

# **Financial Laws Amendment Act 1997**

**No. 107, 1997**

**An Act to amend certain legislation administered  
by the Treasurer, and for related purposes**



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## An Act to amend certain legislation administered by the Treasurer, and for related purposes

[Assented to 30 June 1997]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Financial Laws Amendment Act 1997*.

### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 15 to 20 in Schedule 3 commence, or are taken to have commenced, on the day, or on the respective days, fixed for the commencement of the sections amended by those items, immediately after the commencement of the sections concerned.
- (3) Items 1, 12, 24 and 25 in Schedule 7 are taken to have commenced on 1 October 1994, immediately after the commencement of Part 3 of the *Insurance Laws Amendment Act 1994*.
- (4) Schedule 10 is taken to have commenced on 1 October 1994, immediately after the commencement of section 34 of, and the Schedule to, the *Insurance Laws Amendment Act 1994*.

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### **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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Banking Act 1959**

### **1 Subsection 38A(3)**

Omit “his discretion, by writing signed by him and”, substitute “his or her discretion, by signed writing”.

### **2 Paragraph 39(2)(q)**

Omit “\$100,000”, substitute “1,000 penalty units”.

### **3 Paragraph 42(1)(b)**

Omit “him”, substitute “that person”.

### **4 Paragraphs 69A(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) if the letter A is set out in column 3 of the table opposite to the reference to the provision in column 1 or 2—by a fine of not more than 200 penalty units; or
- (b) if the letter B is set out in column 3 of the table opposite to the reference to the provision in column 1 or 2—by a fine of not more than 50 penalty units.

### **5 At the end of subsection 69A(3)**

Add:

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* 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. Section 4J of that Act allows certain indictable offences to be dealt with summarily with the consent of the prosecutor and the defendant and provides for appropriate fines.

### **6 Section 69B**

Repeal the section.

### **7 Section 69D**

Repeal the section, substitute:

**69D Disclosure of information received under Act prohibited in certain circumstances**

Section 79A of the *Reserve Bank Act 1959* prohibits certain disclosures of information received under this Act.

**8 Paragraph 71(1)(a)**

Omit "\$5,000", substitute "50 penalty units".

**9 Paragraph 71(1)(b)**

Omit "\$25,000", substitute "250 penalty units".



## **Schedule 2—Amendment of the Banks (Shareholdings) Act 1972**

### **1 Paragraph 8(3)(a)**

Omit “definition of ‘prescribed interest’ in subsection 5(1) of the *Companies Act 1981*”, substitute “definition of *prescribed interest* in section 9 of the Corporations Law”.

### **2 Paragraph 8(3)(c)**

Omit “section 164 of the *Companies Act 1981*”, substitute “section 9 of the Corporations Law”.

### **3 Subparagraph 8(5)(a)(i)**

Repeal the subparagraph, substitute:

- (i) a body corporate that, under section 50 of the Corporations Law, is related to that other person;

### **4 Paragraph 8(6)(d)**

Omit “his”.

### **5 Subsections 10(12) and (13)**

Repeal the subsections, substitute:

- (12) A person who intentionally or recklessly contravenes subsection (1), (2D) or (3) is guilty of an offence punishable on conviction by a fine of not more than 100 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the Court on an individual convicted of the same offence.

- (13) A person who contravenes subsection (9) is guilty of an offence punishable on conviction by a fine of not more than 50 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the Court on an individual convicted of the same offence.

### **6 Subsection 12(7)**

Repeal the subsection, substitute:

- (7) A person who intentionally or recklessly contravenes an order under this section is guilty of an offence punishable on conviction by a fine of not more than 50 penalty units.

Note: If a body corporate is convicted of an offence, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine that is not greater than 5 times the maximum fine that could be imposed by the Court on an individual convicted of the same offence.

## **7 After section 14**

Insert:

### **15 Disclosure of information received under Act prohibited in certain circumstances**

Section 79A of the *Reserve Bank Act 1959* prohibits certain disclosures of information received under this Act.

## **Schedule 3—Amendment of the Financial Corporations Act 1974**

### **1 Subsection 4(1) (definition of *Australia*)**

Omit “to which this Act extends”.

### **2 Subsection 4(1) (definition of *financial corporation*)**

Repeal the definition, substitute:

*financial corporation* means a financial corporation to which paragraph 51(xx) of the Constitution applies.

### **3 Subsection 4(1) (definition of *Territory*)**

Repeal the definition.

### **4 Subsection 4(1) (definition of *trading corporation*)**

Repeal the definition, substitute:

*trading corporation* means a trading corporation to which paragraph 51(xx) of the Constitution applies.

### **5 Section 5:**

Omit “except Papua New Guinea”.

### **6 Subsection 7(1)**

Omit “corporations are related to each other is determined under the *Companies Act 1981*”, substitute “bodies corporate are related to each other is determined under the Corporations Law”.

### **7 Subsection 9(3)**

Omit “\$5,000”, substitute “50 penalty units”.

### **8 Subsection 9(7) (penalty)**

Omit “\$1,000”, substitute “10 penalty units”.

### **9 Subsection 9(11)**

Omit “of the Treasury, furnish to him”, substitute “, give the Secretary”.

### **10 Subsection 10(1)**

After “he”, insert “or she”.

**11 Paragraph 10(7)(d)**

Omit “he”, substitute “the Treasurer”.

**12 Subsection 11(10)**

Omit “\$2,000”, substitute “20 penalty units”.

**13 Subsection 11(11)**

Omit “of the Treasury requests it to do so, furnish to him”, substitute “requests it to do so, give the Secretary”.

**14 Subsection 11(14)**

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

**15 Subsection 13(7)**

Omit “\$1,000”, substitute “10 penalty units”.

**16 Subsection 14(1) (penalty)**

Omit “\$5,000”, substitute “50 penalty units”.

**17 Subsection 14(3) (penalty)**

Omit “\$5,000”, substitute “50 penalty units”.

**18 Subsection 15(5)**

Omit “\$10,000”, substitute “100 penalty units”.

**19 Subsection 18(1)**

Omit “his so doing, he may, by writing signed by him”, substitute “so doing, the Treasurer may, by signed writing”.

**20 Section 18 (penalty)**

Omit “\$2,000”, substitute “20 penalty units”.

**21 Subsection 20(1) (penalty)**

Omit “\$2,000”, substitute “20 penalty units”.

**22 Section 22**

Repeal the section, substitute:

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**22 Disclosure of information received under Act prohibited in certain circumstances**

Section 79A of the *Reserve Bank Act 1959* prohibits certain disclosures of information received under this Act.

**23 Section 26 (penalty)**

Omit "\$1,000", substitute "10 penalty units".

**24 Section 27**

Repeal the section.

**25 Subsection 30(2)**

After "he", insert "or she".

## **Schedule 4—Amendment of the Financial Corporations (Transfer of Assets and Liabilities) Act 1993**

**1 Section 3 (paragraph (b) of the definition of *eligible foreign bank*)**

Omit “3”, substitute “5”.

**2 Paragraph 7(6)(c)**

Omit “6”, substitute “8”.

## **Schedule 5—Amendment of the Insurance Act 1973**

### **1 Subsection 3(1) (definition of *accounts*)**

After “and (3)”, insert “and 49J(1), (2) and (3)”.

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

Insert:

*building society* has the same meaning as in the AFIC Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland.

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

Insert:

*credit union* has the same meaning as in the AFIC Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland.

### **4 Subsection 3(1) (definition of *financial year*)**

Repeal the definition, substitute:

*financial year*, in relation to a body corporate, has the same meaning as that expression has in relation to a body for the purposes of the Corporations Law.

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

Omit “his employees” (first occurring), substitute “an employer’s employees”.

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

Omit “his employees” (last occurring), substitute “the employer’s employees”.

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

Omit “his liability in respect of goods belonging to another person and in his possession or under his control”, substitute “the person’s liability in respect of goods belonging to another person and in the possession, or under the control, of the first-mentioned person”.

**8 Subsection 3(1) (paragraph (i) of the definition of *insurance business*)**

Omit “his”, substitute “the person’s”.

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

Repeal the definition, substitute:

*quarterly statutory accounts*, in relation to a body corporate, means the statements that the body corporate is required to lodge with the Commissioner under subsection 44(4) or 49J(4).

**10 Subsection 3(1)**

Insert:

*securities exchange* means:

- (a) Australian Stock Exchange Limited; or
- (b) a body approved as a futures exchange under subsection 1126(2) of the Corporations Law; or
- (c) any other body (whether in or outside Australia) approved by the Treasurer as a securities exchange for the purposes of this Act.

**11 Subsection 3(1) (definition of *statutory accounts*)**

Repeal the definition, substitute:

*statutory accounts*, in relation to a body corporate, means:

- (a) yearly statutory accounts of the body corporate; or
- (b) quarterly statutory accounts of the body corporate; or
- (c) if subsection 44(6) applies to the body corporate—statements that the body corporate is required to lodge with the Commissioner under that subsection.

**12 Subsection 3(1)**

Insert:

*supervised body corporate* has the meaning given by section 49A.

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### **13 Subsection 3(1) (definition of *yearly statutory accounts*)**

Repeal the definition, substitute:

*yearly statutory accounts*, in relation to a body corporate, means the accounts and statements that the body corporate is required to lodge with the Commissioner under subsection 44(1) or 49J(1).

### **14 At the end of section 3**

Add:

- (2) The Treasurer may, by signed writing, give approvals for the purposes of paragraph (c) of the definition of *securities exchange* in subsection (1).
- (3) An approval under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **15 Section 4**

Repeal the section, substitute:

### **4 References to related bodies corporate**

For the purposes of this Act, the question whether bodies corporate are related to each other is to be determined in the same way as that question would be determined for the purposes of the Corporations Law if, in section 46 of that Law:

- (a) the reference to a body corporate that is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of another body corporate were a reference to a body corporate that is in a position to cast, or control the casting of, more than one-quarter of that number of votes; and
- (b) the reference to a body corporate holding more than one-half of the issued share capital of another body corporate were a reference to a body corporate holding more than one-quarter of the issued share capital of another body corporate.

### **16 Section 19A**

Repeal the section, substitute:

**19A Delegation**

The Commissioner may, by signed writing, delegate to a person all or any of the Commissioner's powers under this Act (other than section 23 or 24) or the regulations.

**17 Saving**

A delegation that was in force under section 19A of the *Insurance Act 1973* immediately before the commencement of item 16 continues in force as if it had been given under the section substituted by that item.

**18 Subsections 21(1) and (3)**

Omit "\$2,000", substitute "20 penalty units".

**19 Subsection 21(2)**

Omit "\$20,000", substitute "200 penalty units".

**20 Subsection 21(3)**

Omit "he", substitute "the underwriter".

**21 Subsection 22(5) (penalty)**

Omit "\$20,000", substitute "200 penalty units".

**22 Paragraph 30(1)(a)**

Omit "a loan to a person who, when the loan was made, was—", substitute "an amount due from, or a loan to, a person who, when the debt came into existence or the loan was made, was:".

**23 Paragraph 30(1)(d)**

Repeal the paragraph, substitute:

- (d) an amount due from, or a loan to, another body corporate that is related to the first-mentioned body corporate except:
  - (i) an amount or loan to the extent that the Commissioner has, under subsection (2), approved the amount or loan as an asset for the purposes of this Part; or
  - (ii) if the other body corporate is a bank as defined in subsection 5(1) of the *Banking Act 1959*, a State bank, a building society, a credit union or another body prescribed by the regulations for the purposes of this subparagraph—an amount due in respect of a deposit

with the other body corporate or a loan constituted by such a deposit;

- (da) a debenture of, or a share in, a body corporate that is related to the first-mentioned body corporate except to the extent that the Commissioner has, under subsection (2), approved the debenture or share as an asset for the purposes of this Part;

**24 Paragraph 30(1)(e)**

Omit “unless it is, under subsection (3), approved as an asset for the purposes of this Part”.

**25 Subsection 30(2)**

Repeal the subsection, substitute:

- (2) If a body corporate (the *first body corporate*) and another body corporate (the *second body corporate*) that is related to the first body corporate together request the Commissioner in writing to approve as an asset of the first body corporate for the purposes of this Part the whole or a part of an amount due from, a loan to, a debenture of, or a share in, the second body corporate, the Commissioner may, by written notice given to each body corporate, approve the amount, loan, debenture or share, or any part of the amount, loan, debenture or share referred to in the notice.

**26 Saving**

An approval that was in force under subsection 30(2) of the *Insurance Act 1973* immediately before the commencement of item 25 continues in force for the purposes of this Act (other than Parts IVA, V and X) as if it had been duly given under the subsection substituted by that item.

