



# **Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015**

**No. 87, 2015**

**An Act to deal with consequential and transitional  
matters arising from the enactment of the *Private  
Health Insurance (Prudential Supervision) Act 2015*,  
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 87, 2015**

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**An Act to deal with consequential and transitional matters arising from the enactment of the *Private Health Insurance (Prudential Supervision) Act 2015*, and for related purposes**

[Assented to 26 June 2015]

The Parliament of Australia enacts:

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No. 87, 2015      *Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015*      1

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## 1 Short title

This Act may be cited as the *Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 June 2015
2. Schedule 1, Part 1, Division 1	At the same time as section 1 of the <i>Private Health Insurance (Prudential Supervision) Act 2015</i> commences.	1 July 2015
3. Schedule 1, item 178	The later of: (a) the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of item 10 of Schedule 1 to the <i>Private Health Insurance Amendment Act 2015</i> .	1 July 2015
4. Schedule 1, item 179	The later of: (a) the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of item 17 of Schedule 1 to the <i>Private Health Insurance Amendment Act 2015</i> .	1 July 2015
5. Schedule 1, item 180	The later of: (a) the commencement of the provisions covered by table item 2; and	1 July 2015

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	(b) immediately after the commencement of item 19 of Schedule 1 to the <i>Private Health Insurance Amendment Act 2015</i> .	
6. Schedule 1, item 181	The later of: (a) the commencement of the provisions covered by table item 2; and (b) the commencement of Part 1 of Schedule 2 to the <i>Norfolk Island Legislation Amendment Act 2015</i> .	1 July 2016
7. Schedule 1, item 182	The later of: (a) immediately after the commencement of section 92 of the <i>Private Health Insurance (Prudential Supervision) Act 2015</i> ; and (b) the commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i> .	5 March 2016 (paragraph (b) applies)
8. Schedule 1, Part 2	At the same time as the provisions covered by table item 2.	1 July 2015
9. Schedule 2	The day after this Act receives the Royal Assent.	27 June 2015

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

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

### 3 Schedules

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

## Schedule 1—Consequential amendments

### Part 1—Amendments

#### Division 1—Main amendments

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

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

Insert:

*Collapsed Insurer Special Account*: see subsection 54F(1).

##### **2 Subsection 3(1) (definition of *prudential regulation framework law*)**

Omit “Acts”.

##### **3 Subsection 3(1) (after paragraph (j) of the definition of *prudential regulation framework law*)**

Insert:

(ja) the *Private Health Insurance (Prudential Supervision) Act 2015* or the risk equalisation levy legislation (within the meaning of that Act);

##### **4 After paragraph 3(2)(e)**

Insert:

(ea) a private health insurer, within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*;

##### **5 Subsection 8(1)**

Omit “APRA exists for the following purposes:”, substitute “The main purposes for which APRA exists are as follows:”

##### **6 Subsection 50(6) (definition of *levy*)**

Repeal the definition, substitute:



**levy** means levy paid or payable under the *Financial Institutions Supervisory Levies Collection Act 1998*, other than levy imposed by the following Acts:

- (a) the *Financial Claims Scheme (ADIs) Levy Act 2008*;
- (b) the *Financial Claims Scheme (General Insurers) Levy Act 2008*;
- (c) the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*;
- (d) the *Superannuation (Financial Assistance Funding) Levy Act 1993*.

## **7 Subsection 54(3)**

Repeal the subsection, substitute:

- (3) However, payments of the following kinds must not be debited from the APRA Special Account:
  - (a) payments to meet entitlements described in section 54C (Purposes of the Financial Claims Scheme Special Account), and other payments referred to in that section;
  - (b) collapsed insurer assistance payments within the meaning of section 54H (Purposes of the Collapsed Insurer Special Account);
  - (c) payments described in subsection 318-10(1) of the *Private Health Insurance Act 2007* (Purpose of the Risk Equalisation Special Account).

Note 1: APRA's administrative costs associated with making a payment referred to in paragraph (a), (b) or (c) may be debited from the APRA Special Account. However, the payment itself can be debited only from the Special Account referred to in that paragraph.

Note 2: In the case of APRA's administrative costs associated with making a payment referred to in paragraph (b), such costs may alternatively be debited from the Collapsed Insurer Special Account (see paragraph 54H(1)(c)).

## **8 After Division 2 of Part 5**

Insert:

## Division 2A—Collapsed insurer special account

### 54F Private Health Insurance Collapsed Insurer Special Account

- (1) The Private Health Insurance Collapsed Insurer Special Account (the *Collapsed Insurer Special Account*) is established by this section.
- (2) The Collapsed Insurer Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

### 54G Credits to the Collapsed Insurer Special Account

There must be credited to the Collapsed Insurer Special Account amounts equal to amounts received by APRA, under Part 3B of the *Financial Institutions Supervisory Levies Collection Act 1998*, by way of:

- (a) collapsed insurer levy; or
- (b) late payment penalty in respect of unpaid amounts of collapsed insurer levy.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

### 54H Purposes of the Collapsed Insurer Special Account

- (1) The purposes of the Collapsed Insurer Special Account are as follows:
  - (a) APRA making payments (*collapsed insurer assistance payments*) to help meet a collapsed insurer's liabilities to the people insured under its complying health insurance policies that the collapsed insurer is unable to meet itself;
  - (b) APRA making payments by way of refund, in accordance with regulations made for the purpose of this paragraph, of amounts paid (or purportedly paid) by way of:
    - (i) collapsed insurer levy; or

- (ii) late payment penalty in respect of unpaid amounts of collapsed insurer levy;
- (c) meeting APRA's administrative costs associated with APRA making payments referred to in paragraph (a) or (b).

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

- (2) The Minister may, by written notice to a collapsed insurer (or to an external manager or terminating manager of a collapsed insurer), determine conditions on which collapsed insurer assistance payments in respect of the insurer are made. The conditions may include conditions under which the insurer is liable to repay such payments to APRA.

Note: Repayments of collapsed insurer assistance payments are required to be credited to the Risk Equalisation Special Account: see section 318-5 of the *Private Health Insurance Act 2007*.

- (3) A notice under subsection (2) is not a legislative instrument.
- (4) In this section:

*collapsed insurer* has the same meaning as in the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*.

*complying health insurance policy* has the same meaning as in the *Private Health Insurance Act 2007*.

## ***Financial Institutions Supervisory Levies Collection Act 1998***

### **9 Section 6**

Insert:

*private health insurer* has the same meaning as in the *Private Health Insurance (Prudential Supervision) Act 2015*.

### **10 Section 7 (after paragraph (d) of the definition of *leviable body*)**

Insert:

(da) a private health insurer;

### 11 Section 7 (after paragraph (d) of the definition of *levy*)

Insert:

- (da) in respect of a leviable body that is a private health insurer—  
levy imposed by the *Private Health Insurance Supervisory  
Levy Imposition Act 2015*; or

### 12 After subsection 8(4)

Insert:

*Private health insurers: 2015-16 financial year*

- (4A) A body corporate that is a private health insurer on the liability day in a quarter in the financial year starting on 1 July 2015 is liable to pay a levy in respect of that quarter. However, this subsection does not apply to a quarter if the liability day for the quarter is before the commencement of this subsection.

- (4B) In subsection (4A):

***liability day*** in a quarter means the 28th day of the second month of the quarter.

***quarter*** means a period of 3 months starting on 1 July, 1 October, 1 January or 1 April.

*Private health insurers: 2016-17 financial year and later financial years*

- (4C) A body corporate that is a private health insurer at any time during the financial year starting on 1 July 2016 or a later financial year is liable to pay a levy in respect of that financial year.

### 13 Subsection 9(1)

Omit “(other than a superannuation entity) for a financial year under section 8”, substitute “for a financial year (other than levy payable under subsection 8(4A) or (6))”.

### 14 At the end of section 9

Add:

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- (3) Levy payable by a private health insurer for a quarter under subsection 8(4A) is payable on the 14th day after the liability day for the quarter.

Note: For the meaning of *quarter* and *liability day*, see subsection 8(4B).

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

Omit “rate of 20%”, substitute “applicable rate”.

### **16 At the end of section 10**

Add:

- (3) The *applicable rate*, in relation to an amount of unpaid levy, is:
- (a) 20% (unless the levy was imposed by the *Private Health Insurance Supervisory Levy Imposition Act 2015*); or
  - (b) if the levy was imposed by the *Private Health Insurance Supervisory Levy Imposition Act 2015*:
    - (i) 15% (unless subparagraph (ii) applies); or
    - (ii) if, under a legislative instrument made by the Minister for the purposes of this subparagraph, a specified rate of less than 15% applies in relation to the unpaid levy—that specified rate.

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

Add:

- (3) This section applies in relation to levy imposed by the *Private Health Insurance Supervisory Levy Imposition Act 2015* as if subsections (1) and (2) referred to the time when this subsection commences (rather than to the commencement of this section).

### **18 After Part 3A**

Insert:

## Part 3B—Private health insurance collapsed insurer levy

### 26J Definitions

In this Part:

*collapsed insurer levy day* has the same meaning as in the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*.

*late payment penalty* means penalty payable under section 26M.

*levy* means levy imposed by the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*.

*levy determination*, in relation to a collapsed insurer levy day, means the determination under section 7 of the *Private Health Insurance (Collapsed Insurer Levy) Act 2003* because of which that day is a collapsed insurer levy day.

### 26K Liability to levy

A private health insurer is liable to pay a levy imposed on the insurer on a collapsed insurer levy day.

