on 1 July 2001 and for all later financial years.

## 3 Subsection 56(1)

Insert:

**personal information** has the same meaning as in the *Privacy Act 1988*.



**4 At the end of section 56**

Add:

- (12) A disclosure of personal information is taken to be authorised by law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* if:
- (a) the information is protected information and the disclosure is made in accordance with any of subsections (4), (5), (6), (7A), (7B) and (7C); or
  - (b) the information is contained in a protected document and the disclosure is made by the production of the document in accordance with any of those subsections.

## Schedule 2—Amendment of the Financial Institutions Supervisory Levies Collection Act 1998

### 1 Paragraph 9(1)(a)

Repeal the paragraph, substitute:

- (a) if the levy imposition day relating to the levy payable by the leviable body is 1 July of the financial year—a business day that is:
  - (i) specified in a notice given to the leviable body by APRA in relation to the financial year; and
  - (ii) is not earlier than 28 days after the day on which the notice is given; or

### 2 Subsection 9(2)

Repeal the subsection, substitute:

- (2) Levy payable under subsection 8(6) for a financial year by a trustee of a superannuation entity is due and payable:
  - (a) if the entity is a superannuation entity on 1 July of the financial year and became a superannuation entity before that day—on a business day that:
    - (i) is specified in a notice given by APRA to the trustee on or after the day on which a return under section 36 of the *Superannuation Industry (Supervision) Act 1993* that relates to the previous financial year was received by APRA; and
    - (ii) is not earlier than 6 weeks after the day on which the notice is given; or
  - (b) if the entity becomes a superannuation entity on or after 1 July of the financial year—on a business day that:
    - (i) is specified in a notice given by APRA to the trustee; and
    - (ii) is not earlier than 6 weeks after the day on which the notice is given.

### 3 Section 10

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Repeal the section, substitute:

## **10 Late payment penalty**

- (1) If any levy payable by a levy paying entity:
  - (a) is not paid on or before the day on which it is due and payable (the *due day for payment*); and
  - (b) remains unpaid after the penalty calculation day;the levy paying entity is liable to pay, by way of penalty, an amount worked out at the rate of 20% per year on the amount unpaid, computed from the end of the due day for payment to the end of the penalty calculation day.
- (2) The *penalty calculation day* is:
  - (a) if the levy is paid on or after the first day of a month and before the sixth day of that month—the 20th day of the immediately preceding month; or
  - (b) if the levy is paid on or after the sixth day of a month and before the 20th day of that month—the sixth day of that month; or
  - (c) if the levy is paid on or after the 20th day of a month and on or before the last day of that month—the 20th day of that month.

## **4 Application**

The amendment made by item 3 applies only to levy that becomes due and payable after the commencement of that item.

## **5 At the end of section 13**

Add:

- (2) APRA is authorised, as agent of the Commonwealth, to bring proceedings in the name of the Commonwealth for the recovery of a debt due to the Commonwealth of a kind mentioned in subsection (1).
- (3) If, in proceedings brought by APRA under subsection (2), the Commonwealth is ordered to pay costs, APRA must pay the costs out of APRA's money and the Commonwealth is not liable to reimburse APRA for the payment.

## **Schedule 3—Amendment of the Financial Sector (Transfers of Business) Act 1999**

### **1 At the end of subsection 12(2)**

Add:

; and (c) the Commissioner of Taxation.

### **2 At the end of section 12**

Add:

(5) APRA does not have to consult with the Commissioner of Taxation in relation to the transfer of business if the Commissioner has notified APRA, in writing, that he or she does not wish to be consulted about:

(a) the transfer; or

(b) a class of transfers that includes the transfer.

## **Schedule 4—Amendments relating to general insurance**

### ***Insurance Act 1973***

#### **1 Paragraph 25(1)(a)**

Repeal the paragraph, substitute:

- (a) the person has been convicted of an offence against or arising out of:
  - (i) this Act; or
  - (ii) the *Financial Sector (Collection of Data) Act 2001*; or
  - (iii) the *Corporations Act 2001*, the Corporations Law that was previously in force, or any law of a foreign country that corresponds to that Act or to that Corporations Law; or

#### **2 At the end of subsection 25(1)**

Add:

- ; or (f) APRA has disqualified the person under section 25A.

#### **3 After section 25**

Insert:

#### **25A APRA may disqualify person**

- (1) APRA may disqualify a person if it is satisfied that the person is not a fit and proper person to be or to act as someone referred to in paragraph 24(1)(a), (b) or (c).
- (2) A disqualification takes effect on the day on which it is made.
- (3) APRA may revoke a disqualification on application by the disqualified person or on its own initiative. A revocation takes effect on the day on which it is made.
- (4) APRA must give the person written notice of a disqualification, revocation of a disqualification or a refusal to revoke a disqualification.