**27 Subsection 30(2A)**

Repeal the subsection, substitute:

- (2A) In exercising the power of approval under subsection (2) in respect of a relevant asset (the *relevant asset concerned*) of the first body corporate in relation to the second body corporate, the Commissioner must have regard to all matters that he or she thinks relevant and, in particular, to the following matters:

- (a) the proportion that the sum of the values of the relevant asset concerned and of the values of all other relevant assets (whether approved under subsection (2) or not) of the first body corporate in relation to the second body corporate bears to the sum of the values of the assets of the first body corporate (other than the relevant assets of the first body corporate in relation to the second body corporate);
- (b) the proportion that the value of the relevant asset concerned bears to the sum of the values of all the assets of the second body corporate;
- (c) the nature, and the degree of diversity, of the assets of the first body corporate;
- (d) the nature, and the degree of diversity, of the assets of the second body corporate;
- (e) the nature of the business carried on by the second body corporate.

**28 Before subsection 30(2B)**

Insert:

(2AA) In subsection (2A):

*relevant asset of the first body corporate in relation to the second body corporate*, means:

- (a) an amount due to the first body corporate by the second body corporate; or
- (b) a loan made by the first body corporate to the second body corporate; or
- (c) a debenture or share in the second body corporate held by the first body corporate.

**29 Subsection 30(3)**

Repeal the subsection.

**30 After subsection 30(5)**

Insert:

(5AA) If:

- (a) a body corporate that is authorised under this Act to carry on insurance business expects to recover an 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 to which subsection 31(4) applies, whether or not the claims have been paid by the body corporate; and

(c) under the terms of the contract, payments by way of reinsurance are to be made in Australia;

the amount is taken for the purposes of this Part to be an asset in Australia of the body corporate.

**31 Subsection 30(5A)**

Omit “, (3)”.

**32 Paragraph 30(6)(c)**

Omit “, (3)”.

**33 Subsection 31(3)**

After “may,”, insert “with the Treasurer’s agreement,”.

**34 After subsection 31(3A)**

Insert:

(3AA) Subsection (3A) does not apply to a decision made within 5 years after the commencement of this subsection.

(3AB) It is not necessary to obtain the agreement of the Treasurer to the making of a decision by the Commissioner under this section after 5 years after the commencement of subsection (3AA).

**35 Subsection 31(3B)**

After “Commissioner” (first occurring), insert “, and the Treasurer agrees,”.

**36 Paragraph 31(3C)(a)**

After “it appears to him”, insert “, and the Treasurer agrees,”.

**37 Subsection 31(3F)**

Omit “\$10,000”, substitute “100 penalty units”.

**38 Subsection 33(3)**

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After “may,”, insert “with the Treasurer’s agreement,”.

**39 Subsection 33(4)**

Omit “Where”, substitute “Subject to subsections (3), (6A) and (6B) of this section and subsection 39(4), if”.

**40 Subsection 33(4)**

Omit “stock” (wherever occurring), substitute “securities”.

**41 Subsection 33(6)**

Omit “subsection (4)”, substitute “subsections (3), (4), (6A) and (6B) of this section and subsection 39(4)”.

**42 After subsection 33(6A)**

Insert:

(6B) If:

- (a) a body corporate (the *authorised body*) that is authorised under this Act to carry on insurance business has an asset that is an amount due from, a loan to, a debenture of, or a share in, a body corporate (the *connected body*) that is connected with the authorised body for the purposes of Part IVA; and
- (b) the connected body has an asset that is an amount due from, a loan to, a debenture of, or a share in, a body corporate that is related to it;

the Commissioner may, by written notice served on the authorised body, direct that the value of the asset referred to in paragraph (a) is to be reduced by an amount stated, or worked out under a formula or procedure stated, in the notice, being an amount, formula or procedure determined by the Commissioner in accordance with principles prescribed by the regulations for the purposes of this subsection.

**43 Subsection 33(7) (definition of securities)**

Omit “subsection 5(1) of the *Companies Act 1981*”, substitute “section 9 of the Corporations Law”.

**44 At the end of section 33**

Add:

(9) Subsection (8) does not apply to a direction given within 5 years after the commencement of this subsection.

(10) It is not necessary to obtain the agreement of the Treasurer to the giving of a direction by the Commissioner under subsection (3) after 5 years after the commencement of subsection (9).

**45 Section 37 (penalty)**

Omit "\$20,000", substitute "200 penalty units".

**46 Subsection 39(4)**

Omit "the Regulations in force for the time being under subsection 269(8) of the *Companies Act 1981*", substitute "the Corporations Law".

**47 Section 40 (penalty)**

Omit "\$20,000", substitute "200 penalty units".

**48 Subsection 41(2)**

After "may,", insert "with the Treasurer's agreement,".

**49 At the end of section 41**

Add:

(4) Subsection (3) does not apply to a direction given within 5 years after the commencement of this subsection.

(5) It is not necessary to obtain the agreement of the Treasurer to the giving of a direction by the Commissioner under subsection (2) after 5 years after the commencement of subsection (4).

**50 At the end of paragraph 44(2)(m)**

Add "or are determined by the Commissioner".

**51 At the end of subsection 44(7)**

Add "or the form determined by the Commissioner".

**52 After subsection 44(7)**

Insert:

(7A) The Commissioner may make written determinations for the purposes of this section.

(7B) Such a determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**53 After subsection 44(8)**

Insert:

(8A) A reference in paragraph (8)(a) or (b) to a period is, if that period has been extended (or further extended) under subsection 49(1), taken to be a reference to the period as so extended (or further extended).

**54 Section 44 (penalty)**

Omit “\$20,000”, substitute “200 penalty units”.

**55 Section 48 (penalty)**

Omit “\$20,000”, substitute “200 penalty units”.

**56 Subsection 48A(9)**

Omit “\$10,000”, substitute “100 penalty units”.

**57 After Part IV**

Insert:

**Part IVA—Accounts of certain bodies that are related to bodies authorised to carry on insurance business**

**49A General definitions**

In this Part:

*authorised body corporate* means a body corporate that is authorised under this Act to carry on insurance business.

*constitutional corporation* means:

- (a) a foreign corporation; or
- (b) a trading corporation to which paragraph 51(xx) of the Constitution applies; or



- (c) a financial corporation to which paragraph 51(xx) of the Constitution applies; or
- (d) a corporation incorporated in a Territory.

***supervised body corporate*** means a body corporate that, under subsection 49B(1) or (2), is connected with an authorised body corporate.

#### **49B Connected bodies corporate**

(1) If:

- (a) an authorised body corporate's assets for the purposes of Part III include, with the approval of the Commissioner under subsection 30(2), an amount due from, a loan to, a debenture of, or a share in, another body corporate that is related to the authorised body corporate; and
- (b) the other body corporate is not:
  - (i) authorised under this Act to carry on insurance business; or
  - (ii) a company registered under the *Life Insurance Act 1995*; or
  - (iii) a bank as defined in subsection 5(1) of the *Banking Act 1959*; or
  - (iv) a State bank; or
  - (v) a building society; or
  - (vi) a credit union; or
  - (vii) a body corporate that is declared by the regulations to be a body corporate to which this paragraph does not apply;

the authorised body corporate and the other body corporate are taken for the purposes of this Part to be ***connected*** with each other.

(2) If:

- (a) the assets of a body corporate that is taken to be connected with an authorised body corporate by subsection (1) or by another application of this subsection include, with the approval of the Commissioner under subsection 49E(2), an amount due from, a loan to, a debenture of, or a share in, another body corporate that is related to the authorised body corporate; and
  - (b) the other body corporate is not:
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- (i) authorised under this Act to carry on insurance business; or
- (ii) a company registered under the *Life Insurance Act 1995*; or
- (iii) a bank as defined in subsection 5(1) of the *Banking Act 1959*; or
- (iv) a State bank; or
- (v) a building society; or
- (vi) a credit union; or
- (vii) a body corporate that is declared by the regulations to be a body corporate to which this paragraph does not apply;

the authorised body corporate and the other body corporate are taken for the purposes of this Part to be *connected* with each other.

#### 49C Bodies to which Part applies

- (1) This Part applies to a body corporate (a *supervised body corporate*) that is connected with an authorised body corporate.
- (2) If:
  - (a) this Part has begun to apply to a body corporate (the *relevant body corporate*) because it is a supervised body corporate; and
  - (b) the relevant body corporate is a constitutional corporation; this Part continues to apply to the relevant body corporate until the Commissioner certifies in writing that he or she is satisfied that:
  - (c) the relevant body corporate has ceased to be a supervised body corporate; and
  - (d) the authorised body corporate with which the relevant body corporate is connected is not subject to any action under this Act.
- (3) A person must not intentionally give any information, or intentionally produce any document, to the Commissioner that is relevant to whether or not a body corporate that is a constitutional corporation is a supervised body corporate if the person knows that the information, or anything in the document, is false or misleading in a material particular.

Penalty: Imprisonment for 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 the 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.

#### **49D Exemptions**

The Commissioner may, by written notice given to a supervised body corporate, exempt the body, either unconditionally or subject to conditions, from all or any of the provisions of this Part.

#### **49E Assets**

- (1) In this Part, a reference to assets of a body corporate (the *body* or the *first body*) does not include a reference to any of the following:
- (a) an amount due from, or a loan to, a person who, when the debt came into existence or the loan was made, was:
    - (i) a director of the body;
    - (ii) a director of another body corporate that is connected with the first body;
    - (iii) if, because of subsection (10), this section applies in relation to a trust—a trustee in respect of the trust, or, if the trustee is a body corporate, a director of that body corporate; or
  - (b) an unsecured loan:
    - (i) to a person who, when the loan was made, was an employee of the body; and
    - (ii) that exceeded \$1,000 when it was made or that was made under an agreement under which the body agreed to lend that person amounts the total of which exceeds \$1,000;
  - (c) an asset that is charged for the benefit of a person other than the body to the extent that it is so charged;
  - (d) if the whole or part of the undertaking, business or property of the body is subject to a floating charge—that undertaking, business or property to the extent that it is so subject;
  - (e) an amount due from, or a loan to, another body corporate that is related to the first body except:

- (i) an amount or loan to the extent that the Commissioner has, under subsection (2), approved the amount or loan as an asset for the purposes of this Part; or
  - (ii) if the other body corporate is a bank as defined in subsection 5(1) of the *Banking Act 1959*, a State bank, a building society, a credit union or another body corporate prescribed by the regulations for the purposes of this subparagraph—an amount in respect of a deposit with the other body corporate or a loan constituted by such a deposit;
  - (f) a debenture of, or a share in, another body corporate that is related to the first body except to the extent that the Commissioner has, under subsection (2), approved the debenture or share as an asset for the purposes of this Part;
  - (g) the estimated value of a future benefit to the body that may arise, under a law of the Commonwealth, of a State or of a Territory, relating to taxation because of a loss or losses incurred by the body;
  - (h) a guarantee given to or in relation to the body, except to the extent that the Commissioner has, under subsection (6), approved the guarantee as an asset for the purposes of this Part;
  - (i) an intangible asset, other than an intangible asset referred to in any of the previous paragraphs, but including expenses of the body in relation to the formation, extension or purchase of its business or the purchase of goodwill.
- (2) If a body corporate (the *first body corporate*) and another body corporate (the *second body corporate*) that is related to the first body corporate together request the Commissioner in writing to approve as an asset of the first body corporate for the purposes of this Part the whole or a part of an amount due from, a loan to, a debenture of, or a share in, the second body corporate, the Commissioner may, by written notice given to each body corporate, approve the amount, loan, debenture or share, or any part of the amount, loan, debenture or share referred to in the notice.
- (3) In exercising the power of approval under subsection (2) in respect of a relevant asset (the *relevant asset concerned*) of the first body corporate in relation to the second body corporate, the

Commissioner must have regard to all matters that he or she thinks relevant and, in particular, to the following matters:

- (a) the proportion that the sum of the values of the relevant asset concerned and of the values of all other relevant assets (whether approved under subsection (2) or not) of the first body corporate in relation to the second body corporate bears to the sum of the values of the assets of the first body corporate (other than the relevant assets of the first body corporate in relation to the second body corporate);
  - (b) the proportion that the value of the relevant asset concerned bears to the sum of the values of all the assets of the second body corporate;
  - (c) the nature, and the degree of diversity, of the assets of the first body corporate;
  - (d) the nature, and the degree of diversity, of the assets of the second body corporate;
  - (e) the nature of the business carried on by the second body corporate.
- (4) In subsection (3):
- relevant asset of the first body corporate in relation to the second body corporate*** means:
- (a) an amount due to the first body corporate by the second body corporate; or
  - (b) a loan made by the first body corporate to the second body corporate; or
  - (c) a debenture or share in the second body corporate held by the first body corporate.
- (5) For the purposes of subsection (3), the value of an amount, loan, debenture or share that is not an asset within the meaning of this Part is to be determined as if it were such an asset.
- (6) If a body corporate requests the Commissioner to approve, as an asset for the purposes of this Part, the whole or part of a guarantee given to or in relation to the body, the Commissioner may, by written notice given to the body, approve the guarantee, or such part of the guarantee as the Commissioner determines, accordingly.
- (7) Without otherwise limiting the discretion of the Commissioner to refuse to approve, as an asset for the purposes of this Part, the

whole or part of a guarantee given to or in relation to a body corporate, the Commissioner must not give such an approval unless:

- (a) the guarantor, or each of the guarantors, is a bank as defined by subsection 5(1) of the *Banking Act 1959* or a State bank; and
  - (b) the guarantee is in accordance with a prescribed form or a form approved by the Treasurer, being a form that includes provision to the effect that, in the event of the winding-up of the body, amounts due under the guarantee are to be available to meet the body's liabilities; and
  - (c) the guarantee is not revocable without the approval of the Commissioner.
- (8) If an approval has been given, or a determination has been made, under subsection (2), (6) or (7), and it appears at any time to the Commissioner that the approval or determination is no longer necessary or should be varied, the Commissioner must, by written notice served on the body corporate concerned, revoke or vary the approval or determination, as the case may be.
- (9) Part VI applies to:
- (a) a determination made under subsection (2) or (6); and
  - (b) a refusal or failure to give an approval under subsection (2) or (6); and
  - (c) a decision made under subsection (8).
- (10) If:
- (a) a body corporate holds units in a unit trust and:
    - (i) the number of those units, or the sum of the number of those units and the number of units issued by the trust to a body corporate connected with the first-mentioned body corporate, exceeds 25% of the total number of units issued by the trust; or
    - (ii) the value of those units, or the sum of the value of those units and the value of units issued by the trust to bodies corporate connected with the first-mentioned body corporate, exceeds 25% of the total value of units issued by the trust; or
  - (b) a body corporate is connected with a body corporate that is a trustee in respect of a unit trust;

this section applies as if the trust were a body corporate connected with the first-mentioned body corporate and as if a reference to a share in a body corporate were a reference to a unit issued by the trust.