### 26L When levy due for payment

A levy imposed on a private health insurer on a collapsed insurer levy day is due and payable on the day specified in the levy determination as the payment day in relation to that collapsed insurer levy day.

### 26M Late payment penalty

- (1) If any levy payable by a private health insurer:
  - (a) is not paid on or before the day on which it is due and payable (the *due day for payment*); and
  - (b) remains unpaid after the penalty calculation day;the insurer is liable to pay, by way of penalty, an amount worked out at the applicable rate per year on the amount unpaid, computed

from the end of the due day for payment to the end of the penalty calculation day.

- (2) The **penalty calculation day** is:
- (a) if the levy is paid on or after the first day of a month and before the sixth day of that month—the 20th day of the immediately preceding month; or
  - (b) if the levy is paid on or after the sixth day of a month and before the 20th day of that month—the sixth day of that month; or
  - (c) if the levy is paid on or after the 20th day of a month and on or before the last day of that month—the 20th day of that month.
- (3) The **applicable rate**, in relation to an amount of unpaid levy, is:
- (a) 15% (unless paragraph (b) applies); or
  - (b) if, under a legislative instrument made by the Minister for the purposes of this paragraph, a specified rate of less than 15% applies in relation to the unpaid levy—that specified rate.

#### **26N Payment of levy and late payment penalty**

Levy and late payment penalty are payable to APRA on behalf of the Commonwealth.

#### **26P Waiver of levy and late payment penalty**

- (1) The Minister may waive the whole or a part of an amount of levy or late payment penalty.
- (2) The Minister may, in writing, delegate to APRA the power under subsection (1) to waive levy or late payment penalty.

#### **26Q Recovery of levy and late payment penalty**

- (1) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:
  - (a) levy that is due and payable;
  - (b) late payment penalty that is due and payable.

- (2) APRA may bring proceedings in the name of the Commonwealth (as its agent) for the recovery of a debt due to the Commonwealth as described in subsection (1).

**26R Exempting laws ineffective**

- (1) A law made before the commencement of this section does not exempt a private health insurer from liability to pay levy.
- (2) A law made on or after the commencement of this section purporting to exempt a private health insurer from liability to pay taxes under laws of the Commonwealth that would otherwise include levy does not exempt the private health insurer from liability to pay levy unless the exemption expressly refers to levy under the Act under which the levy is imposed.

**19 Subsection 27(10) (paragraph (b) of the definition of *decision maker*)**

After “section 22”, insert “or subsection 26P(1)”.

**20 Subsection 27(10) (at the end of paragraph (b) of the definition of *reviewable decision*)**

Add “or subsection 26P(1)”.

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

**21 Paragraph 3(1)(a)**

Omit “in the prudential regulation or monitoring of bodies in the financial sector”, substitute “to perform its functions or exercise its powers under other laws”.

**22 Paragraph 7(2)(d)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.



***Income Tax Assessment Act 1997***

**23 Section 50-30 (table item 6.3)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**24 Paragraph 315-5(b)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**25 Paragraph 315-15(a)(note)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**26 Paragraph 315-15(b)**

Repeal the paragraph, substitute:

- (b) an application by the entity to convert to being registered as a for profit insurer (within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*) is approved under subsection 20(5) of that Act; and

**27 Paragraph 315-15(c)**

Omit “126-42(2)(b)”, substitute “20(2)(a)”.

**28 Paragraph 315-90(1)(a)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**29 Paragraph 315-140(a)**

Omit “paragraph 126-42(2)(b) of the *Private Health Insurance Act 2007*”, substitute “paragraph 20(2)(a) of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

**30 Subparagraph 315-140(c)(i)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**31 Paragraph 315-310(2)(a)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**32 Subparagraph 316-5(a)(i)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

**33 Subsection 316-65(1) (definitions of *embedded value of the friendly society’s other business (if any)* and *market value of the friendly society’s health insurance business (if any)*)**

Omit “*Private Health Insurance Act 2007*”, substitute “*Private Health Insurance (Prudential Supervision) Act 2015*”.

***Life Insurance Act 1995***

**34 Subsection 16ZB(2) (note)**

After “*Private Health Insurance Act 2007*”, insert “and the *Private Health Insurance (Prudential Supervision) Act 2015*”.

***Medibank Private Sale Act 2006***

**35 After paragraph 9(7)(ba) of Schedule 2**

Insert:

(bb) a provision of the *Private Health Insurance (Prudential Supervision) Act 2015*; or

**36 Subitem 10(8) of Schedule 2**

Omit “section 137-10 of the *Private Health Insurance Act 2007*”, substitute “section 28 of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

**37 At the end of subitems 14(1) and 14(2) of Schedule 2**

Add:

; or (e) a provision of the *Financial Sector (Collection of Data) Act 2001*; or

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(f) a provision of the *Private Health Insurance (Prudential Supervision) Act 2015*.

**38 After paragraph 15(3)(ba) of Schedule 2**

Insert:

(bb) a provision of the *Private Health Insurance (Prudential Supervision) Act 2015*; or

**39 Subitems 16(2) and 21(2) of Schedule 2**

Omit “section 137-10 of the *Private Health Insurance Act 2007*”, substitute “section 28 of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

**40 After paragraph 22(3)(ba) of Schedule 2**

Insert:

(bb) a provision of the *Private Health Insurance (Prudential Supervision) Act 2015*; or

**41 Subitems 23(2) and 58(8) of Schedule 2**

Omit “section 137-10 of the *Private Health Insurance Act 2007*”, substitute “section 28 of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

***Private Health Insurance Act 2007***

**42 Subsection 1-10(6) (table item 1)**

Repeal the item.

**43 Paragraph 3-1(b)**

Omit “\*products; and”, substitute “\*products.”.

**44 Paragraph 3-1(c)**

Repeal the paragraph.

**45 At the end of section 3-1**

Add:

Note: The *Private Health Insurance (Prudential Supervision) Act 2015* sets out the registration process for private health insurers, imposes requirements about how private health insurers conduct health insurance business and deals with other matters in relation to the prudential supervision of private health insurers.

**46 Section 3-15**

Repeal the section, substitute:

**3-15 Health insurance business, health benefits funds and miscellaneous obligations of private health insurers (Chapter 4)**

Chapter 4 defines the key concepts of \*health insurance business and \*health benefits funds. It also deals with some related matters and imposes miscellaneous obligations on private health insurers.

**47 Paragraph 84-10(3)(b)**

Repeal the paragraph.

**48 Section 90-1**

Omit “, the Council”.

**49 Subsection 93-20(4) (note)**

Omit “Division 146”, substitute “Division 4 of Part 3 of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

**50 Division 96 (heading)**

Repeal the heading, substitute:

**Division 96—Giving information to the Department and the Private Health Insurance Ombudsman**

**51 Paragraphs 96-1(b), 96-5(b), 96-10(b) and 96-15(1)(b)**

Repeal the paragraphs.

**52 Section 96-20 (heading)**

Repeal the heading, substitute:

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**96-20 Failure to give information to Department or Private Health Insurance Ombudsman**

**53 Paragraph 96-25(b)**

Omit “, the Council”.

**54 Chapter 4 (heading)**

Repeal the heading, substitute:

**Chapter 4—Health insurance business, health benefits funds and miscellaneous obligations of private health insurers**

**55 Section 110-1**

Repeal the section, substitute:

**110-1 What this Chapter is about**

This Chapter defines the key concepts of health insurance business and health benefits funds. It also deals with some related matters and imposes miscellaneous obligations on private health insurers.

**56 Part 4-2 (heading)**

Repeal the heading, substitute:

**Part 4-2—Health insurance business**

**57 Section 115-1**

Repeal the section, substitute:

**115-1 What this Part is about**

This Part defines the key concept of health insurance business.

## Schedule 1 Consequential amendments

### Part 1 Amendments

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Note: Entities are only permitted to carry on health insurance business if they are registered under Division 3 of Part 2 of the *Private Health Insurance (Prudential Supervision) Act 2015*.

#### 58 Section 115-5

Repeal the section, substitute:

#### 115-5 Private Health Insurance (Health Insurance Business) Rules

- (1) The Private Health Insurance (Health Insurance Business) Rules also deal with matters relating to \*health insurance business. The provisions of this Part indicate when a particular matter is or may be dealt with in these Rules.

Note: The Private Health Insurance (Health Insurance Business) Rules are made by the Minister under section 333-20.

- (2) Before making Private Health Insurance (Health Insurance Business) Rules, the Minister must consult \*APRA. However, a failure to consult APRA does not affect the validity of those Rules.

Note: This consultation requirement also applies to any repeal or amendment of such Rules: see subsection 33(3) of the *Acts Interpretation Act 1901*.

#### 59 Division 118

Repeal the Division.

#### 60 Part 4-3

Repeal the Part.

#### 61 Division 131 (heading)

Repeal the heading, substitute:

#### Division 131—Health benefits funds

#### 62 Section 131-1

Repeal the section, substitute:

### 131-1 What this Part is about

This Part defines the key concept of a health benefits fund.

This Part also defines the concepts of health-related business and risk equalisation jurisdictions, and deals with some related matters (including the operation of health-related businesses through health benefits funds).

Note: The *Private Health Insurance (Prudential Supervision) Act 2015* requires private health insurers to have health benefits funds. Health benefits funds must be operated in accordance with the requirements of that Act.

### 63 Section 131-5

Repeal the section, substitute:

#### 131-5 Private Health Insurance (Health Benefits Fund Policy) Rules

- (1) \*Health benefits funds (and some related matters) are also dealt with in the Private Health Insurance (Health Benefits Fund Policy) Rules. The provisions of this Part indicate when a particular matter is or may be dealt with in these Rules.