- (5) As soon as practicable after a notice is given to a person under subsection (4), APRA must cause particulars of the disqualification, revocation or refusal to which the notice relates:
- (a) to be given:
    - (i) if the person is, or is acting as, a person referred to in paragraph 24(1)(a)—to the general insurer concerned; or
    - (ii) if the person is, or is acting as, a person referred to in paragraph 24(1)(b)—to the foreign general insurer concerned; or
    - (iii) if the person is, or is acting as, a person referred to in paragraph 24(1)(c)—to the authorised NOHC; and
  - (b) to be published in the *Gazette*.
- (6) Part VI applies to a disqualification under this section or to a refusal to revoke such a disqualification.

#### **4 Subsections 26(3) to (6)**

Repeal the subsections, substitute:

- (3) If a person applies for a determination under this section, APRA must:
- (a) either make, or refuse to make, the determination; and
  - (b) in the case of a refusal, give the person written notice of the refusal.
- (4) APRA may do any of the following:
- (a) when making a determination under subsection (1), specify in the determination conditions to which the determination is to be subject;
  - (b) at any later time while a determination under subsection (1) is in force, make a further determination specifying conditions or additional conditions to which the determination under subsection (1) is to be subject;
  - (c) at any time make a determination varying or revoking conditions that have been specified under paragraph (a) or (b).
- (5) A determination takes effect on the day on which it is made.

- (6) APRA must, as soon as practicable after a determination is made, give written notice of the making of the determination, and a copy of the determination, to the person concerned and to any affected general insurer or authorised NOHC.
- (7) A notice of a refusal to make a determination, or a notice of the making of a determination that specifies or varies conditions, must state the reasons for the refusal or for the specifying or variation of the conditions, as the case may be.
- (8) 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.
- (9) Part VI applies to a refusal of APRA to make a determination under this section, to a determination under this section that specifies conditions, to a determination under this section that varies conditions in a way that is more onerous on the person concerned or to the revocation of a determination under this section.

**5 Subsection 32(3A)**

Omit “proposed by a general insurer, authorised NOHC or subsidiary of a general insurer”, substitute “proposed by, or agreed to with, a general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC”.

**6 After subsection 32(3C)**

Insert:

- (3CA) APRA may vary or revoke a modification of a prudential standard and, if it revokes a modification, it may make under subsection (3A) a further modification of the standard in substitution for the previous modification. APRA must give written notice of a variation or revocation to the general insurer, authorised NOHC or subsidiary concerned.

**7 At the end of subsection 32(3E)**

Add “or varying a modification under subsection (3CA)”.

**8 After subsection 32(4)**

Insert:

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- (4A) A modification, or a variation of a modification, takes effect on the day on which the modification or variation is made or such later day as is specified in the instrument effecting the modification or variation.

**9 Subsection 33(1)**

After “making”, insert “, modifying”.

**10 Paragraph 42(1)(a)**

Omit “of the appointment”, substitute “that the person was required to perform”.

**11 Paragraph 43(a)**

Repeal the paragraph.

**12 Subsection 49N(1)**

Repeal the subsection, substitute:

- (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;
- as the value of a specified asset of the insurer.

**13 After subsection 49N(4)**

Add:

- (4A) A direction ceases to have effect on the commencement of the winding up of the general insurer concerned.

**14 Subsection 63(12)**

Omit all the words after “employee”, substitute:

of:

- (a) an entity of any kind carrying on (whether in Australia or elsewhere) insurance business or life insurance business; or
- (b) if an entity referred to in paragraph (a) is a body corporate—  
a body corporate that is related to it.

**15 After subsection 63(12)**

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Insert:

- (12A) The question whether 2 bodies corporate are related to each other for the purposes of paragraph (12)(b) is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

**16 At the end of section 117**

Add:

(3) If:

- (a) written notice has been given to APRA of an address for service in Australia for a foreign general insurer; and
- (b) a body corporate that is a subsidiary of the foreign general insurer is not incorporated in Australia; and
- (c) no written notice has been given to APRA of an address for service in Australia for the subsidiary;

the address for service in Australia for the foreign general insurer is taken, from the time when the notice referred to in paragraph (a) was or is given, to have been, or to be, the address for service in Australia for the subsidiary for the purposes of this Act.