#### **49F Liabilities**

- (1) In this Part, unless the contrary intention appears, a reference to liabilities of a body corporate includes a reference to provision for liabilities made in its statutory accounts, or directed in accordance with this section to be made, but does not include a liability in respect of share capital.
- (2) For the purposes of this Act, a supervised body corporate must make in its statutory accounts provision in respect of liabilities.
- (3) For the purposes of this Act, the Commissioner may, with the Treasurer's agreement, at any time, if the Commissioner thinks fit, by written notice served on a supervised body corporate, direct that the body must, within a stated period, not being less than 21 days, after the giving of the direction, or as at a stated date, make in its statutory accounts provision, or further provision:
  - (a) of a stated amount; or
  - (b) of an amount determined in a stated manner;in respect of liabilities.
- (4) If a direction has been given to a body corporate under subsection (3) and it appears at any time to the Commissioner, and the Treasurer agrees, that the direction is no longer necessary or should be varied, the Commissioner must, by written notice served on the body, revoke or vary the direction.
- (5) Part VI applies to a decision of the Commissioner under this section.
- (6) Subsection (5) does not apply to a decision made within 5 years after the commencement of this subsection.
- (7) It is not necessary to obtain the agreement of the Treasurer to the making of a decision by the Commissioner under this section after 5 years after the commencement of this section.

- (8) If a body corporate to which a direction has been given under subsection (3) applies to the Commissioner, by notice in writing, for the direction to be revoked or varied, the Commissioner must:
  - (a) if it appears to the Commissioner, and the Treasurer agrees, that the direction is no longer necessary or should be varied—revoke or vary the direction; or
  - (b) otherwise—refuse to revoke or vary the direction;and must serve on the body written notice of the decision.
- (9) The powers of the Commissioner under this section are in addition to, and do not derogate from, the powers of the Commissioner or of the Treasurer under Part V.
- (10) If a body corporate in respect of which a direction has been given under subsection (3) is begun to be wound up, the direction ceases to have effect.
- (11) A body corporate that fails to comply with a direction given to it under subsection (3) is, in respect of each day during which it so fails to comply with the direction (including the day of a conviction under this subsection or any later day), guilty of an offence punishable on conviction by a fine of not more than 100 penalty units.
- (12) In this section, unless the contrary intention appears:

*direction* includes, if a direction is varied, the direction as varied.

#### **49G Valuation of assets**

- (1) This section has effect for the purposes of this Part.
- (2) The Commissioner may, by written notice served on a supervised body corporate, require it to give the Commissioner any information with respect to the value of an asset of the body that is stated in the notice, being the value that is, in the Commissioner's opinion, in accordance with the following subsections.
- (3) Subject to subsections (5), (6), (7) and (8), if an asset of a supervised body corporate consists of securities:
  - (a) listed for quotation on the official list of a securities exchange in Australia; or



- (b) not so listed but listed for quotation on the official list of a securities exchange outside Australia;  
the value of those securities as at a particular time is the value as worked out by reference to that securities exchange or any one of those securities exchanges and:
- (c) by reference to:
- (i) the sale of securities of the same class last recorded before that time by the securities exchange; or
  - (ii) the selling offer for securities of the same class last recorded before that time by the securities exchange;
- whichever is the lesser; or
- (d) by reference to the buying bid for securities of the same class last recorded before the time by the securities exchange; whichever is the greater.
- (4) Subject to subsections (3), (5), (6), (7) and (8), the value of an asset of a supervised body corporate as at a particular time is the market value of the asset at that time.
- (5) If the Commissioner is not satisfied that the value of an asset of a supervised body corporate as reported in its statutory accounts is in accordance with subsection (3), (4) or (6), whichever is applicable, the Commissioner may, with the Treasurer's agreement, by written notice served on the body, direct that the value of the asset is the value stated in the notice.
- (6) Despite subsections (3), (4) and (5), if an asset of a supervised body corporate consists of shares in an authorised body corporate with which it is connected, the value of the asset is the amount worked out using the formula:

$$\frac{\text{Number of SBC's shares in ABC}}{\text{Total number of shares in ABC}} \times \text{Reduced value of all shares in ABC}$$

where:

***number of SBC's shares in ABC*** means the number of shares in the authorised body corporate that are held by the supervised body corporate.

***total number of shares in ABC*** means the total number of issued shares in the authorised body corporate.

*reduced value of all shares in ABC* means the value of all the issued shares in the authorised body corporate, reduced by:

- (a) if the authorised body corporate is incorporated in Australia:
    - (i) \$2,000,000; or
    - (ii) 20% of its premium income during its last preceding financial year; or
    - (iii) 15% of its outstanding claims provision as at the end of its last preceding financial year;whichever is the greatest; or
  - (b) if the authorised body corporate is not incorporated in Australia:
    - (i) \$2,000,000; or
    - (ii) 20% of its premium income in Australia during its last preceding financial year; or
    - (iii) 15% of its outstanding claims provision as at the end of its last preceding financial year;whichever is the greatest.
- (7) If a body corporate (the *connected body corporate*) that is connected with an authorised body corporate has an asset that is an amount due from, a loan to, a debenture of, or a share in, a body corporate that is related to it, the Commissioner may, by written notice served on the connected body corporate, direct that the value of the asset is to be taken to be reduced by an amount stated, or worked out under a formula or procedure stated, in the notice, being an amount, formula or procedure determined by the Commissioner in accordance with principles prescribed by the regulations for the purposes of this subsection.
- (8) Despite the preceding provisions of this section, a supervised body corporate is not required to show in a balance-sheet prepared for the purposes of this Part an asset at a value determined or worked out in accordance with those provisions if the balance-sheet is in accordance with the requirements of the Corporations Law or would be in accordance with those requirements if they applied to the body.
- (9) In this section:

*government* means government of the Commonwealth or of a State or any other government.

*securities* means shares, stock, debentures, debenture stock or bonds of a government, authority of a government, local governing authority, body corporate or unincorporated body, and includes rights and options in respect of any such shares, stock, debentures, debenture stock or bonds and any prescribed interests as defined by section 9 of the Corporations Law.

- (10) Part VI applies to a direction of the Commissioner under subsection (5).
- (11) Subsection (10) does not apply to a direction given within 5 years after the commencement of this subsection.
- (12) It is not necessary to obtain the agreement of the Treasurer to the giving of a direction by the Commissioner under subsection (5) after 5 years after the commencement of this section.

#### **49H Accounting records**

- (1) A supervised body corporate must:
  - (a) keep such accounting records as correctly record and explain the transactions and financial position of the body; and
  - (b) so keep its accounting records as to enable the yearly statutory accounts to be prepared; and
  - (c) so keep its accounting records as to enable those yearly statutory accounts to be conveniently and properly audited in accordance with this Act.
- (2) The body must retain its accounting records kept in accordance with subsection (1) for at least 7 years after the completion of the transactions to which they relate.
- (3) The accounting records kept in accordance with subsection (1), or copies of those records, must be kept in Australia.
- (4) The accounting records referred to in subsection (3) must be kept 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.
- (5) Unless the accounting records referred to in subsection (3) are held at the registered office of the body in the State or Territory in which it is incorporated, the body must, by written notice given to

the Commissioner, notify the Commissioner of the place where those accounting records are held.

**49J Accounts and statements to be lodged with Commissioner**

- (1) A supervised body corporate must, in respect of each of its financial years, lodge with the Commissioner:
  - (a) the accounts and statements mentioned in subsection (2) in respect of any business carried on by it in Australia during that year; and
  - (b) if the body is incorporated in Australia, the accounts and statements so mentioned in respect of any business carried on by it outside Australia during that year.
- (2) The following are the accounts and statements to be lodged as mentioned in subsection (1):
  - (a) a profit and loss account;
  - (b) a balance-sheet;
  - (c) a statement of assets and liabilities;
  - (d) any other accounts and statements that the Commissioner determines.
- (3) If a supervised body corporate is not incorporated in Australia, it must, within 6 months after the end of each of its financial years, lodge with the Commissioner:
  - (a) a copy of accounts and statements, other than such accounts and statements as the Commissioner determines, prepared for the purposes of a law of the place in which the body is incorporated in respect of any business carried on by it during that year; and
  - (b) a statement signed by not fewer than 2 directors, or, if there is only 1 director, by that director, of the body stating whether, during that year, it has contravened the law relating to the carrying on of any business in any place outside Australia in which it has, during that year, carried on such a business and, if it has so contravened such a law, giving particulars of the contravention.
- (4) A supervised body corporate must, within 6 weeks after each 31 March, 30 June, 30 September and 31 December, lodge with the Commissioner a statement of assets and liabilities on that day.

- (5) Statutory accounts lodged under subsection (1) or (4) must be in accordance with a form determined by the Commissioner.
- (6) The Commissioner may make written determinations for the purposes of this section.
- (7) Such a determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) A supervised body corporate must lodge the yearly statutory accounts within 4 months after the end of its financial year.
- (9) A supervised body corporate must, if so required by the Commissioner by written notice served on it, give the Commissioner, within such period after service of the notice, not being less than 7 days, as is stated in the notice, information with respect to such matters relating to statutory accounts or a document referred to in subsection (3) lodged by it under this section as are stated in the notice.

Penalty: 200 penalty units.

#### **49K Accounts etc. to be signed**

- (1) A profit and loss account and balance-sheet lodged by a body corporate under section 49J must be signed by 2 directors of the body or, if there is only 1 director, by that director.
- (2) Yearly statutory accounts (other than a profit and loss account or balance-sheet) lodged by a body corporate under subsection 49J(1) must be signed by a director, secretary or manager of the body, or, if the body is not incorporated in Australia, by the person appointed in accordance with section 118 as, or to act as, its agent.
- (3) In subsection (2):

*manager*, in relation to a body corporate, means the principal executive officer of the body, by whatever name the officer is called.

#### **49L Appointment of auditor**

- (1) A person must not act as an auditor for the purposes of this Part of a supervised body corporate unless:

- (a) the person is a person other than a director or employee of the body; and
  - (b) the person is a registered company auditor under a law in force in a State or Territory; and
  - (c) the Commissioner has, by written notice given to the body, approved the appointment of the person as auditor of the body for the purposes of this Part; and
  - (d) that approval has not been revoked.
- (2) The Commissioner must not approve the appointment of the person unless the Commissioner is satisfied that the person has had suitable experience to enable the person to audit accounts of any business carried on by the body and is competent to audit such accounts.
- (3) If the Commissioner is satisfied that the auditor has failed to fulfil his or her obligations under this Part, the Commissioner may, by written notice given to the body, revoke the approval of the appointment of the auditor given under subsection (1).
- (4) If the Commissioner gives a notice under subsection (3), the Commissioner must give a copy of the notice to the auditor.
- (5) Part VI applies to:
- (a) a refusal of the Commissioner to approve the appointment of a person under subsection (1); and
  - (b) a revocation of an appointment of a person under that subsection.

#### **49M Audit of accounts**

- (1) Yearly statutory accounts of a supervised body corporate (other than any such accounts and statements that are prescribed for the purposes of this subsection) are to be audited by the body's auditor.
- (2) The body must make any arrangements that are necessary to enable the audit of the yearly statutory accounts in accordance with this Act.
- (3) The auditor must give the body, for the purposes of this Part, a certificate relating to the yearly statutory accounts referred to in subsection (1).