Note: The Private Health Insurance (Health Benefits Fund Policy) Rules are made by the Minister under section 333-20.

- (2) Before making Private Health Insurance (Health Benefits Fund Policy) Rules for the purposes of section 131-15, the Minister must consult \*APRA. However, a failure to consult APRA does not affect the validity of those Rules.

Note: This consultation requirement also applies to any repeal or amendment of such Rules: see subsection 33(3) of the *Acts Interpretation Act 1901*.

### 64 After section 131-15

Insert:

#### 131-20 Risk equalisation jurisdictions

- (1) An area is a *risk equalisation jurisdiction* if the Private Health Insurance (Health Benefits Fund Policy) Rules so provide.

- (2) The Private Health Insurance (Health Benefits Fund Policy) Rules may specify circumstances in which a private health insurer may (despite subsection 23(2) of the *Private Health Insurance (Prudential Supervision) Act 2015*) have more than one \*health benefits fund in respect of a particular \*risk equalisation jurisdiction.

### **131-25 Operation of health-related businesses through health benefits funds**

If a private health insurer has a \*health benefits fund in respect of its \*health insurance business and some or all of its \*health-related businesses, the insurer must comply with any requirements specified in the Private Health Insurance (Health Benefits Fund Policy) Rules relating to how the health-related businesses are to be conducted.

### **65 Divisions 134 to 152**

Repeal the Divisions.

### **66 Part 4-5 (heading)**

Repeal the heading, substitute:

## **Part 4-5—Miscellaneous obligations of private health insurers**

### **67 Section 157-1**

Repeal the section, substitute:

#### **157-1 What this Part is about**

This Part imposes miscellaneous notification and other obligations on private health insurers.
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### **68 Section 157-5 (heading)**

Repeal the heading, substitute:

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## **157-5 Private Health Insurance (Data Provision) Rules**

### **69 Section 157-5**

Omit “Private Health Insurance (Insurer Obligations) Rules and the”.

### **70 Section 157-5 (note)**

Omit “The Private Health Insurance (Insurer Obligations) Rules are made by the Council under section 333-25.”

### **71 Divisions 160, 163 and 166**

Repeal the Divisions.

### **72 Division 169 (heading)**

Repeal the heading, substitute:

## **Division 169—Notification obligations**

### **73 Sections 169-1 and 169-5**

Repeal the sections.

### **74 Subsection 169-10(3)**

Omit “and the Council”, substitute “and \*APRA”.

### **75 Section 169-15**

Repeal the section.

### **76 Division 172 (heading)**

Repeal the heading, substitute:

## **Division 172—Other obligations**

### **77 Section 172-1**

Repeal the section.

### **78 Subparagraphs 172-15(a)(ii) and (b)(ii)**

Omit “Division 149, 152, 203 or 293”, substitute “Division 203”.

**79 Section 180-1**

Omit “Both the Minister and the Council have powers under this Chapter.”

**80 Section 185-1**

Repeal the section, substitute:

**185-1 Introduction**

This Part gives the Minister powers to enable him or her to find out whether a private health insurer is complying with its enforceable obligations and to encourage or compel an insurer to comply with those obligations.

The Minister can:

- (a) set performance indicators for insurers; or
- (b) seek explanations from insurers; or
- (c) investigate insurers; or
- (d) obtain enforceable undertakings from insurers; or
- (e) direct insurers to do particular things; or
- (f) seek remedies in the Federal Court; or
- (g) revoke an insurer’s entitlement to offer tax rebates as premium reductions.

**81 Paragraph 185-5(b)**

Omit “or 333-25”.

**82 Paragraph 185-5(e)**

Omit “subsection 126-20(6)”, substitute “subsection 15(3) of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

**83 Section 185-10**

Repeal the section.

**84 Section 191-1**

Repeal the section, substitute:

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**191-1 Minister may seek an explanation from a private health insurer**

- (1) If, having regard to information available to the Minister or to any performance indicators under the Private Health Insurance (Complying Product) Rules, the Minister believes that a private health insurer may have contravened an \*enforceable obligation, the Minister may write to the private health insurer:
  - (a) explaining the Minister's concerns; and
  - (b) asking the insurer to explain its operations in relation to those concerns; and
  - (c) specifying the period within which the Minister requires the insurer's response.
- (2) The private health insurer must respond within the specified period, or any longer period that the Minister, in writing before the end of the specified period, allows.
- (3) If the Minister refuses a request by the private health insurer for a longer period to respond, the Minister must state the Minister's reasons for refusing.

Note: Refusals of requests for longer periods to respond are reviewable under Part 6-9.

**85 Section 191-5 (heading)**

Repeal the heading, substitute:

**191-5 Minister must respond to insurer's explanation**

**86 Section 191-5**

Omit "writer under subsection 191-1(1)", substitute "Minister".

**87 Paragraphs 191-5(a) and (b)**

Omit "writer" (wherever occurring), substitute "Minister".

**88 Before section 194-1**

Insert:

**194-1A Purposes for which powers may be exercised etc.**

- (1) The powers in this Division may only be exercised for the purposes of this Act.
- (2) The powers in this Division cannot be exercised for the purposes of this Act, as it applies in relation to:
  - (a) levy imposed under the *Private Health Insurance (Risk Equalisation Levy) Act 2003*; or
  - (b) the Risk Equalisation Special Account.

**89 Section 194-1 (heading)**

Repeal the heading, substitute:

**194-1 Minister may investigate a private health insurer**

**90 Subsection 194-1(1)**

Omit “(1)”.

**91 Subsection 194-1(2)**

Repeal the subsection.

**92 Subsection 194-5(1)**

Omit “, or, if subsection 194-1(2) applies, the Council,”

**93 Subsections 194-5(1), (2) and (3)**

Omit “notice-giver” (wherever occurring), substitute “Minister”.

**94 Subsections 194-10(1) and 194-15(1)**

Omit “, or, if subsection 194-1(2) applies, the Council,”.

**95 Subsections 194-15(1), (2) and (3)**

Omit “notice-giver” (wherever occurring), substitute “Minister”.

**96 Subsection 194-25(1)**

Omit “, or, if subsection 194-1(2) applies, the Council,”.

**97 Section 194-30**

Repeal the section.

**98 Section 194-35 (heading)**

Repeal the heading, substitute:

**194-35 Minister must notify outcome of investigation**

**99 Section 194-35**

Omit “or the Council (whichever was the investigator)”.

**100 Paragraphs 194-35(a) and (b)**

Omit “investigator” (wherever occurring), substitute “Minister”.

**101 Section 197-1 (heading)**

Repeal the heading, substitute:

**197-1 Minister may accept written undertakings given by a private health insurer**

**102 Paragraph 197-1(1)(a)**

After “of the insurer”, insert “in relation to one or more matters of a kind regulated by this Act”.

**103 Subsection 197-1(2)**

Repeal the subsection.

**104 Subsection 197-5(1)**

Repeal the subsection, substitute:

- (1) If the Minister considers that a private health insurer that gave an undertaking under this Division has contravened any of its terms, the Minister may apply to the Federal Court for an order under subsection (2).

**105 Division 200 (heading)**

Repeal the heading, substitute:

## **Division 200—Ministerial directions**

### **106 Section 200-1 (heading)**

Repeal the heading, substitute:

#### **200-1 Minister may give directions**

### **107 Subsections 200-1(1) and (2)**

Repeal the subsections, substitute:

- (1) If, at any time and for any reason, the Minister considers that it will assist in the prevention of \*improper discrimination to do so, the Minister may give a direction to a private health insurer requiring it:
- (a) to modify its day-to-day operations in a particular respect; or
  - (b) to modify its \*rules in a particular respect; or
  - (c) if the insurer is a \*restricted access insurer—to modify the provisions included in its constitution or \*rules in order to comply with subsection 15(3) of the *Private Health Insurance (Prudential Supervision) Act 2015* in a particular respect.

Note: A decision to give a direction is reviewable under Part 6-9.

- (2) If, at any time and for any reason, the Minister considers that there appears to be a contravention of an \*enforceable obligation involving \*improper discrimination by a private health insurer, the Minister may give a direction to the insurer requiring it to address the contravention by:
- (a) modifying its day-to-day operations; or
  - (b) modifying its \*rules; or
  - (c) if the insurer is a \*restricted access insurer—modifying the provisions included in its constitution or \*rules in order to comply with subsection 15(3) of the *Private Health Insurance (Prudential Supervision) Act 2015*.

Note: A decision to give a direction is reviewable under Part 6-9.

### **108 Subsection 200-1(3)**

Omit “person who gives the direction”, substitute “Minister”.

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**109 Subsection 200-1(5)**

Repeal the subsection, substitute:

- (5) A direction given under this section must be published on the Department's website not later than 5 working days after the direction is given.

**110 Paragraph 200-5(b)**

Omit "person giving the direction", substitute "Minister".

**111 Section 200-5 (note)**

Repeal the note.

**112 Section 203-1 (heading)**

Repeal the heading, substitute:

**203-1 Minister may apply to the Federal Court**

**113 Subsection 203-1(1)**

Omit "(1)".

**114 Subsection 203-1(2)**

Repeal the subsection.

**115 Subsection 203-10(1)**

Omit "(whether on application by the Minister or the Council)".

**116 Subsections 203-15(1) and 203-20(1)**

Omit "on application by the Minister".

**117 Subsection 203-25(1)**

Omit "(whether on application by the Minister or the Council)".

