

2008

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Financial Sector Legislation Amendment  
(Review of Prudential Decisions) Bill  
2008**

**No.     , 2008**

*(Treasury)*

**A Bill for an Act to amend the law relating to the  
financial sector, and for related purposes**



# Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	4
<b>Schedule 1—Court power of disqualification etc.</b>		<b>5</b>
Part 1—Amendments commencing on Royal Assent		5
<i>Banking Act 1959</i>		5
<i>Insurance Act 1973</i>		12
<i>Life Insurance Act 1995</i>		23
<i>Retirement Savings Accounts Act 1997</i>		29
<i>Superannuation Industry (Supervision) Act 1993</i>		34
Part 2—Amendments contingent on the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007		52
<i>Financial Sector Legislation Amendment (Discretionary Mutual     Funds and Direct Offshore Foreign Insurers) Act 2007</i>		52
<i>Insurance Act 1973</i>		52
<b>Schedule 2—Direction powers</b>		<b>54</b>
<i>Banking Act 1959</i>		54
<i>Insurance Act 1973</i>		56
<i>Life Insurance Act 1995</i>		64
<i>Superannuation Industry (Supervision) Act 1993</i>		66
<b>Schedule 3—Removal of Ministerial consent</b>		<b>68</b>
Part 1—Amendments commencing on Royal Assent		68
<i>Insurance Act 1973</i>		68
<i>Life Insurance Act 1995</i>		71
<i>Superannuation Industry (Supervision) Act 1993</i>		71
Part 2—Amendments contingent on the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007		73

Division 1—Amendments if Schedule 2 to the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 commences first	73
<i>Insurance Act 1973</i>	73
Division 2—Amendments if Schedule 2 to the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 has not yet commenced	74
<i>Insurance Act 1973</i>	74
Division 3—Amendments once Schedule 2 to the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 commences	77
<i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i>	77
<i>Insurance Act 1973</i>	78
<b>Schedule 4—Review of decisions</b>	79
<i>Banking Act 1959</i>	79
<i>Financial Sector (Collection of Data) Act 2001</i>	81
<i>Insurance Act 1973</i>	85
<i>Life Insurance Act 1995</i>	87
<i>Superannuation Industry (Supervision) Act 1993</i>	88

1     **A Bill for an Act to amend the law relating to the**  
2     **financial sector, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Financial Sector Legislation*  
6                     *Amendment (Review of Prudential Decisions) Act 2008*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	
3. Schedule 1, item 71	Immediately before the commencement of items 9A, 9B, 9D, 9E, 9F and 9G of Schedule 2 to the <i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i> .  However, the provision(s) do not commence at all if those items commence before the day on which this Act receives the Royal Assent.	
4. Schedule 1, items 72 to 83	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the <i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2	The day on which this Act receives the Royal Assent.	
6. Schedule 3, Part 1	The day on which this Act receives the Royal Assent.	
7. Schedule 3, Part 2, Division 1	The day on which this Act receives the Royal Assent.  However, the provision(s) do not commence at all if items 8 and 13 to 33 of Schedule 2 to	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	the <i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i> have not commenced before that day.	
8. Schedule 3, Part 2, Division 2	The day on which this Act receives the Royal Assent.  However, the provision(s) do not commence at all if items 8 and 13 to 33 of Schedule 2 to the <i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i> commence before that day.	
9. Schedule 3, items 65 and 66	Immediately before the commencement of items 8 and 13 to 33 of Schedule 2 to the <i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i> .  However, the provision(s) do not commence at all if those items commence before the day on which this Act receives the Royal Assent.	
10. Schedule 3, item 67	Immediately after the commencement of item 5 of Schedule 2 to the <i>Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007</i> .  However, the provision(s) do not commence at all if that item commences before the day on which this Act receives the Royal Assent.	
11. Schedule 4	The day on which this Act receives the Royal Assent.	

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

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

1     **3 Schedule(s)**

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



1  
2 **Schedule 1—Court power of disqualification**  
3 **etc.**

4 **Part 1—Amendments commencing on Royal Assent**

5 *Banking Act 1959*

6 **1 At the end of subsection 17(2)**

7 Add:

8 ; or (c) either:

- 9 (i) for a person who is a disqualified person only because  
10 he or she was disqualified under section 21—is  
11 disqualified from being or acting as an auditor of the  
12 ADI; or  
13 (ii) otherwise—is a disqualified person.

14 **2 Subsections 19(1) and (2)**

15 Repeal the subsections, substitute:

16 (1) A person commits an offence if:

- 17 (a) the person is a disqualified person; and  
18 (b) the person is or acts as one of the following:  
19 (i) a director or senior manager of an ADI (other than a  
20 foreign ADI);  
21 (ii) a senior manager of the Australian operations of a  
22 foreign ADI;  
23 (iii) a director or senior manager of an authorised NOHC;  
24 (iv) an auditor of an ADI or an authorised NOHC; and  
25 (c) for a person who is a disqualified person only because he or  
26 she was disqualified under section 21—the person is  
27 disqualified from being or acting as that director, senior  
28 manager or auditor (as the case requires).