- (4) In a certificate given under subsection (3) relating to yearly statutory accounts in respect of a financial year of the body, the auditor must:
- (a) state whether the yearly statutory accounts to which it relates appear to the auditor to be in accordance with this Act and give particulars of any matters that do not appear to the auditor to be in accordance with this Act; and
  - (b) state whether the body's accounting records in respect of that year appear to the auditor to have been properly kept and to record and explain correctly the body's transactions and financial position and give particulars of accounting records that appear to the auditor not to have been so kept and of transactions that appear to the auditor not to have been so recorded; and
  - (c) state whether, in respect of that year, the auditor has obtained the information and explanations that the auditor requested from the body and give particulars of information and explanations that the auditor requested but did not obtain; and
  - (d) state whether the auditor is satisfied that the yearly statutory accounts referred to in paragraph (a) agree with the body's accounting records and appear to the auditor truly to represent the body's transactions and financial position in respect of the financial year to which they relate and, if any of them appear to the auditor to fail so to represent the transactions and financial position, give particulars of the failure.

#### **49N Certificate of auditor to be lodged with Commissioner**

A supervised body corporate must, within 4 months after the end of each of its financial years, lodge with the Commissioner a certificate referred to in subsection 49M(3) relating to the yearly statutory accounts in respect of that year.

Penalty: 200 penalty units.

#### **49P Extension of time**

The Commissioner may, on the application of a supervised body corporate that is required under this Part to lodge with the Commissioner statutory accounts, a certificate or a document

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referred to in subsection 49J(3), extend, or further extend, the time for lodging the accounts, certificate or document.

**58 Subsection 50(1) (definition of *prescribed interest*)**

Omit “subsection 5(1) of the *Companies Act 1981*”, substitute “section 9 of the Corporations Law”.

**59 Subsection 50(1) (subparagraph (c)(i) of the definition of *prescribed person*)**

Omit “his”, substitute “the person’s”.

**60 At the end of section 50**

Add:

- (3) Without limiting the application of subsection (2), any bodies corporate that are connected with each other for the purposes of Part IVA are taken also to be associated with each other for the purposes of this Part.

**61 Paragraph 51(1)(b)**

Before “by notice”, insert “with the Treasurer’s agreement,”

**62 Subsections 51(2), (3), (4) and (5)**

Repeal the subsections, substitute:

- (2) If the Commissioner has served, or is proposing to serve, a notice under paragraph (1)(a) or (b) on a body corporate, the Commissioner may:
- (a) if the notice has been served—at any time; or
  - (b) otherwise—at or about the time when the notice is served;
- do either or both of the following in relation to a body corporate that is connected with the first-mentioned body corporate:
- (c) by written notice served on the connected body corporate, direct it to furnish to him or her in writing, within such period after service of the notice, being not less than 7 days, as is stated in the notice, such information as is stated in the notice about such matters in relation to the affairs of the connected body corporate as are so stated;
  - (d) with the Treasurer’s agreement, by written notice served on the connected body corporate, direct:



- (i) that it not dispose of, otherwise deal with, or remove from Australia, any of its assets; or
  - (ii) that it not dispose of, otherwise deal with, or remove from Australia, any of its assets that is, or is of a kind that is, stated in the notice; or
  - (iii) that it deal with any of its assets, or any of its assets that is, or is of a kind that is, stated in the notice, on such terms and conditions as are stated in the notice;
- during such period after service of the notice, not exceeding 6 months, as is stated in the notice.
- (3) Part VI applies to:
    - (a) a direction given, after 5 years after the commencement of this subsection, under paragraph (1)(b) or (2)(d); and
    - (b) if a direction given after that period under either of those paragraphs is varied—the direction as varied.
  - (4) It is not necessary to obtain the agreement of the Treasurer to the giving of a direction by the Commissioner under paragraph (1)(b) or (2)(d) after 5 years after the commencement of subsection (3).
  - (5) Nothing in subsection (1) or (2) affects the validity of a transaction entered into by a body corporate in contravention of that subsection.
  - (6) If a body corporate in respect of which a direction has been given under paragraph (1)(b) or (2)(d) is begun to be wound up, the direction ceases to have effect.
  - (7) A body corporate must not contravene a direction given to it under subsection (1) or (2).

Penalty: 200 penalty units.

### **63 After subsection 52(1)**

Insert:

- (1A) If the Commissioner has served, or is proposing to serve, a notice under subsection (1) on a body corporate, the Commissioner may:
  - (a) if the notice has been served—at any time; or
  - (b) otherwise—at or about the time when the notice is served;

cause a written notice to be served under subsection (1C) on a body corporate that is connected with the first-mentioned body corporate.

(1B) If it appears to the Commissioner that a body corporate that is connected with a body corporate authorised under this Act to carry on insurance business has contravened a provision of this Act or a condition or direction applicable to it under this Act, the Commissioner may cause a written notice to be served under subsection (1C) on the first-mentioned body corporate.

(1C) A notice referred to in subsection (1A) or (1B) may require the body corporate on which it is served to show cause, within such period after service of the notice (being not less than 14 days) as is stated in the notice, why the Commissioner should not, on stated grounds:

- (a) investigate the whole or any part of the business of the body corporate; or
- (b) appoint a person to make such an investigation and report to the Commissioner the results of the investigation.

#### **64 Paragraphs 52(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a body corporate on which a notice is served under subsection (1), (1A) or (1B) fails, within the period stated in the notice, to show cause to the Commissioner's satisfaction why an investigation should not be made; and
- (b) the Commissioner is satisfied that:
  - (i) if the notice was served under subsection (1)—in relation to the insurance business carried on by the body corporate; or
  - (ii) otherwise—in relation to any business carried on by the body corporate;it is in the public interest that an investigation should be made;

#### **65 Subsection 54(1)**

After “occupied by the body corporate”, insert “or by another body corporate with which the body corporate is connected”.

#### **66 Paragraph 54(1)(a)**

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After “the body corporate”, insert “or of the other body corporate”.

**67 Subsection 54(3) (including the penalty)**

Repeal the subsection and penalty.

**68 Subsection 56(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 3 months.

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 the 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.

**69 Paragraph 60(2)(b)**

Repeal the paragraph, substitute:

and (b) if the investigation relates to the affairs of a body corporate that is associated with a body corporate (the *authorised body corporate*) that is authorised under this Act to carry on insurance business—a statement of the opinion of the Commissioner or inspector in relation to the effect of the association on the ability of the authorised body corporate to meet its liabilities and the facts on which that opinion is based; and

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

Repeal the subparagraph, substitute:

(i) if the body is authorised to carry on insurance business—the question whether it should continue to be so authorised; and

**71 At the end of subparagraph 60(2)(c)(ii)**

Add “and”.

**72 Subparagraph 60(2)(c)(iv)**

After “insurance”, insert “or other”.

**73 Subsection 61(1) (penalty)**

Repeal the penalty, substitute:

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Penalty: Imprisonment for 3 months.

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 the 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.

#### 74 Subsection 61(2)

Omit “he”, substitute “the person”.

#### 75 Subsection 62(1)

After “body corporate” (first occurring), insert “that is authorised under this Act to carry on insurance business”.

#### 76 After subsection 62(1)

Insert:

(1A) If:

- (a) an investigation is being or has been made under this Part into affairs of a body corporate (the *connected body*) that is connected with a body corporate (the *authorised body*) for the purposes of Part IVA; and
- (b) it appears to the Commissioner that:
  - (i) the authorised body is, or is about to become, unable to meet its liabilities; or
  - (ii) the connected body has contravened a provision of this Act or a condition or direction applicable to it under this Act;

the Commissioner may, by written notice served on the connected body, give directions to it with respect to the carrying on of any business by it and, without limiting the generality of the directions that may be given, may give any one or more of the following directions:

- (c) a direction that the body must not dispose of or otherwise deal with an asset of the body, or an asset of the body included in a class of assets stated in the direction;
- (d) a direction that the body must dispose of an asset of the body, or assets of the body included in a class of assets stated in the direction, in such manner and within such period after the

giving of the direction, not being less than 21 days, as the Commissioner states in the direction;

- (e) a direction that the body must increase, so far as it is able to do so, its paid-up capital, whether by calling up any uncalled capital that is available to be called up or otherwise;
- (f) a direction that the body must not, except with the consent of the Commissioner:
  - (i) enter into an arrangement or agreement for the sale or disposal of its business by amalgamation or otherwise or for the carrying on of its business in partnership with another body corporate; or
  - (ii) effect a reconstruction of the body.

(1B) The Commissioner may only give a direction under subsection (1) or (1A) with the Treasurer's agreement.

**77 Subsection 62(2)**

After "satisfied", insert ", and the Treasurer agrees,".

**78 After subsection 62(3)**

Insert:

(3A) Subsection (3) does not apply to a decision made within 5 years after the commencement of this subsection.

(3B) It is not necessary to obtain the agreement of the Treasurer to a decision by the Commissioner under this section after 5 years after the commencement of subsection (3A).

**79 Subsection 62(5)**

After "(1)(j)", insert "or (1A)(f)".

**80 At the end of subsection 62(6)**

Add "or (1A)".

**81 Subsection 62(7)**

After "Commissioner" (first occurring), insert ", and the Treasurer agrees,".

**82 Paragraph 62(7A)(a)**

After "it appears to him", insert ", and the Treasurer agrees,".

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**83 Subsection 62(9)**

Omit "\$20,000", substitute "200 penalty units".

**84 Subsection 62(10)**

Repeal the subsection, substitute:

(10) A body corporate must not contravene:

- (a) a direction given to it under subsection (1), other than a direction of the kind referred to in paragraph (1)(a), (b), (c) or (d); or
- (b) a direction given to it under subsection (1A).

Penalty: 200 penalty units.

**85 Section 64**

Omit "he is" (wherever occurring).

**86 Section 98**

Omit "he", substitute "the underwriter".

Note: The heading to section 98 is altered by omitting "**he**" and substituting "**the underwriter**".

**87 Paragraph 100(a)**

Omit "his", substitute "the person's".

**88 Subsection 105(15) (penalty)**

Omit "\$20,000", substitute "200 penalty units".

**89 Subsection 106(2)**

Omit "\$2,000", substitute "20 penalty units".

**90 Section 106**

Omit:

Penalty: One thousand dollars for each day during which the contravention occurs.

**91 Subsection 109(3)**

Omit "\$20,000", substitute "200 penalty units".

**92 Before section 114**

Insert:

**113 Compliance with codes of insurance practice**

If:

- (a) a code or codes of practice have been approved by the Commissioner in relation to the carrying on of a class of insurance business prescribed for the purposes of this section; and
- (b) a person carries on that class of insurance business on a day when the person is not a party to an agreement to comply with the code or one of the codes;

the person is, in respect of that day, guilty of an offence punishable on conviction by a fine of not more than:

- (c) if the person is a body corporate—200 penalty units; or
- (d) if the person is a Lloyd’s underwriter and is not a body corporate—20 penalty units.

**93 Subsection 115(1)**

After “business”, insert “or a body corporate with which the first-mentioned body corporate is connected for the purposes of Part IVA”.

**94 Subsection 115(2)**

Omit “an officer of the body corporate to produce to him any books of the body corporate”, substitute “an officer of the body corporate, or an officer of a body corporate that is connected with the first-mentioned body corporate for the purposes of Part IVA, to produce to the Commissioner any books of the body corporate of which he or she is an officer”.

**95 Subsection 115(5) (including the penalty)**

Repeal the subsection and penalty.

**96 At the end of section 115**

Add:

Penalty: Imprisonment for 3 months.

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 the 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.

**97 Subsection 115A(1)**

After “business”, insert “, or a body corporate with which a body corporate so authorised is connected for the purposes of Part IVA,”.

**98 Paragraph 115A(2)(a)**

After “business”, insert “, or a body corporate with which a body corporate so authorised is connected for the purposes of Part IVA,”.

**99 Subsection 115A(5) (including the penalty)**

Repeal the subsection and penalty.

**100 Subsection 116(1)**

Repeal the subsection, substitute:

- (1) If a body corporate that is authorised under this Act to carry on insurance business is begun to be wound up:
  - (a) the body must not carry on insurance business after the date of commencement of the winding up; and
  - (b) the Commissioner must cause to be published in the *Gazette* a notice stating that, because of the commencement of the winding up, the body is no longer permitted to carry on insurance business.

**101 Subsection 116(3)**

After “business,”, insert “or in the winding up of a supervised body corporate,”.

**102 Subsection 117(1)**

Repeal the subsection, substitute:

- (1) A body corporate that is not incorporated in Australia and:
  - (a) is authorised under this Act to carry on insurance business; or
  - (b) is connected for the purposes of Part IVA with a body corporate that is so authorised;



must, at all times while it is so authorised, or while it is connected with a body corporate that is so authorised, have an address in Australia for the purposes of this Act.

**103 Subsections 117A(2), (3) and (4)**

Repeal the subsections, substitute:

- (2) A disqualified person must not:
- (a) be, or act as, a director or principal executive officer of a body corporate (other than a foreign body corporate):
    - (i) that is authorised under this Act to carry on insurance business; or
    - (ii) that is connected for the purposes of Part IVA with a body corporate (other than a foreign body corporate) that is so authorised; or
  - (b) be, or act as, a local executive officer of a foreign body corporate:
    - (i) that is authorised under this Act to carry on insurance business; or
    - (ii) that is connected for the purposes of Part IVA with a foreign body corporate that is so authorised.

Penalty: Imprisonment for 2 years.