**118 Section 203-60 (heading)**

Repeal the heading, substitute:

**203-60 Minister may require person to assist**

**119 Paragraph 203-60(1)(a)**

Omit “by the Minister”.

**120 Subsection 203-60(2)**

Repeal the subsection.

**121 Subsections 203-60(3) and (5)**

Omit “or Council” (wherever occurring).

**122 Subsection 203-60(7)**

Omit “and the Council”.

**123 Part 5-3**

Repeal the Part.

**124 Paragraphs 230-1(b) and (d)**

Repeal the paragraphs.

**125 Paragraph 230-1(f)**

Omit “Risk Equalisation Trust Fund”, substitute “Risk Equalisation Special Account”.

**126 Parts 6-3 and 6-5**

Repeal the Parts.

**127 Paragraphs 304-10(a) and (c)**

Repeal the paragraphs.

**128 At the end of section 304-10**

Add:

Note: Private health insurers are also liable to pay levies imposed by the *Private Health Insurance Supervisory Levy Imposition Act 2015* and the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*. This Part does not apply to those levies. The collection of those levies is dealt with in the *Financial Institutions Supervisory Levies Collection Act 1998*.



**129 Subparagraphs 307-1(1)(a)(i) and (ii)**

Repeal the subparagraphs.

**130 Subsection 307-1(2)**

Repeal the subsection, substitute:

- (2) The Minister must obtain, and take into account, advice from \*APRA in relation to the day that is to be specified as the payment day in a determination made under subparagraph (1)(a)(iv).

**131 Subsection 307-1(3)**

Repeal the subsection.

**132 Subsections 307-10(2) and (3)**

Repeal the subsections, substitute:

- (2) The following must be paid to \*APRA, on behalf of the Commonwealth:
- (a) \*risk equalisation levy;
  - (b) \*late payment penalty in respect of risk equalisation levy.

Note: These amounts are to be credited to the Risk Equalisation Special Account: see section 318-5.

**133 Paragraph 307-15(3)(b)**

Repeal the paragraph, substitute:

- (b) \*APRA (as agent of the Commonwealth), in respect of a debt payable under subsection 307-10(2).

**134 Section 307-20 (heading)**

Repeal the heading, substitute:

**307-20 Waiver of late payment penalty**

**135 Subsection 307-20(2)**

Repeal the subsection, substitute:

- (2) \*APRA may waive the whole or part of an amount of \*late payment penalty in respect of an unpaid amount of \*risk equalisation levy if APRA considers that there are good reasons for doing so.

**136 Section 307-25**

Repeal the section.

**137 Section 310-1 (heading)**

Repeal the heading, substitute:

**310-1 Returns relating to complaints levy**

**138 Subsections 310-1(1) and (2)**

Repeal the subsections, substitute:

- (1) A private health insurer must lodge a return for each day that, under the *Private Health Insurance (Complaints Levy) Act 1995*, is a census day.

**139 Paragraphs 310-1(3)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) be lodged with the Secretary of the Department within 28 days after the census day.

**140 Paragraph 310-5(2)(b)**

Repeal the paragraph, substitute:

- (b) another form approved by:
- (i) the Secretary of the Department, if the records relate to \*complaints levy; or
  - (ii) \*APRA, if the records relate to \*risk equalisation levy.

**141 Section 310-10 (heading)**

Repeal the heading, substitute:

**310-10 Power to request information from insurer**

**142 Subsection 310-10(1)**

Repeal the subsection, substitute:

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- (1) \*APRA may, if it believes on reasonable grounds that a private health insurer is capable of giving information that is relevant to:
- (a) whether the insurer is liable to pay \*risk equalisation levy; or
  - (b) the amount of risk equalisation levy that the insurer is liable to pay;
- request the insurer to give APRA the information or records that are specified in the request, before the end of the period specified in the request.

**143 Division 313 (heading)**

Repeal the heading, substitute:

**Division 313—Power to enter premises and search for documents related to complaints levy**

**144 Subsection 313-1(1)**

Omit “A person who is a member of staff of the Council or authorised in writing by the Minister for this purpose (both of these kinds of persons are *authorised officers*)”, substitute “A person (an *authorised officer*) who is authorised in writing by the Minister for this purpose”.

**145 Paragraphs 313-1(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) whether a private health insurer is liable to pay \*complaints levy; or
- (b) the amount of complaints levy that the insurer is liable to pay.

**146 Subsections 313-20(1) and (2)**

Omit “Council”, substitute “Secretary of the Department”.

**147 Part 6-7**

Repeal the Part, substitute:

## **Part 6-7—Private Health Insurance Risk Equalisation Special Account**

### **Division 318—Private Health Insurance Risk Equalisation Special Account**

#### **318-1 Private Health Insurance Risk Equalisation Special Account**

- (1) The Private Health Insurance Risk Equalisation Special Account (the *Risk Equalisation Special Account*) is established by this section.
- (2) The \*Risk Equalisation Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

#### **318-5 Credits to the Risk Equalisation Special Account**

There must be credited to the \*Risk Equalisation Special Account amounts equal to the following:

- (a) amounts received by \*APRA by way of:
  - (i) \*risk equalisation levy; or
  - (ii) \*late payment penalty in respect of unpaid amounts of risk equalisation levy;
- (b) any of the following other amounts received by APRA:
  - (i) amounts received under paragraph 45(b), or section 46, of the *Private Health Insurance (Prudential Supervision) Act 2015*;
  - (ii) repayments of collapsed insurer assistance payments (within the meaning of section 54H of the *Australian Prudential Regulation Authority Act 1998*);
- (c) amounts paid to the Commonwealth or APRA, by a State or Territory, for crediting to the Risk Equalisation Special Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

### **318-10 Purpose of the Risk Equalisation Special Account**

- (1) The purpose of the \*Risk Equalisation Special Account is for \*APRA to make payments to private health insurers in accordance with the Private Health Insurance (Risk Equalisation Policy) Rules.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

- (2) The Private Health Insurance (Risk Equalisation Policy) Rules must specify:
- (a) the circumstances in which private health insurers are to be paid amounts debited from the \*Risk Equalisation Special Account; and
  - (b) the method for working out the amount to be so debited from the Account for payment to a private health insurer; and
  - (c) the method for working out the amount to be paid, for crediting to the Account, by private health insurers as \*risk equalisation levy.
- (3) Before making Private Health Insurance (Risk Equalisation Policy) Rules, the Minister must consult \*APRA. However, a failure to consult APRA does not affect the validity of those Rules.

Note: This consultation requirement also applies to any repeal or amendment of such Rules: see subsection 33(3) of the *Acts Interpretation Act 1901*.

### **318-15 Record keeping**

The Private Health Insurance (Risk Equalisation Administration) Rules may set out requirements for private health insurers that are liable to \*risk equalisation levy to keep particular kinds of records, and requirements relating to how those records are to be kept.

### **148 After paragraph 323-1(1)(a)**

Insert:

- (aa) the duty, function or power is not an \*APRA private health insurance duty, function or power; and

### **149 After subsection 323-1(1)**

Insert:

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(1A) An *APRA private health insurance duty, function or power* is a duty, function or power of \*APRA, or that a person has in the person's capacity as an officer (within the meaning of section 56 of the *Australian Prudential Regulation Authority Act 1998*), under any of the following:

- (a) this Act;
- (b) the *Private Health Insurance (Prudential Supervision) Act 2015*;
- (c) the *Financial Institutions Supervisory Levies Collection Act 1998*, as that Act applies in relation to levies imposed on private health insurers;
- (d) the *Financial Sector (Collection of Data) Act 2001*, as that Act applies in relation to private health insurers.

Note: The disclosure of information regime for information obtained under APRA private health insurance duties, functions and powers is Part 6 of the *Australian Prudential Regulation Authority Act 1998* (rather than this Division).

#### **150 Subparagraph 323-1(2)(a)(i)**

Omit “performing duties or functions, or exercising powers, under this Act”, substitute “performing or exercising a duty, function or power under this Act, other than an \*APRA private health insurance duty, function or power”.

#### **151 Subsection 323-1(3)**

Omit “, 323-30 or 323-35”, substitute “or 323-30”.

#### **152 Paragraph 323-5(a)**

Omit “performing a duty or function, or exercising a power, under this Act”, substitute “performing or exercising a duty, function or power under this Act, other than an \*APRA private health insurance duty, function or power”.

#### **153 After paragraph 323-5(a)**

Insert:

- (aa) for the purpose of enabling a person to perform or exercise an \*APRA private health insurance duty, function or power; or

**154 Paragraphs 323-10(2)(d) and (e)**

Repeal the paragraphs.

**155 Section 323-25 (heading)**

Repeal the heading, substitute:

**323-25 Authorised disclosure: by the Secretary if authorised by affected person**

**156 Section 323-25**

Omit “or the Council”.

**157 Section 323-35**

Repeal the section.

**158 Section 328-5 (table items 5 to 30)**

Repeal the items.

**159 Section 328-5 (table item 43)**

Omit “(other than late payment penalty in respect of an amount of \*collapsed insurer levy)”.

**160 Section 328-5 (table item 44)**

Repeal the item.

**161 Paragraph 333-1(1)(b)**

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

**162 Paragraph 333-1(1)(c)**

Repeal the paragraph.

**163 Subsection 333-10(1) (table item 3)**

Repeal the item.

**164 Subsection 333-20(1) (table items 7, 10, 12 and 13)**

Repeal the items.

**165 At the end of subsection 333-20(1)**

Add:

Note: There are consultation requirements that apply in relation to the making of Rules mentioned in items 6, 8 and 15 of the above table: see subsections 115-5(2), 131-5(2) and 318-10(3).