29 Penalty: Imprisonment for 2 years.

30 (2) A person commits an offence if:

- 31 (a) the person is a disqualified person; and  
32 (b) the person is or acts as one of the following:

- 1 (i) a director or senior manager of an ADI (other than a  
2 foreign ADI);  
3 (ii) a senior manager of the Australian operations of a  
4 foreign ADI;  
5 (iii) a director or senior manager of an authorised NOHC;  
6 (iv) an auditor of an ADI or an authorised NOHC; and  
7 (c) for a person who is a disqualified person only because he or  
8 she was disqualified under section 21—the person is  
9 disqualified from being or acting as that director, senior  
10 manager or auditor (as the case requires).

11 Penalty: 60 penalty units.

### 12 **3 Subsections 19(4) and (5)**

13 Repeal the subsections, substitute:

- 14 (4) A body corporate commits an offence if:  
15 (a) a person is a disqualified person; and  
16 (b) the person is or acts as one of the following:  
17 (i) if the body corporate is an ADI (other than a foreign  
18 ADI)—a director or senior manager of the body  
19 corporate;  
20 (ii) if the body corporate is a foreign ADI—a senior  
21 manager of the Australian operations of the body  
22 corporate;  
23 (iii) if the body corporate is an authorised NOHC—a  
24 director or senior manager of the body corporate;  
25 (iv) if the body corporate is an ADI or an authorised  
26 NOHC—an auditor of the body corporate; and  
27 (c) for a person who is a disqualified person only because he or  
28 she was disqualified under section 21—the person is  
29 disqualified from being or acting as that director, senior  
30 manager or auditor (as the case requires); and  
31 (d) in any case—the body corporate allows the person to be or  
32 act as a director, senior manager or auditor (as the case  
33 requires).

34 Penalty: 250 penalty units.

- 35 (5) A body corporate commits an offence if:

- 1 (a) a person is a disqualified person; and  
2 (b) the person is or acts as one of the following:  
3 (i) if the body corporate is an ADI (other than a foreign  
4 ADI)—a director or senior manager of the body  
5 corporate;  
6 (ii) if the body corporate is a foreign ADI—a senior  
7 manager of the Australian operations of the body  
8 corporate;  
9 (iii) if the body corporate is an authorised NOHC—a  
10 director or senior manager of the body corporate;  
11 (iv) if the body corporate is an ADI or an authorised  
12 NOHC—an auditor of the body corporate; and  
13 (c) for a person who is a disqualified person only because he or  
14 she was disqualified under section 21—the person is  
15 disqualified from being or acting as that director, senior  
16 manager or auditor (as the case requires); and  
17 (d) in any case—the body corporate allows the person to be or  
18 act as a director, senior manager or auditor (as the case  
19 requires).

20 Penalty: 60 penalty units.

21 **4 Subsection 19(7)**

22 Repeal the subsection.

23 **5 Paragraph 20(1)(f)**

24 Omit “APRA”, substitute “the Federal Court of Australia”.

25 **6 Subsection 20(1) (note)**

26 Omit “APRA”, substitute “The Federal Court of Australia”.

27 **7 Sections 21 and 22**

28 Repeal the sections, substitute:

29 **21 Court power of disqualification**

- 30 (1) On application by APRA, the Federal Court of Australia may, by  
31 order, disqualify a person from being or acting as a person referred  
32 to in subsection (2), for a period that the Court considers  
33 appropriate, if the Court is satisfied that:

- 1 (a) the person is not a fit and proper person to be or act as such a  
2 person; and  
3 (b) the disqualification is justified.
- 4 (2) For the purposes of subsection (1), the Court may disqualify a  
5 person from being or acting as one or more of the following:  
6 (a) a director or senior manager of:  
7 (i) a particular ADI; or  
8 (ii) a class of ADIs; or  
9 (iii) any ADI;  
10 (other than a particular foreign ADI, a class of foreign ADIs  
11 or any foreign ADI);  
12 (b) a senior manager of the Australian operations of:  
13 (i) a particular foreign ADI; or  
14 (ii) a class of foreign ADIs; or  
15 (iii) any foreign ADI;  
16 (c) a director or senior manager of:  
17 (i) a particular authorised NOHC; or  
18 (ii) a class of authorised NOHCs; or  
19 (iii) any authorised NOHC;  
20 (d) an auditor of:  
21 (i) a particular ADI or a particular authorised NOHC; or  
22 (ii) a class of ADIs or a class of authorised NOHCs; or  
23 (iii) any ADI or any authorised NOHC.
- 24 (3) In deciding whether it is satisfied as mentioned in paragraph (1)(a),  
25 the Court may take into account:  
26 (a) any matters specified in the regulations for the purposes of  
27 this paragraph; and  
28 (b) any criteria for fitness and propriety set out in the prudential  
29 standards; and  
30 (c) any other matters the Court considers relevant.
- 31 (4) In deciding whether the disqualification is justified as mentioned in  
32 paragraph (1)(b), the Court may have regard to:  
33 (a) if the application is for the person to be disqualified from  
34 being or acting as a director or senior manager—the person’s  
35 conduct in relation to the management, business or property  
36 of any corporation; and