- (3) A body corporate (other than a foreign body corporate):
- (a) that is authorised under this Act to carry on insurance business; or
  - (b) that is connected for the purposes of Part IVA with a body corporate (other than a foreign body corporate) that is so authorised;

must not permit a disqualified person to be, or act as, a director or principal executive officer of the body corporate.

Penalty: 250 penalty units.

- (4) A foreign body corporate:
- (a) that is authorised under this Act to carry on insurance business; or
  - (b) that is connected for the purposes of Part IVA with a foreign body corporate that is so authorised;

must not permit a disqualified person to be, or act as, a local executive officer of the body corporate.

Penalty: 250 penalty units.

**104 Subsection 117A(8) (paragraph (a) of the definition of *local executive officer*)**

Repeal the paragraph, substitute:

- (a) an individual who is a resident of Australia and:
  - (i) if the foreign body corporate is authorised under this Act to carry on insurance business—is solely or principally responsible for the management of the insurance business of the foreign body corporate in Australia; or
  - (ii) if the foreign body corporate is connected for the purposes of Part IVA with a body corporate that is authorised under this Act to carry on insurance business in Australia—is solely or principally responsible for the management of the business of the foreign body corporate in Australia; or

**105 Subsection 118(1)**

Repeal the subsection, substitute:

- (1) A body corporate that is not incorporated in Australia and:
  - (a) is authorised under this Act to carry on insurance business; or
  - (b) is connected for the purposes of Part IVA with a body corporate that is so authorised;must, at all times while it is so authorised, or while it is connected with a body corporate that is so authorised, 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.

**106 Subsection 119(1)**

Repeal the subsection, substitute:

- (1) A body corporate that is not incorporated in Australia and:
  - (a) is authorised under this Act to carry on insurance business; or
  - (b) is connected for the purposes of Part IVA with a body corporate that is so authorised;

must, at all times while it is so authorised, or while it is connected with a body corporate that is so authorised, have as its principal banker for the purposes of this Act a bank within the meaning of the *Banking Act 1959* or a bank constituted by a law of a State.

**107 Section 120**

Omit “he is carrying on business for the purpose of discharging liabilities assumed by him”, substitute “the underwriter is carrying on business for the purpose of discharging liabilities assumed by the underwriter”.

**108 Section 126**

Repeal the section, substitute:

**126 Secrecy**

(1) In this section:

***compliance officer*** means:

- (a) a person who is a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (b) a person who is engaged under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents;  
other than a member or officer of, or a person employed or engaged by:
    - (iii) a financial sector supervisory agency; or
    - (iv) an overseas financial sector supervisory agency; or
    - (v) a law enforcement agency.

***court*** includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

***financial sector supervisory agency*** means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section.

**law enforcement agency** means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section.

**overseas financial sector supervisory agency** means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

**produce** includes permit access to.

**protected document** means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act and containing information relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

**protected information** means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act and relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

- (2) Subject to this section, a person who is or has been a compliance officer must not, except for the purposes of this Act or any other Act of which the Commissioner has the general administration, directly or indirectly:
- (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as a compliance officer; or
  - (b) produce to any person, or to a court, a protected document.

Penalty: Imprisonment for 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.

- (3) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, relating to the affairs of another person if the other person agrees in writing to the disclosure of the information or the production of the document, as the case may be.
- (4) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:

- (a) the Treasurer, the Secretary to the Department or an officer of the Department authorised by the Secretary to the Department for the purposes of this section; or
  - (b) a court for the purposes of this Act or any other Act of which the Commissioner has the general administration; or
  - (c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (d) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (e) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person; or
  - (f) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.
- (5) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) a law enforcement agency; or
  - (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
  - (c) a person engaged under subsection 13(3) of that Act.
- (6) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.
- (7) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (5)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.
- (8) Paragraphs (4)(e) and (f) do not authorise the disclosure of information, or the production of a document, relating to the
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personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.

- (9) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.
- (10) A person who is or has been a compliance officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act or any other Act of which the Commissioner has the general administration.
- (11) If protected information is disclosed, or a protected document is produced, under paragraph (4)(a), to the Secretary to the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Treasurer in connection with the administration of this Act, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

Penalty: Imprisonment for 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.

- (12) A document that:
- (a) is a protected document; or
  - (b) contains protected information;
- is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.
- (13) At the end of 5 years after the commencement of this section, the definitions of ***financial sector supervisory agency***, ***law enforcement agency*** and ***overseas financial sector supervisory agency*** in subsection (1), and subsections (4), (5), (6), (7), (8) and (11), are taken to be repealed.

## 109 At the end of section 127

Add:

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- (3) The Commissioner may arrange for the publication of statistical information based on information obtained by the Commissioner under this Act if the publication is in such a form that information relating to a particular body corporate authorised under this Act to carry on insurance business cannot be found out from it.
- (4) The Commission may determine that fees are to be paid in respect of the supply of publications in accordance with this section.

**110 Subsection 128(1)**

After “48A(9)”, insert “or 49F(8), section 49H, 49J or 49N, subsection”.

**111 Paragraph 128(1)(a)**

After “48A(9)”, insert “49F(8),”.

**112 Paragraph 128(1)(a)**

Omit “\$2,000”, substitute “20 penalty units”.

**113 Paragraph 128(1)(b)**

Omit “or 48”, substitute “, 48, 49H, 49J or 49N”.

**114 Paragraph 128(1)(b)**

Omit “\$4,000”, substitute “40 penalty units”.

**115 Subsection 128(2) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 3 months.

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 the 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.

**116 Section 129B**

Repeal the section.

**117 Section 130**

After “a prescribed form”, insert “or a form determined by the Commissioner”.

**118 Paragraph 132(b)**

Repeal the paragraph.

**119 Paragraph 132(f)**

Omit “\$1,000”, substitute “10 penalty units”.

**120 The whole of the Act**

Amend so that every occurrence of “he” is followed once by “or she”.

**121 The whole of the Act**

Amend so that every occurrence of “him” is followed once by “or her”.

**122 The whole of the Act**

Amend so that every occurrence of “his” is followed once by “or her”.

**123 Application**

The amendments made by items 120, 121 and 122 take effect immediately after the commencement of the amendments made by the other items.



## **Schedule 6—Amendment of the Insurance Acquisitions and Takeovers Act 1991**

### **1 Section 24**

Omit “or a fine not exceeding \$50,000, or both”.

### **2 At the end of section 24**

Add:

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.

### **3 Section 26**

Omit “or a fine not exceeding \$50,000, or both”.

### **4 At the end of section 26**

Add:

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.

### **5 Subsection 27(3)**

Omit “or a fine not exceeding \$50,000, or both”.

### **6 At the end of subsection 27(3)**

Add:

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 Section 31**

Omit “or a fine not exceeding \$50,000, or both”.

**8 At the end of section 31**

Add:

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.

**9 Section 38**

Omit “or a fine not exceeding \$50,000, or both”.

**10 At the end of section 38**

Add:

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.

**11 Section 40**

Omit “or a fine not exceeding \$50,000, or both”.

**12 At the end of section 40**

Add:

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.

**13 Subsection 41(3)**

Omit “or a fine not exceeding \$50,000, or both”.

**14 At the end of subsection 41(3)**

Add:

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.

**15 Section 45**

Omit “or a fine not exceeding \$50,000, or both”.

**16 At the end of section 45**

Add:

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.

**17 Section 52**

Omit “or a fine not exceeding \$50,000, or both”.

**18 At the end of section 52**

Add:

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.

**19 Section 54**

Omit “or a fine not exceeding \$50,000, or both”.

**20 At the end of section 54**

Add:

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.

**21 Subsection 55(3)**

Omit “or a fine not exceeding \$50,000, or both”.

**22 At the end of subsection 55(3)**

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Add:

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.

**23 Section 59**

Omit “or a fine not exceeding \$50,000, or both”.

**24 At the end of section 59**

Add:

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.

**25 At the end of subsection 73(5)**

Add:

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.

**26 At the end of subsection 73(6)**

Add:

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.

**27 At the end of subsection 73(7)**

Add:

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.

## **28 At the end of subsection 74(1)**

Add:

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.

## **29 Section 75**

Repeal the section, substitute:

## **75 Secrecy**

(1) In this section:

***compliance officer*** means:

- (a) a person who is a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (b) a person who is engaged under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents; orother than a member or officer of, or a person employed or engaged by:
  - (iii) a financial sector supervisory agency; or
  - (iv) an overseas financial sector supervisory agency; or
  - (v) a law enforcement agency.

***court*** includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

***financial sector supervisory agency*** means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section.

**law enforcement agency** means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section.

**overseas financial sector supervisory agency** means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

**produce** includes permit access to.

**protected document** means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act and containing information relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

**protected information** means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act and relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

- (2) Subject to this section, a person who is or has been a compliance officer must not, except for the purposes of this Act or any other Act of which the Commissioner has the general administration, directly or indirectly:
- (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as a compliance officer; or
  - (b) produce to any person, or to a court, a protected document.

Penalty: Imprisonment for 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.

- (3) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, relating to the affairs of another person if the other person agrees in writing to the disclosure of the information or the production of the document, as the case may be.
- (4) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:

- (a) the Treasurer, the Secretary to the Department or an officer of the Department authorised by the Secretary to the Department for the purposes of this section; or
  - (b) a court for the purposes of this Act or any other Act of which the Commissioner has the general administration; or
  - (c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (d) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (e) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person; or
  - (f) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.
- (5) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) a law enforcement agency; or
  - (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
  - (c) a person engaged under subsection 13(3) of that Act.
- (6) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.
- (7) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (5)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.
- (8) Paragraphs (4)(e) and (f) do not authorise the disclosure of information, or the production of a document, relating to the
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personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.

- (9) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is so prepared that information relating to any particular person cannot be found out from it.
- (10) A person who is or has been a compliance officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act or any other Act of which the Commissioner has the general administration.
- (11) If protected information is disclosed, or a protected document is produced, under paragraph (4)(a), to the Secretary to the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Treasurer in connection with the administration of this Act, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

Penalty: Imprisonment for 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.

- (12) A document that:
  - (a) is a protected document; or
  - (b) contains protected information;is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.
- (13) At the end of 5 years after the commencement of this section, the definitions of ***financial sector supervisory agency***, ***law enforcement agency*** and ***overseas financial sector supervisory agency*** in subsection (1), and subsections (4), (5), (6), (7), (8) and (11), are taken to be repealed.



## **Schedule 7—Amendment of the Insurance (Agents and Brokers) Act 1984**

### **1 Section 9 (paragraph (a) of the definition of *class of insurance business*)**

After “insurance”, insert “business”.

### **2 Section 9 (definition of *insolvent under administration*)**

Repeal the definition, substitute:

*insolvent under administration* means a person who:

- (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
- (b) under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt;

and includes:

- (c) a person any of whose property is subject to control under:
  - (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or
  - (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or
- (d) a person who has, at any time during the preceding 3 years, executed a deed of assignment or a deed of arrangement under:
  - (i) Part X of the *Bankruptcy Act 1966*; or
  - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country; or
- (e) a person whose creditors have, within the preceding 3 years, accepted a composition under:
  - (i) Part X of the *Bankruptcy Act 1966*; or
  - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.

### **3 Subsection 10(1)**

Omit “himself”, substitute “the intermediary”.

### **4 Subsection 10(2)**

Omit “himself”, substitute “the intermediary”.

**5 Subsection 10(2A)**

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

**6 Subsection 10(3)**

After “his”, insert “or her”.

**7 Subsection 10(4)**

Omit “himself”, substitute “the intermediary”.

**8 Subsection 10(4)**

After “him” (first occurring), insert “or her”.

**9 Subsection 10(4)**

Omit “him” (last occurring), substitute “the intermediary”.

**10 Subsection 10(5)**

After “him”, insert “or her”.

**11 At the end of section 10**

Add:

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.

**12 After subsection 11(1J)**

Insert:

(1K) If:

- (a) a person is the agent of more than one insurer in respect of a particular class of insurance business; and
- (b) the person engages in the conduct in relation to a matter relating to that class; and
- (c) any one or more of the insurers enters or enter into a contract of insurance as a result of the conduct;

then, for the purposes of this section, the agent is taken, in respect of the conduct, to have acted within the scope of the authority granted by the insurer or each insurer who so entered into a contract of insurance.

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

Add:

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.

### **14 Section 15**

Omit “his”, substitute “the intermediary’s”.

### **15 Subsection 16(1) (other than the penalty)**

Repeal the subsection (other than the penalty), substitute:

- (1) An insurance intermediary who intends to act under a binder in effecting a contract of insurance on behalf of the intermediary’s principal must:
  - (a) subject to paragraph (b), give notice to the intending insured, before the intermediary enters into the contract, that, in effecting the contract, the intermediary will be acting under an authority given to the intermediary by the insurer to effect the contract and that the intermediary will be effecting the contract as agent of the insurer and not of the intending insured; or
  - (b) if it is not practicable for the intermediary to comply with paragraph (a), give notice to the insured, as soon as is reasonably practicable after the intermediary has effected the contract, that, in effecting the contract, the intermediary acted under an authority given to the intermediary by the insurer to effect the contract and that the intermediary effected the contract as agent of the insurer and not of the insured.