**166 Section 333-25**

Repeal the section, substitute:

**333-25 Private Health Insurance Rules made by APRA**

- (1) \*APRA may, by legislative instrument, make Private Health Insurance Rules, known as Private Health Insurance (Risk Equalisation Administration) Rules, providing for matters mentioned in section 318-15.
- (2) To the extent that Private Health Insurance Rules made under this section deal with a matter that is dealt with in Private Health Insurance Rules made under section 333-20, they must do so in a way that is not inconsistent with the Rules made under section 333-20.

**167 Clause 1 of Schedule 1**

Repeal the following definitions:

- (a) definition of *ADI*;
- (b) definition of *application provision*;
- (c) definition of *applied Corporations Act provision*;
- (d) definition of *appointed actuary*.

**168 Clause 1 of Schedule 1**

Insert:

*APRA* means the Australian Prudential Regulation Authority.

*APRA private health insurance duty, function or power*: see subsection 323-1(1A).

**169 Clause 1 of Schedule 1**

Repeal the following definitions:

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- (a) definition of *assets*;
- (b) definition of *capital adequacy direction*;
- (c) definition of *capital adequacy standard*;
- (d) definition of *census day*;
- (e) definition of *Chief Executive Officer*;
- (f) definition of *collapsed insurer levy*;
- (g) definition of *Commissioner*;
- (h) definition of *Council*;
- (i) definition of *Council administration levy*;
- (j) definition of *Council-supervised obligation*;
- (k) definition of *Deputy Commissioner*;
- (l) definition of *disqualified person*;
- (m) definition of *external management*;
- (n) definition of *external manager*;
- (o) definition of *fringe benefit*;
- (p) definition of *Human Services Department*;
- (q) definition of *Human Services Minister*;
- (r) definition of *inspector*;
- (s) definition of *makes a capital payment*;
- (t) definition of *manager*;
- (u) definition of *member*;
- (v) definition of *net asset position*;
- (w) definition of *policy group*;
- (x) definition of *policy liability*.

**170 Clause 1 of Schedule 1 (definition of *private health insurer*)**

Repeal the definition, substitute:

*private health insurer* means a body that is registered under Division 3 of Part 2 of the *Private Health Insurance (Prudential Supervision) Act 2015*.

**171 Clause 1 of Schedule 1**

Repeal the following definitions:

- (a) definition of *prudential direction*;

- (b) definition of *prudential matters*;
- (c) definition of *prudential standard*.

**172 Clause 1 of Schedule 1 (definition of referable)**

Omit “Division 146”(wherever occurring), substitute “Division 4 of Part 3 of the *Private Health Insurance (Prudential Supervision) Act 2015*”.

**173 Clause 1 of Schedule 1**

Repeal the following definitions:

- (a) definition of *registered as a for profit insurer*;
- (b) definition of *responsible insurer*;
- (c) definition of *restricted access group*.

**174 Clause 1 of Schedule 1 (definition of restricted access insurer)**

Repeal the definition, substitute:

*restricted access insurer* has the same meaning as in the *Private Health Insurance (Prudential Supervision) Act 2015*.

**175 Clause 1 of Schedule 1 (definition of risk equalisation jurisdiction)**

Omit “subsection 146-1(6)”, substitute “subsection 131-20(1)”.

**176 Clause 1 of Schedule 1**

Insert:

*Risk Equalisation Special Account*: see subsection 318-1(1).

**177 Clause 1 of Schedule 1**

Repeal the following definitions:

- (a) definition of *Risk Equalisation Trust Fund*;
  - (b) definition of *senior manager*;
  - (c) definition of *solvency direction*;
  - (d) definition of *solvency standard*;
  - (e) definition of *terminating management*;
  - (f) definition of *terminating manager*;
-

- (g) definition of *termination day*;
- (h) definition of *voluntary deed of arrangement*.

## **Division 2—Other amendments**

### ***Ombudsman Act 1976***

#### **178 Paragraphs 35(6D)(d) and (e)**

Repeal the paragraphs, substitute:

- (d) an APRA member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*;
- (e) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*;

### ***Private Health Insurance Act 2007***

#### **179 After paragraph 323-10(1A)(c)**

Insert:

- or (d) \*APRA; or
- (e) an APRA member or APRA staff member (within the meaning of the *Australian Prudential Regulation Authority Act 1998*);

#### **180 Section 328-1**

Omit “the Council”, substitute “\*APRA”.

### ***Private Health Insurance (Prudential Supervision) Act 2015***

#### **181 After section 5**

Insert:

#### **5A Norfolk Island**

This Act extends to Norfolk Island.

**182 Paragraph 92(7)(b)**

Omit “*Legislative Instruments Act 2003*”, substitute “*Legislation Act 2003*”.

## **Part 2—Repeals**

### ***Private Health Insurance (Council Administration Levy) Act 2003***

#### **183 The whole of the Act**

Repeal the Act.

## Schedule 2—Transitional provisions

### Part 1—Introduction

#### 1 Interpretation

(1) In this Schedule:

**APRA** means the Australian Prudential Regulation Authority.

**APRA Act** means the *Australian Prudential Regulation Authority Act 1998*.

**APRA Minister** means the Minister administering the APRA Act.

**APRA Special Account** has the same meaning as it has in the APRA Act.

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**assets official**, in relation to an asset other than land, means the person or authority who:

- (a) under a law of the Commonwealth, a State or a Territory; or
- (b) under a trust instrument; or
- (c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

**collapsed insurer levy** has the same meaning as it had in the PHI Act as in force immediately before the transition time.

**Collapsed Insurer Special Account** has the same meaning as it has in the APRA Act as amended by this Act.

**Council** means the Private Health Insurance Administration Council.

**Council administration levy** has the same meaning as it had in the PHI Act as in force immediately before the transition time.

**Council money**: see subitem 16(1).

**Council-supervised obligation** has the same meaning as it had in the PHI Act as in force immediately before the transition time.

**Federal Court** means the Federal Court of Australia.

**Health Minister** means the Minister administering the PHI Act.

**imposition day** has the same meaning as it had in section 307-1 of the PHI Act as in force immediately before the transition time.

**land** means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

**PHI Act** means the *Private Health Insurance Act 2007*.

**Prudential Supervision Act** means the *Private Health Insurance (Prudential Supervision) Act 2015*.

**Risk Equalisation Special Account** has the same meaning as it has in the PHI Act as amended by this Act.

**Risk Equalisation Trust Fund** has the same meaning as it had in the PHI Act as in force immediately before the transition time.

**transferring employee** has the meaning given by subitem 31(2).

**transition time** means the commencement of section 1 of the Prudential Supervision Act.

- (2) Unless rules made under item 43 provide otherwise, if this Schedule provides that an Act (or a Part, Division or provision of an Act) as in force immediately before the transition time, continues to apply in relation to a matter, then:
- (a) any rules, determinations or other instruments as in force, immediately before the transition time, under or for the purposes of the Act (or the Part, Division or provision) are also taken to continue to apply in relation to the matter; and
  - (b) that continued application of the rules, determinations or other instruments is subject to the same general modifications (if any) as apply under this Schedule in relation to the Act (or the Part, Division or provision).

## Part 2—Specific transitional provisions

### Division 1—Registration of private health insurers

#### 2 Proceedings for injunctions relating to carrying on health insurance business without registration

- (1) This item applies if, immediately before the transition time, proceedings for an injunction are pending in the Federal Court under section 118-5 of the PHI Act.
- (2) If the proceedings were commenced by application made by the Health Minister or by the Council, then, from the transition time, the proceedings continue, with APRA substituted for the Health Minister or the Council as a party, as if the proceedings had been commenced by application made by APRA under section 11 of the Prudential Supervision Act.
- (3) If the proceedings were commenced by application made by some other person, then, from the transition time, the proceedings continue as if the person had standing to commence the proceedings under section 11 of the Prudential Supervision Act, and had so commenced the proceedings under that section.

#### 3 Continuing the registration of private health insurers

- (1) If, immediately before the transition time, the registration of a body is in force under Part 4-3 of the PHI Act then, from the transition time:
  - (a) the registration is taken to be a registration of the body under Division 3 of Part 2 of the Prudential Supervision Act subject to the same terms and conditions (the body's **registration terms and conditions**) as apply immediately before the transition time; and
  - (b) the body is taken to be registered under that Division as a restricted access insurer if, immediately before the transition time, the body had that status under the PHI Act; and
  - (c) the body is taken to be registered under that Division as a for profit insurer if, immediately before the transition time, the body had that status under the PHI Act.



- (2) Subitem (1) has effect subject to Division 3 of Part 2 of the Prudential Supervision Act.

Note: For example, under Division 3 of Part 2 of the Prudential Supervision Act, the status of the body's registration may change, or the body's registration may be cancelled.

- (3) After the transition time, the body may, in writing, request APRA to vary the body's registration terms and conditions by:
- (a) amending one or more of those terms and conditions; or
  - (b) revoking one or more of those terms and conditions.

Note: A request to impose additional terms and conditions cannot be made under subitem (3).

- (4) If the body makes a request under subitem (3), APRA may, by written notice to the body, vary the body's registration terms and conditions in accordance with the request.