- 1 (b) if the application is for the person to be disqualified from  
2 being or acting as an auditor—the person’s conduct in  
3 relation to the functions or duties of the person as required  
4 under this Act and the prudential standards; and  
5 (c) in any case—any other matters the Court considers relevant.
- 6 (5) As soon as practicable after the Court disqualifies a person under  
7 this section, APRA must cause particulars of the disqualification:  
8 (a) to be given:  
9 (i) if the person is, or is acting as, a person referred to in  
10 subparagraph (2)(a)(i)—to the ADI concerned; or  
11 (ii) if the person is, or is acting as, a person referred to in  
12 subparagraph (2)(b)(i)—to the foreign ADI concerned;  
13 or  
14 (iii) if the person is, or is acting as, a person referred to in  
15 subparagraph (2)(c)(i)—to the authorised NOHC  
16 concerned; or  
17 (iv) if the person is, or is acting as, a person referred to in  
18 subparagraph (2)(d)(i)—to the ADI or authorised  
19 NOHC concerned; and  
20 (b) to be published in the *Gazette*.

## 21 **22 Court power to revoke or vary a disqualification etc.**

- 22 (1) A disqualified person, or APRA, may apply to the Federal Court of  
23 Australia for:  
24 (a) if the person is a disqualified person only because he or she  
25 was disqualified under section 21—a variation or a  
26 revocation of the order made under that section; or  
27 (b) otherwise—an order that the person is not a disqualified  
28 person.
- 29 (2) If the Court revokes an order under paragraph (1)(a) or makes an  
30 order under paragraph (1)(b), then, despite section 20, the person is  
31 not a *disqualified person*.
- 32 (3) At least 21 days before commencing the proceedings, written  
33 notice of the application must be lodged:  
34 (a) if the disqualified person makes the application—by the  
35 person with APRA; or

1 (b) if APRA makes the application—by APRA with the  
2 disqualified person.

3 (4) An order under paragraph (1)(b) may be expressed to be subject to  
4 exceptions and conditions determined by the Court.

## 5 **8 Paragraph 23(2)(a)**

6 Repeal the paragraph, substitute:

7 (a) either:

8 (i) for a person who is a disqualified person only because  
9 he or she was disqualified under section 21—is  
10 disqualified from being or acting as a director or senior  
11 manager of the ADI or NOHC; or

12 (ii) otherwise—is a disqualified person; or

## 13 **9 Application and transitional provisions**

### 14 *Disqualifications*

15 (1) For the purposes of the *Banking Act 1959*, a disqualification by APRA  
16 that is in force under section 21 of that Act immediately before this item  
17 commences continues in force after this item commences.

18 (2) For the purposes of the *Banking Act 1959*, a reference in column 1 of  
19 the table in the provision of the *Banking Act 1959* (as in force  
20 immediately after this item commences) referred to in column 2 is taken  
21 to include the reference in column 3.

22

---

### **New references to court orders to include references to disqualifications by APRA**

---

<b>Item</b>	<b>Column 1 Reference</b>	<b>Column 2 Provision of the Banking Act</b>	<b>Column 3 Reference taken to be included</b>
1	a person who was disqualified under section 21	section 19 and paragraph 22(1)(a)	a person who was disqualified under section 21 under a disqualification that is continued in force under subitem (1)
2	a person disqualified under section 21 by the	paragraph 20(1)(f)	a person disqualified under section 21 by APRA under

---

**New references to court orders to include references to disqualifications by APRA**

<b>Item</b>	<b>Column 1 Reference</b>	<b>Column 2 Provision of the Banking Act</b>	<b>Column 3 Reference taken to be included</b>
	Federal Court of Australia		a disqualification that is continued in force under subitem (1)
3	an order made under section 21	paragraph 22(1)(a) and subsection 22(2)	a disqualification made under section 21 that is continued in force under subitem (1)

1

- 2 (3) Section 21 of the *Banking Act 1959* (as in force immediately after this  
3 item commences) applies in relation to any conduct engaged in by a  
4 person, whether before or after this item commences.