### **16 Subsection 17(1) (other than the penalty)**

Repeal the subsection (other than the penalty), substitute:

- (1) An insurance intermediary who intends to act under a binder in dealing with or settling a claim under a contract of insurance must not deal with or settle the claim on behalf of the intermediary's principal unless the intermediary has first told the insured that, in dealing with or settling the claim, the intermediary will be acting under an authority given to the intermediary by the insurer to deal with or settle the claim and that the intermediary will be dealing with or settling the claim as agent of the insurer and not of the insured.

**17 Subsection 18(2)**

Omit "him", substitute "the broker".

**18 Subsection 18(2)**

Omit "his" (wherever occurring), substitute "the broker's".

**19 Paragraph 19(1)(a)**

Omit "he", substitute "the person".

**20 At the end of subsection 19(1)**

Add:

- ; and (c) if the person carries on business as an insurance broker in relation to a class of general insurance business that, under the regulations, is domestic or personal insurance business and there is in force an arrangement, approved by the Commissioner, for dealing with complaints against persons carrying on business as insurance brokers in relation to that class of general insurance business—unless the person is a party to the arrangement.

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.

**21 At the end of section 20**

Add:

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

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greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

**22 After paragraph 21(1)(b)**

Insert:

- (ba) if the application is for registration in respect of a class of general insurance business that, under the regulations, is domestic or personal insurance business and there is in force an arrangement, approved by the Commissioner, for dealing with complaints against persons carrying on that class of general insurance business—the Commissioner is satisfied that the person is a party to the arrangement; and

**23 After paragraph 21(1A)(d)**

Insert:

- (da) if the application is for renewal of registration in respect of a class of general insurance business that, under the regulations, is domestic or personal insurance business and there is in force an arrangement, approved by the Commissioner, for dealing with complaints against persons carrying on that class of general insurance business—the Commissioner is satisfied that the person is a party to the arrangement; and

**24 Subsection 21(6)**

Omit “request” (last occurring), substitute “requirement”.

**25 Paragraph 23(d)**

Omit “aa”, substitute “(b)”.

**26 Paragraph 24(2)(a)**

Omit “his”, substitute “the broker’s”.

**27 Subsection 24(4)**

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

**28 After subsection 25(1A)**

Insert:

(1AA) If:

- (a) a person carries on business as an insurance broker in relation to a class of general insurance business that, under the regulations, is domestic or personal insurance business; and
  - (b) there is in force an arrangement, approved by the Commissioner, for dealing with complaints against persons carrying on that class of general insurance business; and
  - (c) the person is not a party to the arrangement;
- the Commissioner may:
- (d) suspend the person's registration until the person becomes a party to the arrangement; or
  - (e) cancel the person's registration.

**29 Subsection 25(3)**

Omit "his", substitute "the person's".

**30 Subsection 25(3)**

After "him" (wherever occurring), insert "or her".

**31 Subsection 25(4)**

Omit "him" (wherever occurring), substitute "the person".

**32 At the end of subsection 25(4)**

Add:

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.

**33 Subsection 25(5)**

Omit "he may, by writing signed by him", substitute "the Commissioner may, by signed writing".

**34 Subsection 25(6)**

Omit "his", substitute "the person's".

**35 Subsection 25(6)**

Omit "he", substitute "the person".

**36 Subsection 25(7)**

Omit “he”, substitute “the Commissioner”.

**37 Subsections 26(1) and (3)**

Omit “him” (wherever occurring), substitute “the broker”.

**38 Paragraph 26(3)(a)**

Omit “himself in so far as he is entitled to receive payment for himself”, substitute “the broker in so far as the broker is entitled to receive payment for the broker personally”.

**39 Subsections 26(4) and (5)**

Omit “him” (wherever occurring), substitute “the broker”.

**40 Subsections 26(7) and (8)**

Omit “his”, substitute “the broker’s”.

**41 At the end of section 26**

Add:

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.

**42 Paragraph 27(2)(b)**

Omit “him”, substitute “the broker”.

**43 Subsection 27(3)**

Omit “he” (wherever occurring), substitute “the broker”.

**44 Subsection 27(4)**

Omit “him” (wherever occurring), substitute “the broker”.

**45 Subsection 27(5)**

Omit “he” (wherever occurring), substitute “the broker”.

**46 At the end of subsection 27(12)**

Add:

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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.

**47 Paragraph 29(5)(a)**

Omit “him”, substitute “the person”.

**48 At the end of section 29**

Add:

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.

**49 Subsections 30(1) and (2)**

Omit “himself or his business in a way that would be likely to lead a person into believing that he”, substitute “the broker or the broker’s business in a way that would be likely to lead a person into believing that the broker”.

**50 At the end of section 30**

Add:

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.

**51 Section 31**

Omit “he” (wherever occurring), substitute “the broker”.

**52 At the end of subsection 31B(1)**

Add:

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.

**53 At the end of section 31C**

Add:

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.

**54 At the end of subsection 31H(4)**

Add:

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.

**55 Paragraphs 32(1)(a) and (b)**

Omit “his”, substitute “the broker’s”.

**56 Subsections 32(1), (2) and (5)**

Omit “he” and “him” (wherever occurring), substitute “the broker”.

**57 Subsection 33(2)**

Omit “he arranges or effects”, substitute “arranging or effecting”.

**58 Paragraph 33(3)(a)**

Omit “he arranges or effects”, substitute “arranging or effecting”.

**59 Paragraph 33(3)(b)**

Omit “him” and “he”, substitute “the intermediary”.

**60 At the end of section 33**

Add:

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.

**61 At the end of subsection 34(1)**

Add:

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.

**62 At the end of subsection 34A(9)**

Add:

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.

**63 At the end of section 34P**

Add:

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.

**64 At the end of section 34S**

Add:

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.

**65 At the end of section 34T**

Add:

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.

## **66 Section 34U**

Repeal the section, substitute:

### **34U Secrecy**

(1) In this section:

***compliance officer*** means:

- (a) a person who is a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (b) a person who is engaged under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents; other than a member or officer of, or a person employed or engaged by:
    - (iii) a financial sector supervisory agency; or
    - (iv) an overseas financial sector supervisory agency; or
    - (v) a law enforcement agency.

***court*** includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

***financial sector supervisory agency*** means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section.

***law enforcement agency*** means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section.

***overseas financial sector supervisory agency*** means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

***produce*** includes permit access to.

**protected document** means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act and containing information relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

**protected information** means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act and relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

- (2) Subject to this section, a person who is or has been a compliance officer must not, except for the purposes of this Act or any other Act of which the Commissioner has the general administration, directly or indirectly:
- (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as a compliance officer; or
  - (b) produce to any person, or to a court, a protected document.

Penalty: Imprisonment for 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.

- (3) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, relating to the affairs of another person if the other person agrees in writing to the disclosure of the information or the production of the document, as the case may be.
- (4) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) the Treasurer, the Secretary to the Department or an officer of the Department authorised by the Secretary to the Department for the purposes of this section; or
  - (b) a court for the purposes of this Act or any other Act of which the Commissioner has the general administration; or
  - (c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or

- (d) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (e) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person; or
  - (f) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.
- (5) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) a law enforcement agency; or
  - (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
  - (c) a person engaged under subsection 13(3) of that Act.
- (6) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.
- (7) A person who is or has been compliance officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (5)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.
- (8) Paragraphs (4)(e) and (f) do not authorise the disclosure of information, or the production of a document, relating to the personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.
- (9) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is so prepared that information relating to any particular person cannot be found out from it.
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- (10) A person who is or has been a compliance officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act or any other Act of which the Commissioner has the general administration.
- (11) If protected information is disclosed, or a protected document is produced, under paragraph (4)(a), to the Secretary to the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Treasurer in connection with the administration of this Act, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

Penalty: Imprisonment for 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.

- (12) A document that:
- (a) is a protected document; or
  - (b) contains protected information;
- is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.
- (13) At the end of 5 years after the commencement of this section, the definitions of ***financial sector supervisory agency***, ***law enforcement agency*** and ***overseas financial sector supervisory agency*** in subsection (1), and subsections (4), (5), (6), (7), (8) and (11), are taken to be repealed.

## 67 At the end of section 35

Add:

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.

## 68 At the end of section 37

Add:

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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.

### **69 Paragraph 38(1)(d)**

Omit “him”, substitute “the broker”.

### **70 Subsections 39(1) and (2)**

Repeal the subsections, substitute:

- (1) An insurance intermediary other than a registered insurance broker must not describe the intermediary or the intermediary’s business in a way that would be likely to lead a person into believing that the intermediary is an insurance broker.
- (2) An insurance intermediary must not describe the intermediary or the intermediary’s business in a way that would be likely to mislead a person into believing that the intermediary is an insurer.

### **71 At the end of section 39**

Add:

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.

### **72 Section 45**

After “him” (wherever occurring), insert “or her”.

### **73 Paragraph 45(d)**

After “his”, insert “or her”.

### **74 Section 47**

Repeal the section, substitute:

**47 Delegation**

The Commissioner may, by signed writing, delegate to a person all or any of the Commissioner's powers under this Act or the regulations.

**75 Saving**

A delegation that was in force under section 47 of the *Insurance (Agents and Brokers) Act 1984* immediately before the commencement of item 74 continues in force as if it had been given under the section substituted by that item.



## **Schedule 8—Amendment of the Insurance Contracts Act 1984**

### **1 Subsection 9(3)**

Repeal the subsection, substitute:

- (3) Sections 37, 41, 58, 59, 60, 63, 69 and 74 do not apply in relation to contracts, and proposed contracts, of insurance against the risk of the loss of an aircraft, or damage to the hull of an aircraft, as a result of war.

### **2 Paragraph 11(10)(a)**

Omit “or 68”, substitute “, 68 or 71A”.

### **3 Paragraph 11(10)(c)**

Omit “and 68”, substitute “, 68 and 71A”.

### **4 Section 11F**

Repeal the section, substitute:

#### **11F Secrecy**

- (1) In this section:

***compliance officer*** means:

- (a) a person who is a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (b) a person who is engaged under subsection 13(3) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents;  
other than a member or officer of, or a person employed or engaged by:
    - (iii) a financial sector supervisory agency; or
    - (iv) an overseas financial sector supervisory agency; or
    - (v) a law enforcement agency.

***court*** includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

***financial sector supervisory agency*** means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section.

***law enforcement agency*** means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section.

***overseas financial sector supervisory agency*** means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

***produce*** includes permit access to.

***protected document*** means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act and containing information relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

***protected information*** means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act and relating to the affairs of a person other than information that has already been lawfully made available to the public from other sources.

- (2) Subject to this section, a person who is or has been a compliance officer must not, except for the purposes of this Act or any other Act of which the Commissioner has the general administration, directly or indirectly:
- (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as a compliance officer; or
  - (b) produce to any person, or to a court, a protected document.

Penalty: Imprisonment for 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.

- (3) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, relating to the

affairs of another person if the other person agrees in writing to the disclosure of the information or the production of the document, as the case may be.

- (4) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) the Treasurer, the Secretary to the Department or an officer of the Department authorised by the Secretary to the Department for the purposes of this section; or
  - (b) a court for the purposes of this Act or any other Act of which the Commissioner has the general administration; or
  - (c) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (d) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
  - (e) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to a particular person—that person; or
  - (f) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.
- (5) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) a law enforcement agency; or
  - (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
  - (c) a person engaged under subsection 13(3) of that Act.
- (6) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.
- (7) A person who is or has been a compliance officer may only disclose protected information, or produce a protected document,
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to a person referred to in paragraph (5)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.

- (8) Paragraphs (4)(e) and (f) does not authorise the disclosure of information, or the production of a document, relating to the personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.
- (9) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is so prepared that information relating to any particular person cannot be found out from it.
- (10) A person who is or has been a compliance officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act or any other Act of which the Commissioner has the general administration.
- (11) If protected information is disclosed, or a protected document is produced, under paragraph (4)(a), to the Secretary to the Department or to an officer of the Department, the Secretary or officer must not, except for the purpose of advising the Treasurer in connection with the administration of this Act, directly or indirectly make a record of, or disclose to any person, the information, or the information contained in the document, as the case may be.

Penalty: Imprisonment for 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.

- (12) A document that:
  - (a) is a protected document; or
  - (b) contains protected information;is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.
- (13) At the end of 5 years after the commencement of this section, the definitions of ***financial sector supervisory agency, law***

*enforcement agency* and *overseas financial sector supervisory agency* in subsection (1), and subsections (4), (5), (6), (7), (8) and (11), are taken to be repealed.

**5 Paragraph 21(2)(c)**

Omit “his”, substitute “the insurer’s”.

**6 Subsection 26(1)**

Omit “he”, substitute “the person”.

**7 Section 27**

Omit “he”, substitute “the person”.

**8 Subsection 28(3)**

Omit “him” and “he”, substitute “the insurer”.

**9 Subsection 29(4)**

Omit “he”, substitute “the insurer”.