#### **4 Applications for registration as private health insurer**

- (1) If an application for registration that was made under section 126-10 of the PHI Act before the transition time has not been decided by the transition time, the Prudential Supervision Act applies in relation to the application as if it had been made under section 12 of that Act.
- (2) For the purposes of sections 13 and 17 of the Prudential Supervision Act, the application is taken to have been made at the transition time.
- (3) If, before the transition time, the Council gave the applicant notice under section 126-15 of the PHI Act requiring the provision of further information, and that information has not been provided by the transition time, the notice is taken to have been given by APRA, at the transition time, under section 13 of the Prudential Supervision Act.

#### **5 Conversion to for profit status**

- (1) An approval that is in force under section 126-42 of the PHI Act immediately before the transition time has effect from the transition time as if it were an approval by APRA under section 20 of the Prudential Supervision Act.
- (2) If an application made to the Council before the transition time under section 126-42 of the PHI Act has not been decided by the transition time, then:

- (a) the Prudential Supervision Act applies in relation to the application as if the application had been made under section 20 of the Prudential Supervision Act; and
- (b) if, before the transition time, the Council caused a notice to be published in relation to the application in accordance with paragraph 126-42(4)(a) of the PHI Act, then APRA is taken to have complied with paragraph 20(4)(a) of the Prudential Supervision Act in relation to the application; and
- (c) if, before the transition time:
  - (i) the Council gave the applicant a notice under paragraph 126-42(4)(b) of the PHI Act requiring the applicant to provide further information; and
  - (ii) that information has not been provided to the Council by the transition time;then the notice is taken to have been given by APRA under paragraph 20(4)(b) of the Prudential Supervision Act.

## **Division 2—Health benefits funds—restructures, mergers and acquisitions, and terminating and external management**

### **6 Restructures of health benefits funds**

- (1) An approval that is in force under section 146-1 of the PHI Act immediately before the transition time has effect from the transition time as if it were an approval by APRA under section 32 of the Prudential Supervision Act.
- (2) If an application made to the Council before the transition time under section 146-1 of the PHI Act has not been decided by the transition time, the Prudential Supervision Act applies in relation to the application as if it had been made under section 32 of the Prudential Supervision Act.

### **7 Mergers and acquisitions of health benefits funds**

- (1) An approval that is in force under section 146-5 of the PHI Act immediately before the transition time has effect from the transition time as if it were an approval by APRA under section 33 of the Prudential Supervision Act.

- (2) If an application made to the Council before the transition time under section 146-5 of the PHI Act has not been decided by the transition time, the Prudential Supervision Act applies in relation to the application as if it had been made under section 33 of the Prudential Supervision Act.

## **8 Terminating management and external management of health benefits funds**

### *Approvals of termination of health benefits funds*

- (1) An approval that is in force under section 149-10 of the PHI Act immediately before the transition time has effect from the transition time as if it were an approval by APRA under section 37 of the Prudential Supervision Act.

### *Applications for approval of termination of health benefits funds*

- (2) If an application made to the Council before the transition time under section 149-1 of the PHI Act has not been decided by the transition time, the Prudential Supervision Act applies in relation to the application as if it had been made under section 35 of the Prudential Supervision Act.
- (3) For the purposes of sections 36 and 38 of the Prudential Supervision Act, the application is taken to have been made at the transition time.
- (4) If, before the transition time, the Council gave the applicant notice under section 149-5 of the PHI Act requiring the provision of further information, and that information has not been provided by the transition time, the notice is taken to have been given by APRA, at the transition time, under section 36 of the Prudential Supervision Act.

### *Appointments of terminating managers and external managers*

- (5) An appointment of a terminating manager that is in force under the PHI Act immediately before the transition time has effect from the transition time as if it were:
- (a) if the appointment was made under section 149-10 of the PHI Act—an appointment made under section 37 of the Prudential Supervision Act; or

- (b) if the appointment was made under Division 220 of the PHI Act—an appointment made under Division 7 of Part 3 of the Prudential Supervision Act.

*Other things done in relation to the terminating management or external management of health benefits funds*

- (6) Subject to subitem (7), if a health benefits fund is under terminating management or external management immediately before the transition time, then the terminating management or external management continues after the transition time, under the Prudential Supervision Act, as if:
  - (a) a thing done, by or in relation to the Council for the purposes of the terminating management or external management, under a provision of the PHI Act had been done, by or in relation to APRA, under the corresponding provision of the Prudential Supervision Act; and
  - (b) a thing done, by or in relation to the terminating manager or external manager, under a provision of the PHI Act had been done, by or in relation to the terminating manager or external manager, under the corresponding provision of the Prudential Supervision Act.
- (7) Rules made under item 43 may make provision for or in relation to how a terminating management or external management is to continue under the Prudential Supervision Act.

### **Division 3—Other obligations of private health insurers**

#### **9 Directions**

- (1) This item applies in relation to a direction given to a private health insurer, under any of the following provisions of the PHI Act, that is in force immediately before the transition time:
  - (a) section 140-20 (solvency directions);
  - (b) section 143-20 (capital adequacy directions);
  - (c) section 163-15 (directions to comply with standards);
  - (d) section 200-1 (other directions).
- (2) The direction has effect from the transition time as if it were a direction given by APRA to the private health insurer under section 96 of the

Prudential Supervision Act. However, section 104 (non-compliance with a direction) does not apply in relation to the direction unless it was given under section 163-15 of the PHI Act.

Note: The direction may be varied or revoked under section 99 of the Prudential Supervision Act.

- (3) If the direction specifies a period for which it remains in force, the direction ceases to have effect at the end of the specified period.

## **10 Actuaries**

An appointment of a person as the actuary of a private health insurer that is in force under section 160-1 of the PHI Act immediately before the transition time has effect from the transition time as if it were an appointment under section 106 of the Prudential Supervision Act.

## **11 Disqualified persons**

- (1) The Prudential Supervision Act has effect as if the definition of *disqualified person* in subsection 119(1) of that Act also included a person in relation to whom a disqualification under section 166-20 of the PHI Act was in force immediately before the transition time.
- (2) Subitem (1) ceases to apply if APRA revokes the disqualification under subitem (3).
- (3) APRA may revoke the disqualification on application by the person or on its own initiative. A revocation takes effect on the day on which it is made.
- (4) APRA must give the person written notice of a revocation of the disqualification, or of a refusal to revoke the disqualification. APRA may also give notice of the revocation or refusal in any other way that it considers appropriate.
- (5) Section 168 of the Prudential Supervision Act (review of decisions) applies to a decision under this item to refuse to revoke the disqualification as if the decision were a reviewable decision as defined in that section.

## Division 4—Enforcement

### 12 Investigations

*Continuation of investigations in progress under PHI Act at the transition time*

- (1) If an investigation commenced by the Council under Division 194 of the PHI Act before the transition time has not been completed by that time, then Division 194 of the PHI Act, as in force immediately before the transition time, is taken to continue to apply in relation to the investigation (despite the amendments of that Division made by this Act), as if:
  - (a) references in the Division to the Council (other than references that are to a Council-supervised obligation) were instead references to APRA; and
  - (b) a thing done, by or in relation to the Council, under a provision of the Division before the transition time had been done, by or in relation to APRA, under that provision.
- (2) If an investigation commenced by the Council under Division 214 of the PHI Act before the transition time has not been completed by that time, then Division 214 of the PHI Act, as in force immediately before the transition time, is taken to continue to apply in relation to the investigation (despite the repeal of that Division by this Act), as if:
  - (a) references in the Division to the Council were instead references to APRA; and
  - (b) a thing done, by or in relation to the Council, under a provision of the Division before the transition time had been done, by or in relation to APRA, under that provision.
- (3) Without limiting subitem (2), an appointment of an inspector under subsection 214-1(1) of the PHI Act that is in force immediately before the transition time has effect, after the transition time, as if it were an appointment of the inspector by APRA under that subsection as it continues to apply because of subitem (2).
- (4) Rules made under item 43 may make provision for or in relation to how an investigation to which subitem (1) or (2) applies is to continue after the transition time.

*Use of powers in Prudential Supervision Act to investigate breaches of Council-supervised obligations*

- (5) Division 3 of Part 6 of the Prudential Supervision Act has effect as if the reference in paragraph 130(1)(b) of that Act to an enforceable obligation included a reference to a Council-supervised obligation.

**13 Enforceable undertakings**

An enforceable undertaking that was accepted by the Council under subsection 197-1(2) of the PHI Act before the transition and that is in force immediately before that time has effect, from the transition time, as if it had been accepted by APRA under subsection 152(1) of the Prudential Supervision Act.

**14 Federal Court remedies**

*Continuation of proceedings under Division 203 of the PHI Act*

- (1) If, immediately before the transition time, proceedings commenced by the Council are pending in the Federal Court under Division 203 of the PHI Act, then the proceedings continue after the transition time in accordance with subitem (2), with APRA substituted for the Council as a party.
- (2) Division 203 of the PHI Act, as in force immediately before the transition time, is taken to continue to apply (despite the amendments of that Division made by this Act) in relation to the proceedings as if:
- (a) references in the Division to the Council (other than references that are to a Council-supervised obligation) were instead references to APRA; and
  - (b) a thing done, by or in relation to the Council, under a provision of the Division before the transition time had been done, by or in relation to APRA, under that provision.

*Applying Part 8 of the Prudential Supervision Act to contraventions of Council-supervised obligations*

- (3) Part 8 of the Prudential Supervision Act has effect as if references in that Part to enforceable obligations also included references to Council-supervised obligations.

## 15 Proceedings for injunctions relating to non-complying policies

If, immediately before the transition time:

- (a) proceedings for an injunction are pending in the Federal Court under section 84-10 of the PHI Act; and
- (b) the proceedings were commenced by application made by the Council;

then, from the transition time, the proceedings continue, but with the Health Minister substituted for the Council as a party.