**17 After subsection 118(4)**

Insert:

(4A) If:

- (a) a foreign general insurer has given written notice under subsection (4) of the appointment of an agent of the foreign general insurer and the notice specifies the name and place of residence of the agent; and
- (b) a body corporate that is a subsidiary of the foreign general insurer is not incorporated in Australia; and
- (c) no written notice has been given to APRA of the appointment of an agent of the subsidiary;

the agent specified in the notice referred to in paragraph (a) is taken, from the time when that notice was or is given, to have been, or to be, the agent of the subsidiary for the purposes of this Act and to have been, or to have, the place of residence specified in that notice.

***General Insurance Reform Act 2001***

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**18 Paragraph (a) of subitem 5(2) of Schedule 2**

Omit “old Act”, substitute “new Act”.

## **Schedule 5—Amendment of the Insurance Acquisitions and Takeovers Act 1991**

### **1 Section 3**

Omit:

- A proposal can be **stopped** if the Minister makes a **temporary restraining order** or a **permanent restraining order**.
- A proposal can be **carried out** if:
  - (a) the Minister makes a **go-ahead decision**; or
  - (b) the Minister takes no action before a **time limit** runs out.

substitute:

- A proposal can be **stopped** if the Minister makes a **permanent restraining order**.
- A proposal can be **carried out** if the Minister makes a **go-ahead decision**.

### **2 Section 4 (definition of *reviewable decision*)**

Omit “(other than section 42 or 56)”.

### **3 Section 35 (definition of *temporary restraining order*)**

Repeal the definition.

### **4 Division 2 of Part 3 (heading)**

Repeal the heading, substitute:

## **Division 2—Notification**

### **5 Section 39**

Repeal the section.

**6 Section 40**

Repeal the section, substitute:

**40 Trigger proposal must not be carried out before a go-ahead decision is given**

If:

- (a) a person carries out a trigger proposal; and
- (b) the Minister did not give a go-ahead decision in relation to the proposal before the relevant acquisition occurred or the relevant arrangement was entered into;

the person commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

**7 Subsection 41(4)**

Omit “a temporary restraining order or”.

**8 Division 4 of Part 3 (heading)**

Repeal the heading, substitute:

**Division 4—Permanent restraining orders and divestment orders**

**9 Section 42**

Repeal the section.

**10 Section 45**

Omit “temporary restraining order,”.

Note: The heading to section 45 is altered by omitting “**temporary restraining order**,”.

**11 Section 46**

Omit “temporary restraining order,”.

**12 Subsection 47(1)**

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Omit “temporary restraining order or”.

**13 Subsection 48(1)**

Omit “a temporary restraining order,”.

**14 Section 49 (definition of *temporary restraining order*)**

Repeal the definition.

**15 Division 2 of Part 4 (heading)**

Repeal the heading, substitute:

**Division 2—Notification**

**16 Section 53**

Repeal the section.

**17 Section 54**

Repeal the section, substitute:

**54 Trigger proposal must not be carried out before a go-ahead decision is given**

If:

- (a) a person or company carries out a trigger proposal; and
- (b) the Minister did not give a go-ahead decision in relation to the proposal before the relevant agreement was entered into or the relevant alteration to the company’s constituent document was made, as the case may be;

the person or company commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

**18 Subsection 55(4)**

Omit “a temporary restraining order or”.

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**19 Division 4 of Part 4 (heading)**

Repeal the heading, substitute:

**Division 4—Permanent restraining orders and divestment orders**

**20 Section 56**

Repeal the section.

**21 Section 59**

Omit “temporary restraining order,”.

Note: The heading to section 59 is altered by omitting “**temporary restraining order,**”.

**22 Section 60**

Omit “temporary restraining order,”.

**23 Subsection 61(1)**

Omit “temporary restraining order or”.

**24 Subsection 62(1)**

Omit “a temporary restraining order,”.

## **Schedule 6—Amendment of the Life Insurance Act 1995**

### **1 Subsection 236(1A)**

Omit “Any of the following decisions that are made within 5 years after the commencement of this subsection”, substitute “The following decisions”.

### **2 Subsection 236(1B)**

Repeal the subsection.

## **Schedule 7—Amendment of the Reserve Bank Act 1959**

### **1 Subparagraph 10B(3)(b)(ii)**

After “efficiency of”, insert “the”.

### **2 Paragraph 14(1)(d)**

Omit “Governor-General”, substitute “Treasurer”.

### **3 Subsection 14(3)**

Omit “Governor-General”, substitute “Treasurer”.

### **4 After section 17**

Insert:

### **17A Resignation**

A member of the Reserve Bank Board appointed under paragraph 14(1)(d) may resign his or her appointment by giving a written resignation to the Treasurer.