**10 Subsection 35(2)**

Omit “he”, substitute “the insurer”.

**11 Paragraph 41(1)(a)**

Omit “him”, substitute “the insured”.

**12 Subsection 41(2)**

Omit “him”, substitute “the insured”.

**13 Paragraph 41(2)(b)**

Omit “he”, substitute “the insurer”.

**14 At the end of subsection 44(1)**

Add “including whether the provision is based on indemnity or on replacement value of the property that is the subject-matter of the contract”.

**15 Subsection 44(4)**

Repeal the subsection, substitute:

(4) In this section:

*value*, in relation to property, means:

- (a) if the relevant contract provides for indemnifying the insured in respect of loss of or damage to the property—the indemnity value of the property; or
  - (b) if the relevant contract provides for reinstatement or replacement of the property—the reinstatement or replacement value of the property;
- at the time when the relevant contract was entered into.

**16 Subsection 46(2)**

Omit “his”, substitute “the insurer’s”.

**17 Subsection 47(2)**

Omit “his”, substitute “the insurer’s”.

**18 Subsections 48(1) and (2)**

Omit “his”, substitute “the person’s”.

**19 Subsections 48(1) and (2)**

Omit “he”, substitute “the person”.

**20 Subsection 48(3)**

Omit “he”, substitute “the insurer”.

**21 Paragraph 49(3)(a)**

Omit “his”, substitute “the insurer’s”.

**22 Paragraph 49(3)(b)**

Omit “his”, substitute “the person’s”.

**23 Paragraph 51(2)(b)**

Omit “his”, substitute “the insured’s”.

**24 Subsection 54(1)**

Omit “his”, substitute “the insurer’s”.

**25 Subsection 57(3)**

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Omit “rate that is the prescribed rate in respect of that day”, substitute “rate applicable in respect of that day that is prescribed by, or worked out in a manner prescribed by, the regulations”.

**26 Subsection 58(2)**

Omit “him”, substitute “the person to whom the notice is given”.

**27 Subparagraph 58(3)(d)(ii)**

After “from”, insert “the original insurer or”.

**28 Paragraph 58(4)(b)**

Repeal the paragraph, substitute:

- (b) if a claim is made under the contract, there is payable by the insured to the insurer, as a premium in respect of the contract, an amount worked out in accordance with subsection (5) or (6), as the case requires.

**29 At the end of section 58**

Add:

- (5) If the claim is for total loss of the property insured, the premium is an amount equal to the amount (the *hypothetical premium*) that, if the original contract had been renewed for the same period and on the same terms and conditions (including the same subject-matter and risk), would have been payable by the insured in respect of the renewal.
- (6) If the claim is not for total loss of the property insured, the premium is an amount worked out in accordance with the formula:

$$\frac{\text{Period until claim} \times \text{Hypothetical premium}}{\text{Period of original contract}}$$

where:

*period until claim* means the number of days in the period that began on the day on which the contract came into force and ended on the day on which the claim was made.

*hypothetical premium* has the meaning given in subsection (5).

*period of original contract* means the number of days in the period of the original contract.

**30 Subparagraph 59(2)(b)(i)**

Repeal the subparagraph, substitute:

- (i) 4 pm on the applicable business day;

**31 After subsection 59(2)**

Insert:

(2A) In subparagraph (2)(b)(i):

*applicable business day* means:

(a) in respect of a contract that is not a contract of life insurance:

- (i) if the contract is in force because of section 58—the fourteenth business day; or
- (ii) otherwise—the third business day; or

(b) in respect of a contract of life insurance—the twentieth business day;

after the day on which the notice was given to the insured.

**32 Subsection 64(1)**

Omit “he”, substitute “the insured”.

**33 Subsection 64(2)**

Omit “him”, substitute “the insurer”.

**34 Subsection 64(4)**

Omit “of his own, he”, substitute “of the insured, the insured”.

**35 Paragraph 65(2)(a)**

Omit “his”, substitute “the third party’s”.

**36 Subsection 65(3)**

Omit “his”, substitute “the third party’s”.

**37 Subsection 65(4)**

Omit “his”, substitute “the insurer’s”.

**38 Subsection 65(5)**

Omit “him” and “he”, substitute “the insured”.



**39 Paragraph 66(a)**

Omit “his”, substitute “the insurer’s”.

**40 Subsection 68(1)**

Omit “he”, substitute “the insurer”.

**41 Section 72**

Omit “him”, substitute “the person”.

**42 Subsection 74(2)**

Omit “he”, substitute “the insurer”.

**43 Subsection 75(1)**

Omit “he” (wherever occurring), substitute “the insurer”.

**44 Subsection 75(1)**

Omit “his”, substitute “the insurer’s”.

**45 Subsection 76(1)**

Omit “him”, substitute “the insured”.

**46 Subparagraph 77(1)(b)(ii)**

Omit “his”, substitute “the person’s”.

**47 Subsection 77(2)**

Omit “of his own, he”, substitute “of the insured, the insured”.

## **Schedule 9—Repeal of the Insurance (Deposits) Act 1932**

### **1 The whole of the Act**

Repeal the Act.

## **Schedule 10—Amendment of the Insurance Laws Amendment Act 1994**

### **1 Schedule (item 24)**

Repeal the item, substitute:

### **24 Subsection 34(1)**

Omit all the words from and including “conviction:” to the end of paragraph (d), substitute “conviction, by imprisonment for not more than 2 years”.

## **Schedule 11—Amendment of the Insurance Supervisory Levies Collection Act 1989**

### **1 After section 5**

Insert:

#### **5A Bodies that have ceased to carry on insurance business or life insurance business**

In this Act:

- (a) a reference to a body corporate that is required to lodge accounts under subsection 44(1) of the *Insurance Act 1973* includes a reference to a body corporate which has ceased to be authorised under that Act to carry on insurance business but which, if it had not so ceased, would be required to lodge accounts under that subsection; and
- (b) except in subsection 7(3A), a reference to a life company includes a reference to a company that has ceased to be a life company.

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

Repeal the paragraph, substitute:

- (a) the day by which the body corporate:
  - (i) is required to lodge accounts under subsection 44(1) of the *Insurance Act 1973* for that period; or
  - (ii) would, if it had not ceased to be authorised under that Act to carry on insurance business, be required to lodge accounts under that subsection for that period;

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

Insert:

- (3B) Life insurance levy payable by a company that has ceased to be a life company is due and payable on the last day of the period within which the company would, if it had not so ceased, be required by subsection 118(3) of the *Life Insurance Act 1995* to give to the Commissioner financial statements as at the end of that period.

#### **4 After section 8**

Insert:

#### **8A Waiver of levy**

If:

(a) an amount of levy is payable by:

(i) a body corporate that has ceased to be authorised under the *Insurance Act 1973* to carry on insurance business; or

(ii) a company that has ceased to be a life company; and

(b) the Commissioner is satisfied that payment of the levy would prevent payment in full of claims under contracts of insurance made with the body corporate or company;

the Commissioner may waive the payment of the whole or a part of the amount.

## Schedule 12—Amendment of the Life Insurance Act 1995

### 1 After section 9

Insert:

#### 9A Continuous disability policy

- (1) Subject to this section, a continuous disability policy is a contract of insurance:
  - (a) that is, by its terms, to be of more than 3 years' duration; and
  - (b) under which a benefit is payable in the event of:
    - (i) the death, by accident or by some other cause stated in the contract, of the person whose life is insured (the *insured*); or
    - (ii) injury to, or disability of, the insured as a result of accident or sickness; or
    - (iii) the insured being found to have a stated condition or disease.
- (2) A contract of insurance that is, by its terms, to be of a duration of not more than 3 years is taken to comply with paragraph (1)(a) if:
  - (a) contracts of insurance of the same kind as the contract are usually of more than 3 years' duration; and
  - (b) the contract is of a lesser duration only because of the age of the owner of the policy at the time when it was entered into.
- (3) A contract of insurance is not a continuous disability policy if the terms of the contract permit alteration, at the instance of the life company concerned, of the benefits provided for by the contract or the premiums payable under the contract.
- (4) A contract of insurance the terms of which permit alteration, at the instance of the life company concerned, of the benefits provided for by the contract is not thereby excluded by subsection (3) from being a continuous disability policy if, by those terms, the only alterations that are permitted to be made are alterations that improve the benefits and are made following an offer made by the life company and accepted by the owner of the policy.

- (5) A contract of insurance the terms of which permit alteration, at the instance of the life company concerned, of the premiums payable under the contract is not thereby excluded by subsection (3) from being a continuous disability policy if the terms of all contracts of the same kind as the contract only permit such alterations if they are made on a simultaneous and consistent basis.
- (6) A contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984* is not a continuous disability policy.
- (7) A contract of insurance entered into in the course of carrying on health insurance business within the meaning of section 67 of the *National Health Act 1953* is not a continuous disability policy.

## **2 Subsection 38(5)**

Repeal the subsection, substitute:

- (5) In subsection (4):

*unsecured borrowing* does not include:

- (a) a borrowing of money by means of a bank overdraft; or
- (b) a borrowing of money by means of an arrangement of a prescribed kind.

## **3 Subsection 41(1)**

After “transaction”, insert “(other than a transaction to which section 41A applies)”.

Note: The heading to section 41 is altered by adding at the end “—general”.

## **4 After section 41**

Insert:

### **41A Effect of non-compliance with section 38—certain classes of transactions**

- (1) Subject to this section, a transaction that is included in a class of transactions declared by the regulations to be transactions to which this section applies is not ineffective merely because it was entered into in contravention of section 38.
- (2) The Court, on application by the Commissioner, may make an order declaring that a particular transaction entered into in

contravention of section 38 is, and is to be taken always to have been, of no effect for any purpose.

- (3) The Court must not make an order under subsection (2) if it is satisfied that the effect of the order (if made) would be to prejudice rights of any person in respect of, or arising out of, the transaction that have been acquired in good faith and without knowledge of the contravention.

**5 Subsection 49(1)**

After “may”, insert “, with the Treasurer’s agreement,”.

**6 Subsection 49(4)**

After “may”, insert “, with the Treasurer’s agreement,”.

**7 After subsection 62(4)**

Insert:

- (4A) The Commissioner must not refuse to give an approval under subsection (4) unless the Treasurer agrees that the approval should not be given.

**8 After subsection 63(2)**

Insert:

- (2A) The Commissioner must not refuse to give an approval under subsection (2) unless the Treasurer agrees that the approval should not be given.

**9 Subsection 68(1)**

After “may”, insert “, with the Treasurer’s agreement,”.

**10 Subsection 68(5)**

After “revoke or”, insert “, with the Treasurer’s agreement,”.

**11 Paragraph 68(6)(a)**

After “thinks”, insert “, and the Treasurer agrees,”.

**12 Subsection 73(1)**

After “may”, insert “, with the Treasurer’s agreement,”.



**13 Subsection 73(5)**

After “thinks”, insert “, and the Treasurer agrees,”.

**14 Paragraph 73(6)(a)**

After “thinks”, insert “, and the Treasurer agrees,”.

**15 At the end of section 82**

Add:

- (6) Rules made for the purposes of paragraph (5)(a) may require that financial statements be prepared in accordance with accounting standards issued by the Australian Accounting Standards Board or actuarial standards issued by the Life Insurance Actuarial Standards Board, or both, as in force or existing from time to time.

**16 Subsection 134(1)**

After “may”, insert “, with the Treasurer’s agreement,”.

**17 Subsection 147(2) (penalty)**

Repeal the penalty.

**18 At the end of section 147**

Add:

- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by imprisonment for not more than 6 months.

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 the 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.

**19 Subsection 150(1)**

After “may”, insert “, with the Treasurer’s agreement,”.

**20 Subsection 150(5)**

After “thinks”, insert “, and the Treasurer agrees,”.

**21 Paragraph 150(6)(a)**

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After “thinks”, insert “, and the Treasurer agrees,”.

**22 Subsection 200(1)**

After “assigned”, insert “at law”.

**23 Subsection 200(2)**

After “effective”, insert “at law”.

**24 Subsection 200(3)**

After “effects”, insert “at law”.

**25 At the end of section 200**

Add:

(8) This section:

- (a) does not prejudice the effect in equity of an assignment of the rights of a person as owner of a life policy that is made otherwise than under this section; and
- (b) has effect subject to section 203.

**26 Paragraph 201(1)(a)**

Repeal the paragraph, substitute:

- (a) the mortgage or trust is not effective unless:
  - (i) it is created by some means other than the memorandum of transfer; and
  - (ii) the memorandum of transfer does not contain any provisions about the rights and duties of the assignor, the assignee or any other person in respect of the mortgage or trust; and

**27 Subsection 202(1)**

Omit “201”, substitute “subsection 201(1)”.

**28 Subsection 202(2)**

Omit “201”, substitute “subsection 201(1)”.

**29 After subsection 202(2)**

Insert:

- (2A) A life company is not taken, for the purposes of subsection (2), to have received express notice in writing of a trust, right, equity or interest merely because the transferee under an assignment is described in the memorandum of transfer as the trustee or trustees of a superannuation fund.