## Division 5—Financial matters

### 16 Crediting of Council money to special accounts

- (1) *Council money* means all money held by the Council immediately before the transition time.
- (2) Amounts equal to the following amounts must be credited to the Risk Equalisation Special Account after the transition time:
  - (a) the amount (if any) that, immediately before the transition time, stood to the credit of the Risk Equalisation Trust Fund;
  - (b) any amounts of Council money that, before the transition time, were required, by section 318-5 of the PHI Act, to be paid to the Risk Equalisation Trust Fund but that had not been so paid by the transition time;
  - (c) any other amount of Council money that consists of a repayment to the Council of a payment made, before the transition time, for the purpose of helping to meet liabilities as described in section 6 of the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*.
- (3) Amounts equal to the following amounts must be credited to the Collapsed Insurer Special Account after the transition time:
  - (a) any amount of Council money that consists of collapsed insurer levy, or related late payment penalty, received by the Council before the transition time;
  - (b) any amount of Council money that consists of the proceeds from investments made using collapsed insurer levy, or related late payment penalty.



- (4) An amount equal to all Council money that is not covered by subitem (2) or (3) must be credited to the APRA Special Account after the transition time.

**17 Collection and recovery of Council administration levy and collapsed insurer levy imposed before the transition time**

- (1) This item applies if the imposition day for an amount (the *levy amount*) of Council administration levy, or collapsed insurer levy, is before the transition time, but the amount has not been paid by that time.
- (2) The following provisions of the PHI Act as in force immediately before the transition time:
- (a) Division 307;
  - (b) section 328-5 as it relates to decisions made under Division 307;

are taken to continue to apply in relation to the levy amount (despite the amendments made by this Act), as if references in sections 307-10, 307-15, 307-20 and 307-25 to the Council were instead references to APRA (acting for and on behalf of the Commonwealth).

- (3) If:
- (a) the levy amount is Council administration levy; and
  - (b) an amount is paid to, or recovered by, APRA in respect of the levy amount or related late payment penalty;
- an amount equal to the amount so paid or recovered must be credited to the APRA Special Account.
- (4) If:
- (a) the levy amount is collapsed insurer levy; and
  - (b) an amount is paid to, or recovered by, APRA in respect of the levy amount or related late payment penalty;
- an amount equal to the amount so paid or recovered must be credited to the Collapsed Insurer Special Account.

## **18 Entitlements to be paid an amount out of the Risk Equalisation Trust Fund**

- (1) This item applies if, immediately before the transition time, a private health insurer has an entitlement to be paid an amount out of the Risk Equalisation Fund that has not been met.
- (2) APRA must, after the transition time, pay that amount to the private health insurer. The amount paid must be debited from the Risk Equalisation Special Account.

## **Division 6—Other matters**

### **19 Secrecy obligations**

For sections 323-1 and 323-40 of the *Private Health Insurance Act 2007*, a disclosure of information is an authorised disclosure if the disclosure is:

- (a) made in the course of performing or exercising an APRA private health insurance duty, function or power (within the meaning of section 323-1 of that Act); or
- (b) one that the person would have been able to make under section 56 of the APRA Act, had the information been obtained in the course of performing such a duty, function or power.

### **20 Report on operations of private health insurers before transition time**

- (1) This item applies if, in relation to a financial year ending at or before the transition time, the Council has not, by the transition time, given a report in relation to that year under section 264-15 of the PHI Act as in force immediately before the transition time.
- (2) That section of the PHI Act is taken to continue in force in relation to that financial year, as if the reference to the Council were instead a reference to APRA.

## **Part 3—General transitional provisions**

### **Division 1—Transitional functions**

#### **21 Transitional function for Council and APRA**

- (1) During the transition period, the functions of the Council include the function of taking such steps as may be necessary or convenient to prepare for or give effect to, or assist APRA or the Commonwealth to prepare for or give effect to:
  - (a) the abolition of the Council; and
  - (b) the operation of this Schedule; and
  - (c) the enactment of this Act and the Prudential Supervision Act.
- (2) During the transition period, APRA's functions include the function of taking such steps as may be necessary or convenient to prepare for or give effect to, or assist the Council or the Commonwealth to prepare for or give effect to:
  - (a) the abolition of the Council; and
  - (b) the operation of this Schedule; and
  - (c) the enactment of this Act and the Prudential Supervision Act.
- (3) In this item:

*transition period* means the period:

  - (a) starting on the day on which this Act receives the Royal Assent; and
  - (b) ending immediately before the transition time.

### **Division 2—Transfer of assets and liabilities**

#### **22 Vesting of assets**

- (1) This item applies to the assets of the Council immediately before the transition time.

*Assets vesting in APRA*
- (2) At the transition time, the assets cease to be assets of the Council and become assets of APRA, without any conveyance, transfer or

assignment. APRA becomes the successor in law in relation to the assets.

*Assets vesting in the Commonwealth*

- (3) Before the transition time, the APRA Minister may determine, in writing, that a specified asset to which this item applies is to become an asset of the Commonwealth.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (4) If the APRA Minister makes a determination under subitem (3), then, at the transition time and despite subitem (2), the asset ceases to be an asset of the Council and becomes an asset of the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the asset.

- (5) A determination made under subitem (3) is not a legislative instrument.

**23 Vesting of liabilities**

- (1) This item applies to the liabilities of the Council immediately before the transition time.

*Liabilities vesting in APRA*

- (2) At the transition time, the liabilities cease to be liabilities of the Council and become liabilities of APRA without any conveyance, transfer or assignment. APRA becomes the successor in law in relation to the liabilities.

*Liabilities vesting in the Commonwealth*

- (3) Before the transition time, the APRA Minister may determine, in writing, that a specified liability to which this item applies is to become a liability of the Commonwealth.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (4) If the APRA Minister makes a determination under subitem (3), then, at the transition time and despite subitem (2), the liability ceases to be a liability of the Council and becomes a liability of the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liability.
-

- (5) A determination made under subitem (3) is not a legislative instrument.

## **24 Transfers of land may be registered**

- (1) This item applies if:
- (a) any land vests in APRA or the Commonwealth under this Division; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the APRA Minister; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the land has become vested in APRA or the Commonwealth under this Division.
- (2) The land registration official may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

## **25 Certificates relating to vesting of assets other than land**

- (1) This item applies if:
- (a) an asset other than land vests in APRA or the Commonwealth under this Division; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the APRA Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in APRA or the Commonwealth under this Division.
- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and

- (b) make such entries in the register in relation to assets of that kind as are necessary, having regard to the effect of this Division.
- (3) A certificate made under paragraph (1)(b) is not a legislative instrument.

### **Division 3—Transfer of other matters**

#### **26 Things done by, or in relation to, the Council**

- (1) This item applies to anything done by, or in relation to, the Council before the transition time.

##### *Attributing things to APRA*

- (2) At and after the transition time, the thing has effect as if it had been done by, or in relation to, APRA.

##### *Attributing things to the Commonwealth*

- (3) The APRA Minister may determine, in writing, that:
  - (a) a specified thing to which this item applies is taken, at and after the transition time, to have been done by, or in relation to, the Commonwealth; or
  - (b) this item does not apply to a specified thing.
- (4) A determination made under subitem (3) has effect accordingly, despite subitem (2).
- (5) The APRA Minister may make a determination under subitem (3) before or after the transition time.
- (6) A determination made under subitem (3) is not a legislative instrument.
- (7) This item does not limit the operation of items 22 and 23.

#### **27 References in certain instruments to the Council**

- (1) This item applies to an instrument that:
    - (a) is in force immediately before the transition time; and
    - (b) contains a reference to the Council.
-

*Attributing references in instruments to APRA*

- (2) If the instrument relates to:
- (a) an asset or liability of the Council that, as a result of the operation of item 22 or 23, becomes an asset or liability of APRA; or
  - (b) a thing done by, or in relation to, the Council, that, as a result of the operation of item 26, is taken to have been done by, or in relation to, APRA;

then the reference to the Council has effect, at and after the transition time, as if it were a reference to APRA.

*Attributing references in instruments to the Commonwealth*

- (3) If the instrument relates to:
- (a) an asset or liability of the Council that, as a result of the operation of item 22 or 23, becomes an asset or liability of the Commonwealth; or
  - (b) a thing done by, or in relation to, the Council, that, as a result of the operation of item 26, is taken to have been done by, or in relation to, the Commonwealth;

then the reference to the Council has effect, at and after the transition time, as if it were a reference to the Commonwealth.

*APRA Minister may attribute references*

- (4) The APRA Minister may determine, in writing, that the reference to the Council has effect, at and after the transition time, as if it were a reference to APRA or the Commonwealth.
- (5) A determination made under subitem (4) has effect accordingly, despite subitems (2) and (3) (if otherwise applicable).
- (6) The APRA Minister may make a determination under subitem (4) before or after the transition time.
- (7) A determination made under subitem (4) is not a legislative instrument.

*Definitions*

- (8) In this item:

***instrument:***

- (a) includes:
  - (i) a contract, undertaking, deed or agreement; and
  - (ii) a notice, authority, order or instruction; and
  - (iii) an instrument made under an Act or under a legislative instrument; but
- (b) does not include:
  - (i) an Act; or
  - (ii) an instrument made under this Act; or
  - (iii) a contract of employment; or
  - (iv) an instrument specified in rules made under item 43.

## **28 Legal proceedings of the Council**

- (1) This item applies if any proceedings to which the Council was a party were pending in any court or tribunal immediately before the transition time.