### **5 At the end of paragraphs 18(1)(a) and (b)**

Add “or”.

### **6 Paragraph 18(1)(c)**

Repeal the paragraph.

### **7 Subsection 18(1)**

Omit “Governor-General”, substitute “Treasurer”.

### **8 Section 22**

Repeal the section, substitute:

### **22 Secretary may nominate alternate to attend meetings of Reserve Bank Board**

- (1) The Secretary may, by writing, nominate a specified person who is an SES employee or acting SES employee in the Department to



attend a particular meeting, or all meetings, of the Reserve Bank Board at which the Secretary is not present.

- (2) A person so nominated may attend a meeting to which the nomination applies and, if the person does so, he or she is taken, for the purposes of this Part, to be a member of the Reserve Bank Board.

**9 Paragraph 24(a)**

Repeal the paragraph, substitute:

- (a) are to be appointed by the Treasurer; and

**10 Paragraph 24(b)**

Omit “Governor-General”, substitute “Treasurer”.

**11 After section 24A**

Insert:

**24B Resignation**

The Governor or the Deputy Governor may resign his or her appointment by giving a written resignation to the Treasurer.

**12 At the end of paragraphs 25(a) and (b)**

Add “or”.

**13 Paragraph 25(c)**

Omit “benefit; or”, substitute “benefit;”.

**14 Paragraph 25(d)**

Repeal the paragraph.

**15 Section 25**

Omit “Governor-General”, substitute “Treasurer”.

**16 Subsection 25B(3)**

Omit “Governor-General”, substitute “Treasurer”.

**17 Paragraph 25K(c)**

Omit “Governor-General”, substitute “Treasurer”.

**18 Subsections 25L(3) and (4)**

Omit “Governor-General”, substitute “Treasurer”.

**19 Section 70**

Repeal the section.

**20 Subsection 74(2)**

Repeal the subsection.

**21 Application**

- (1) The amendments made by items 2, 9, 10 and 16 apply only in respect of appointments made after the commencement of this Schedule.
- (2) The amendments made by items 6, 7, 14 and 15 do not apply to a person who resigned the relevant office before the commencement of this Schedule but whose appointment had not been terminated before that commencement.

## **Schedule 8—Amendment of the Superannuation Industry (Supervision) Act 1993**

### **1 Paragraph 21(2)(c)**

Omit “unless the person is an approved trustee”, substitute “if the person is required by subsection 121A(1) to be, but is not, an approved trustee”.

### **2 Paragraph 21(2)(d)**

Omit “is not an approved trustee”, substitute “is required by subsection 121A(1) to be, but is not, an approved trustee”.

### **3 Subsection 121A(1)**

Omit “A person”, substitute “Subject to subsection (1A), a person”.

### **4 After subsection 121A(1)**

Insert:

- (1A) Subsection (1) does not apply in respect of a superannuation fund at a particular time (the *relevant time*) if:
- (a) at the relevant time the fund is being wound up; and
  - (b) immediately before the commencement of the winding up, the fund had at least 5 members; and
  - (c) the relevant time is not more than one year (or such longer period, if any, as APRA allows in respect of the fund) after the time, or the first time, at which the number of members falls below 5.

### **5 Paragraph 133(1)(d)**

Omit “is not an approved trustee”, substitute “is required by subsection 121A(1) to be, but is not, an approved trustee”.

### **6 At the end of subsection 252C(7A)**

Add:

; (d) a description of:

- (i) court proceedings in relation to a breach or suspected breach by a person of a provision of this Act or a provision of an Act covered by this section; or
- (ii) activity engaged in, or proposed to be engaged in, by the Commissioner in relation to such a breach or suspected breach.

## **Schedule 9—Amendment of the Superannuation Supervisory Levy Imposition Act 1998**

### **1 Section 5**

Insert:

*unregulated entity* at a particular time means:

- (a) a fund, trust or scheme that, at that time, is not a superannuation entity within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
- (b) a fund or scheme that, at that time, is a self managed superannuation fund within the meaning of that Act.

### **2 Paragraph 7(1)(a)**

Repeal the paragraph, substitute:

- (a) unless paragraph (b) or (c) applies—the amount that, for the financial year, is the levy percentage of:
  - (i) except where the superannuation entity was an unregulated entity on 30 June of the previous financial year—the superannuation entity’s asset value on that day; or
  - (ii) if the superannuation entity was an unregulated entity on 30 June of the previous financial year—the unregulated entity’s asset value on that day; or

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[Minister’s second reading speech made in—  
House of Representatives on 21 March 2002  
Senate on 20 June 2002]

(95/02)

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