**30 Subsection 207(1)**

Repeal the subsection, substitute:

- (1) The owner of:
- (a) a policy in respect of which there is no contractual obligation on the owner to make any payments of premiums after the first year for which the policy is in force; or
  - (b) a policy (other than a policy referred to in paragraph (a)) that has been in force for at least 3 years;
- may request the company that issued the policy to surrender the policy.

**31 Subsection 207(6)**

Repeal the subsection, substitute:

- (6) If, apart from this subsection, the surrender value of a policy under this Act would at any time be less than the adjusted pre-1 July 1995 surrender value of the policy, the adjusted pre-1 July 1995 surrender value of the policy is the surrender value of the policy for the purposes of this Act.
- (7) In subsection (6):
- adjusted pre-1 July 1995 surrender value*, in relation to a policy to which that subsection applies, means the surrender value of the policy immediately before 1 July 1995, adjusted for any transactions entered into on or after that date in relation to the policy that affected its surrender value.

**32 Subsection 236(1) (definition of *reviewable decision*)**

After “means”, insert “, subject to subsection (1A),”.

**33 After subsection 236(1)**

Insert:

- (1A) Any of the following decisions that are made within 5 years after the commencement of this subsection are not reviewable decisions for the purposes of this Part:
- (a) a decision under subsection 49(1);
  - (b) a decision under subsection 49(4);
  - (c) a refusal to give an approval under subsection 62(4);
  - (d) a refusal to give an approval under subsection 63(2);
  - (e) a direction under subsection 68(1);
  - (f) a decision to vary a direction under subsection 68(5) or (6);
  - (g) a refusal to revoke or vary a direction under subsection 68(6);
  - (h) a direction under subsection 73(1);
  - (i) a decision to vary a direction under subsection 73(5) or (6);
  - (j) a refusal to revoke or vary a direction under subsection 73(6);
  - (k) a direction under subsection 134(1);
  - (l) a direction under subsection 150(1);
  - (m) a decision to vary a direction under subsection 150(5) or (6);
  - (n) a refusal to revoke or vary a direction under subsection 150(6).
- (1B) After 5 years after the commencement of subsection (1A), it is not necessary to obtain the agreement of the Treasurer to the making of a decision referred to in that subsection.

### **34 At the end of section 244**

Add:

- (6) The Commissioner may determine that fees are to be paid in respect of the supply of publications in accordance with this section.

### **35 At the end of subsection 245(3)**

Add:

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.

### **36 Section 249**

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After “offence”, insert “punishable on conviction by imprisonment for not more than one year”.

**37 Section 249**

Repeal the penalty.

**38 Subsection 251(1) (paragraph (c) of the definition of *compliance officer*)**

Repeal the paragraph, substitute:

- (c) any other person who, because of his or her employment, or in the course of that employment:
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents;  
other than a member or officer of, or a person employed or engaged by:
    - (iii) a financial sector supervisory agency; or
    - (iv) an overseas financial sector supervisory agency; or
    - (v) a law enforcement agency.

**39 Subsection 251(1)**

Insert:

*overseas financial sector supervisory agency* means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

**40 Subsection 251(1) (at the end of the definition of *protected document*)**

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

**41 Subsection 251(1) (at the end of the definition of *protected information*)**

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

**42 Subsection 251(2)**

After “Act”, insert “or any other Act of which the Commissioner has the general administration”.

**43 At the end of subsection 251(2)**

Add:

Penalty: Imprisonment for 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.

**44 Paragraph 251(4)(b)**

After “Act”, insert “or any other Act of which the Commissioner has the general administration”.

**45 After paragraph 251(4)(c)**

Insert:

(ca) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or

**46 At the end of subsection 251(4)**

Add:

; or (e) if the Treasurer states in writing that, in his or her opinion, it is in the public interest that the information be disclosed or the document be produced to members of the public—a member of the public.

**47 Subsection 251(7)**

Before “compliance”, insert “person who is or has been a”.

**48 After subsection 251(7)**

Insert:

(7A) Paragraphs (4)(d) and (e) do not authorise the disclosure of information, or the production of a document, relating to the personal affairs of an individual if the disclosure or production, as the case requires, would be unreasonable in the circumstances.

**49 After subsection 251(8)**

Insert:

(8A) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the

information contained in the document, as the case may be, is in the form of a summary or collection of information that is so prepared that information relating to any particular person cannot be found out from it.

**50 At the end of subsection 251(9)**

Add:

Penalty: Imprisonment for 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.

**51 At the end of section 251**

Add:

- (11) At the end of 5 years after the commencement of this subsection, the definition of *overseas financial sector supervisory agency* in subsection (1), and paragraphs(4)(ca) and (e), are taken to be repealed.

**52 Schedule (definition of *continuous disability policy*)**

Repeal the definition, substitute:

*continuous disability policy* has the meaning given by section 9A.

**53 Schedule**

Insert:

*produce* includes permit access to.

## Schedule 13—Amendment of the Reserve Bank Act 1959

### 1 Subsection 44(1)

Omit “\$1,000”, substitute “10 penalty units”.

### 2 After section 79

Insert:

#### 79A Secrecy

(1) In this section:

*court* includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

*financial institution* means a body (other than the Reserve Bank) that has at any time carried on, is carrying on, or proposes to carry on, a business that consists of, or includes, the provision of financial products or financial services (including a body that has previously carried on such a business but has ceased to exist).

*financial sector supervisory agency* means a person or body having the function, in Australia or in a foreign country, of supervising or regulating financial institutions.

*officer* means:

- (a) the Governor, a Deputy Governor, the Secretary to the Department or any other member of the Board; or
- (b) an officer, or a temporary or casual employee, of the Reserve Bank; or
- (c) a person engaged by the Reserve Bank to perform services for the Bank; or
- (d) the Statistician or a member of the staff of the Australian Bureau of Statistics; or
- (e) any other person who, because of his or her employment, or in the course of that employment:
  - (i) has acquired protected information; or
  - (ii) has had access to protected documents.



**produce** includes permit access to.

**protected document** means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act, the *Banking Act 1959*, the *Banks (Shareholdings) Act 1972* or the *Financial Corporations Act 1974* and containing information relating to the affairs of:

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

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

**protected information** means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act, the *Banking Act 1959*, the *Banks (Shareholdings) Act 1972* or the *Financial Corporations Act 1974* and relating to the affairs of:

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

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

**Statistician** means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

- (2) Subject to this section, a person who is or has been an officer must not, except for the purposes of this Act, the *Banking Act 1959*, the *Banks (Shareholdings) Act 1972* or the *Financial Corporations Act 1974*, directly or indirectly:

- (a) disclose to any person, or to a court, any protected information acquired by the first-mentioned person in the course of his or her duties as an officer; or

(b) produce to any person, or to a court, a protected document.

Penalty: Imprisonment for 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 form of imprisonment.

- (3) Subsection (2) does not prohibit a person from disclosing prohibited information, or producing a protected document, if the person to whose affairs the information or document relates:
- (a) is the employer of the first-mentioned person; or
  - (b) agrees in writing to the disclosure of the information or the production of the document, as the case may be.
- (4) Subsection (2) does not prohibit a person from disclosing protected information or producing a protected document:
- (a) if the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency to perform its functions or exercise its powers—to that agency; or
  - (b) if the Governor approves—to another person.
- (5) The Governor may, by signed writing:
- (a) give approvals for the purposes of paragraph (4)(b); or
  - (b) delegate to a Deputy Governor or an officer of the Reserve Bank the power to give approvals for the purposes of that paragraph.
- (6) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, to:
- (a) the Governor, a Deputy Governor or any other member of the Board; or
  - (b) an officer, or a temporary or casual employee, of the Reserve Bank; or
  - (c) a person engaged by the Reserve Bank to perform services for the Bank;
- for the purposes of the performance of the functions, or the exercise of the powers, of the Bank under a law of the Commonwealth, of a State or of a Territory.
- (7) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in

the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

- (8) A person who is or has been an officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of this Act, the *Banking Act 1959*, the *Banks (Shareholdings) Act 1972* or the *Financial Corporations Act 1974*.
- (9) A document that:
  - (a) is a protected document; or
  - (b) contains protected information;is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.
- (10) At the end of 5 years after the commencement of this section, the definition of **financial sector superisory agency** in subsection (1), and subsections (4) and (5), are taken to be repealed.

**79B Secrecy: documents or information to which section 79A does not apply**

- (1) Subject to this section, an officer, agent or other person carrying on any business of the Reserve Bank must not:
  - (a) permit a person to have access to, or give to a person copies of or extracts from, a document belonging to, or in the possession of, the Reserve Bank; or
  - (b) give to a person information relating to the business of the Reserve Bank;except by the direction or authority of the Reserve Bank or under compulsion or obligation of law.  
  
Penalty: 1 penalty unit.
- (2) Paragraph (1)(b) does not apply to the giving to a person of information with respect to matters of a customer of the Reserve Bank if the person is the customer or the information is given at the direction or request of the customer.
- (3) Subsection (1) does not apply to:
  - (a) a document that is a protected document for the purposes of section 79A; or

- (b) information that is protected information for the purposes of that section.

**3 Subsection 81A(1)**

Omit “*Companies Act 1981*”, substitute “Corporations Law”.

**4 Subsection 81A(3)**

Repeal the subsection, substitute:

- (3) In this section:

*listed corporation* means a body corporate that is included in the official list of a stock exchange.

- (4) Subject to subsection (3), expressions used in this section that are also used in the Corporations Law have the same meanings as they have in that Law.

**5 After section 85**

Insert:

**85A Judicial notice of statistical information published by Bank**

- (1) All courts, judges and persons acting judicially are to take judicial notice of statistical information contained in a publication issued in the name of, by, or under the authority of, the Bank.
- (2) A publication purporting to be issued in the name of, by, or under the authority of, the Bank is to be taken, in any judicial or other proceeding, to have been so issued unless the contrary is proved.

## **Schedule 14—Amendment of the Superannuation Industry (Supervision) Act 1993**

### **1 Subsection 10(1) (at the end of the definition of *protected document*)**

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

### **2 Subsection 10(1) (at the end of the definition of *protected information*)**

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

### **3 Subsection 346(1)**

Insert:

*court* includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

### **4 Subsection 346(1)**

Insert:

*financial sector supervisory agency* means a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section.

### **5 Subsection 346(1)**

Insert:

*law enforcement agency* means a person or body declared by the regulations to be a law enforcement agency for the purposes of this section.

### **6 Subsection 346(1)**

Insert:

*overseas financial sector supervisory agency* means a person or body declared by the regulations to be an overseas financial sector supervisory agency for the purposes of this section.

Note: The heading to subsection 346(1) is replaced by the heading “*Definitions*”.

### **7 Subsection 346(2)**

After “Act”, insert “or any other Act of which the Commissioner has the general administration”.

### **8 At the end of subsection 346(2)**

Add:

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.

### **9 At the end of subsection 346(2A)**

Add:

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.

### **10 Paragraph 346(6)(c)**

After “Act”, insert “or any other Act of which the Commissioner has the general administration”.

### **11 After paragraph 346(6)(d)**

Insert:

- (daa) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
- (dab) an overseas financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or

### **12 After subsection 346(6A)**

Insert:

- (6AB) Subsection (2) does not prohibit a superannuation standards officer from disclosing protected information, or producing a protected document, to:
  - (a) a law enforcement agency; or

- (b) a member of the staff referred to in subsection 13(1) of the *Insurance and Superannuation Commissioner Act 1987*; or
- (c) a person engaged under subsection 13(3) of that Act.

(6AC) A person who is or has been a superannuation standards officer may only disclose protected information, or produce a protected document, to a law enforcement agency for the purposes of the performance by the agency of its functions in relation to an offence or alleged offence against a law of the Commonwealth, of a State or of a Territory.

(6AD) A person who is or has been a superannuation standards officer may only disclose protected information, or produce a protected document, to a person referred to in paragraph (6AB)(b) or (c) for the purposes of the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under a law of the Commonwealth.

### **13 At the end of subsection 346(7)**

Add "or any other Act of which the Commissioner has the general administration".

### **14 After subsection 346(7)**

Insert:

(7A) Subsection (2) does not prohibit a person from disclosing information, or producing a document, if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is so prepared that information relating to any particular person cannot be found out from it.

### **15 Subsection 346(9)**

After "Act", insert "or any other Act of which the Commissioner has the general administration".

### **16 After subsection 346(9)**

Insert:

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.

### **17 Subsection 346(11)**

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Repeal the subsection, substitute:

- (11) At the end of 5 years after the commencement of this subsection, the definitions of *financial sector supervisory agency*, *law enforcement agency* and *overseas financial sector supervisory agency* in subsection (1), paragraphs (6)(daa) and (dab) and subsections (6AB), (6AC) and (6AD) are taken to be repealed.
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*[Minister's second reading speech made in—  
House of Representatives on 21 November 1996  
Senate on 10 February 1997]*

(178/96)



I HEREBY CERTIFY that the above is a fair print of the Financial Laws Amendment Bill 1997 which originated in the House of Representatives as the Financial Laws Amendment Bill 1996 and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
1997