***Substituting APRA as party to proceedings***

- (2) APRA is substituted for the Council, from the transition time, as a party to those proceedings.

***Substituting the Commonwealth as party to proceedings***

- (3) The APRA Minister may determine, in writing, that the Commonwealth is substituted for the Council as a party to those proceedings.
- (4) A determination under subitem (3) has effect accordingly, despite subitem (2).
- (5) The APRA Minister may make a determination under subitem (3) before or after the transition time.
- (6) A determination made under subitem (3) is not a legislative instrument.

## **29 Transfer of Council's records and documents**

- (1) This item applies to any records or documents that were in the possession of the Council immediately before the transition time.



*Transferring records and documents to APRA*

- (2) The records and documents are to be transferred to APRA after the transition time.

*Transferring records and documents to the Commonwealth*

- (3) The APRA Minister may determine, in writing, that a record or document to which this item applies is to be transferred after the transition time to the Commonwealth.
- (4) A determination made under subitem (3) has effect accordingly, despite subitem (2).
- (5) The APRA Minister may make a determination under subitem (3) before or after the transition time.
- (6) A determination made under subitem (3) is not a legislative instrument.
- (7) Sections 37 and 41 of the *Public Governance, Performance and Accountability Act 2013* apply in relation to records or documents transferred to an entity (within the meaning of that Act) under this item as if the records or documents related to that entity.

Note: Records and documents transferred under this item are Commonwealth records for the purposes of the *Archives Act 1983*.

**30 Transfer of Ombudsman investigations**

If:

- (a) before the transition time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to an action taken by the Council; and
- (b) by the transition time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the transition time as if that action had been taken by APRA.

## **Division 4—Staff and officers of the Council**

### **31 Transferring employees—transfer to APRA**

- (1) At the transition time, a transferring employee:
  - (a) ceases to be employed by the Council; and
  - (b) is taken to have been appointed as an employee under subsection 45(1) of the APRA Act.
- (2) A person is a *transferring employee* if the person was employed by the Council under subsection 273-15(1) of the PHI Act immediately before the transition time.
- (3) A transferring employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the Council as a result of this item.

### **32 Transferring employees—terms and conditions of employment with APRA**

- (1) A transferring employee is entitled to terms and conditions of appointment as an employee of APRA that are no less favourable, considered on an overall basis, than the terms and conditions of employment to which the employee was entitled, immediately before the transition time, as an employee of the Council.
- (2) Subitem (1) ceases to have effect on the next occasion when an enterprise agreement (within the meaning of the *Fair Work Act 2009*) comes into operation that is:
  - (a) made on or after the transition time; and
  - (b) expressed to cover persons appointed under subsection 45(1) of the APRA Act.
- (3) The first determination (if any) that the Chair of APRA makes under subsection 45(2) of the APRA Act for a transferring employee may:
  - (a) be made before or after the transition time; and
  - (b) take effect from the transition time or a later time.
- (4) To avoid doubt:

- (a) the Chair of APRA may determine different terms and conditions of appointment under subsection 45(2) of the APRA Act for different transferring employees; and
- (b) a transferring employee may be covered by any of the following instruments (whether made before or after the transition time) that is expressed to cover a class of persons appointed under subsection 45(1) of the APRA Act that includes the transferring employee:
  - (i) a fair work instrument (within the meaning of the *Fair Work Act 2009*);
  - (ii) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*);
  - (iii) a determination made under subsection 45(2) of the APRA Act.

### **33 Transferring employees—accrued leave and prior service**

- (1) APRA must recognise leave accrued by a transferring employee immediately before the transition time, in relation to a transferring employee's employment by the Council, as if it were leave in relation to periods of service as an employee of APRA appointed under section 45 of the APRA Act.
- (2) The service of a transferring employee as an employee of the Council is taken, for all purposes, to have been continuous with his or her service as an employee of APRA appointed under section 45 of the APRA Act.

### **34 Transferring employees—processes begun before transition time**

- (1) Without limiting item 43, rules made under that item may provide for:
  - (a) staffing procedures of the Council to apply, or to continue to apply, in relation to:
    - (i) processes begun before, but not completed by, the transition time; or
    - (ii) things done by, for or in relation to the Council or a transferring employee before that time; or
  - (b) staffing procedures of APRA to apply in relation to:

- (i) processes begun before, but not completed by, the transition time; or
  - (ii) things done by, for or in relation to the Council or a transferring employee before that time.
- (2) In this item:
- staffing procedures* includes procedures and policies related to:
- (a) recruitment, promotion or performance management; or
  - (b) inefficiency, misconduct, forfeiture of position, fitness for duty or loss of essential qualifications; or
  - (c) disciplinary action, grievance processes or reviews of or appeals against staffing decisions; or
  - (d) transfers, resignations or termination of employment; or
  - (e) leave.

### **35 Safety, Rehabilitation and Compensation Act 1988**

- (1) This item applies in relation to a person if:
- (a) the person was employed by the Council under subsection 273-15(1) of the PHI Act at any time before the transition time (whether or not the person is a transferring employee); and
  - (b) the person was an employee (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**)) of the Council when the person was employed as mentioned in paragraph (a); and
  - (c) the person suffered an injury (within the meaning of that Act) before the transition time.
- (2) The SRC Act applies, after the transition time, as if the person had been an employee of APRA appointed under subsection 45(1) of the APRA Act during the period that the person was employed by the Council as mentioned in paragraph (1)(a).
- (3) This item does not limit item 26 or 27 of this Schedule.

### **36 No transfer of Council officers or consultants**

#### *Council officers*

- (1) Nothing in this Part produces the result that the appointment of a Council officer immediately before the transition time has effect at or after the transition time as if it were an appointment of the person in relation to APRA or the Commonwealth.
- (2) Each of the following is a **Council officer**:
  - (a) the Commissioner of Private Health Insurance Administration;
  - (b) any other member of the Council;
  - (c) the Chief Executive Officer of the Council.

#### *Consultants*

- (3) Nothing in this Part produces the result that a person engaged as a consultant to the Council under subsection 273-15(3) of the PHI Act immediately before the transition time becomes engaged at or after that time as a consultant under subsection 47(1) of the APRA Act.

### **Division 5—Annual reporting obligation**

#### **37 Final annual report for the Council**

- (1) The Chair of APRA must prepare and give to the APRA Minister, for presentation to the Parliament, a report (the **final report**) on the activities of the Council during the final reporting period.
- (2) Sections 39, 40, 42, 43 and 46 of the *Public Governance, Performance and Accountability Act 2013*, and rules made for the purposes of those sections, apply subject to this item in relation to the Council and the final reporting period as if:
  - (a) references in those sections and rules to an annual report for a Commonwealth entity were references to the final report; and
  - (b) references in those sections and rules to a reporting period for a Commonwealth entity were references to the final reporting period; and
  - (c) references in those sections and rules to a Commonwealth entity were references to the Council; and

- (d) references in those sections and rules to the accountable authority for a Commonwealth entity were references to the Chair of APRA; and
  - (e) references in those sections and rules to the responsible Minister for a Commonwealth entity were references to the APRA Minister.
- (3) The Chair of APRA must give the final report to the APRA Minister by the 15th day of the fourth month after the end of the final reporting period. The APRA Minister may grant an extension of time in special circumstances.
- (4) The APRA Minister must table the final report in each House of the Parliament as soon as practicable after receiving the report.
- (5) APRA must publish the final report on its website as soon as practicable after the report is tabled in the House of Representatives.
- (6) In this item:
- annual report** means a report under section 46 of the *Public Governance, Performance and Accountability Act 2013*.
- final reporting period** means the period:
- (a) beginning:
    - (i) if, by the transition time, no annual report for the Council has been given to the Health Minister for the most recent reporting period for the Council that ended before the transition time—at the start of that reporting period; or
    - (ii) otherwise—at the start of the reporting period for the Council that includes the transition time; and
  - (b) ending immediately before the transition time.
- reporting period** for the Council means the reporting period for the Council under the *Public Governance, Performance and Accountability Act 2013*.

## **Part 4—Miscellaneous**

### **38 Relationship between Part 3 and other provisions**

Part 3 has effect subject to Part 2 and any rules made under item 43.

### **39 Exemption from stamp duty and other State or Territory taxes**

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
  - (a) the vesting of an asset or liability under this Schedule; or
  - (b) the operation of this Schedule in any other respect.
- (3) The APRA Minister may certify in writing:
  - (a) that a specified matter is an exempt matter; or
  - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.
- (5) A certificate under subitem (3) is not a legislative instrument.

### **40 Certificates taken to be authentic**

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
  - (b) is taken to have been properly given;
- unless the contrary is established.

### **41 Delegation by APRA Minister**

- (1) The APRA Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to:

- (a) the Secretary of the Department responsible for administering the APRA Act; or
- (b) an SES employee, or acting SES employee, in that Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the APRA Minister.
- (3) Subitem (1) does not apply to a power to make, vary or revoke a legislative instrument.

#### **42 Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

#### **43 Transitional rules**

- (1) The APRA Minister may, by legislative instrument (and subject to subitem (3)), make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
  - (a) the amendments or repeals made by this Act; or
  - (b) the enactment of this Act or the Prudential Supervision Act.
- (2) The rules may allow the APRA Minister or APRA to determine matters in relation to anything in relation to which rules may be made.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty provision;
  - (b) provide:
    - (i) powers of arrest or detention; or



- (ii) powers relating to entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (4) This Act (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).
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*[Minister's second reading speech made in—  
House of Representatives on 27 May 2015  
Senate on 16 June 2015]*

(71/15)

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