5 *Waivers of disqualifications*

- 6 (4) If:  
7 (a) a person applies to APRA for a determination under  
8 section 22 of the *Banking Act 1959* that the person is not a  
9 disqualified person; and  
10 (b) APRA has not made a decision on the application at the time  
11 this item commences;  
12 the application is taken to be withdrawn at that time.

13 Note: See subitem (7) for the treatment of a decision by APRA under section 22 of the  
14 *Banking Act 1959* in respect of which review proceedings are on foot at  
15 commencement.

- 16 (5) A determination under section 22 of the *Banking Act 1959* that is in  
17 force immediately before this item commences continues in force after  
18 that time. However, APRA may not revoke the determination.

- 19 (6) If:  
20 (a) a determination in relation to a person continues in force  
21 under subitem (5); and  
22 (b) after this item commences, an order is made under section 21  
23 of the *Banking Act 1959* (as in force at that time) that the

1 person is disqualified from being or acting as a person  
2 referred to in subsection 21(2) of that Act;  
3 the determination ceases to be in force.

4 *Review proceedings on foot at commencement*

- 5 (7) The amendments to the *Banking Act 1959* made by this Schedule do not  
6 affect:
- 7 (a) any request, in relation to a decision made under section 21  
8 or 22 of that Act, for a review that is pending under  
9 section 51B of that Act immediately before the  
10 commencement of this item; or
  - 11 (b) any proceeding, in relation to a decision under section 21 or  
12 22 of that Act that has been confirmed or varied under  
13 subsection 51B(3) of that Act, that is pending before the  
14 Administrative Appeals Tribunal immediately before the  
15 commencement of this item; or
  - 16 (c) any appeal to a court in relation to a proceeding referred to in  
17 paragraph (b).
- 18 (8) If a disqualification by APRA under section 21, or a determination  
19 under section 22, of the *Banking Act 1959* is confirmed or varied as a  
20 result of a request, proceeding or appeal referred to in subitem (7), the  
21 disqualification or determination is, for the purposes of subitem (1) or  
22 (5) (as the case requires), taken to have been in force immediately  
23 before this item commences.

24 ***Insurance Act 1973***

25 **10 Subsections 24(1) to (7)**

26 Repeal the subsections, substitute:

- 27 (1) A person commits an offence if:
- 28 (a) the person is a disqualified person; and
  - 29 (b) the person is or acts as one of the following:
    - 30 (i) a director or senior manager of a general insurer (other  
31 than a foreign general insurer);
    - 32 (ii) a senior manager, or agent in Australia for the purpose  
33 of section 118, of a foreign general insurer;



- 1 (iii) a director or senior manager of an authorised NOHC;  
2 and  
3 (c) for a person who is a disqualified person only because he or  
4 she was disqualified under section 25A—the person is  
5 disqualified from being or acting as that director, senior  
6 manager or agent in Australia (as the case requires).

7 Penalty: Imprisonment for 2 years.

- 8 (2) A person commits an offence if:  
9 (a) the person is a disqualified person; and  
10 (b) the person is or acts as one of the following:  
11 (i) a director or senior manager of a general insurer (other  
12 than a foreign general insurer);  
13 (ii) a senior manager, or agent in Australia for the purpose  
14 of section 118, of a foreign general insurer;  
15 (iii) a director or senior manager of an authorised NOHC;  
16 and  
17 (c) for a person who is a disqualified person only because he or  
18 she was disqualified under section 25A—the person is  
19 disqualified from being or acting as that director, senior  
20 manager or agent in Australia (as the case requires).

21 Penalty: 60 penalty units.

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

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

- 24 (4) A body corporate commits an offence if:  
25 (a) a person is a disqualified person; and  
26 (b) the person is or acts as one of the following:  
27 (i) if the body corporate is a general insurer (other than a  
28 foreign general insurer)—a director or senior manager  
29 of the insurer;  
30 (ii) if the body corporate is a foreign general insurer—a  
31 senior manager, or agent in Australia for the purpose of  
32 section 118, of the insurer;  
33 (iii) if the body corporate is an authorised NOHC—a  
34 director or senior manager of the NOHC; and  
35 (c) for a person who is a disqualified person only because he or  
36 she was disqualified under section 25A—the person is

1                   disqualified from being or acting as that director, senior  
2                   manager or agent in Australia (as the case requires); and  
3           (d) in any case—the body corporate allows the person to be or  
4           act as a director, senior manager or agent in Australia (as the  
5           case requires).

6                   Penalty: 250 penalty units.

- 7           (5) A body corporate commits an offence if:
- 8                   (a) a person is a disqualified person; and
- 9                   (b) the person is or acts as one of the following:
- 10                          (i) if the body corporate is a general insurer (other than a  
11                                  foreign general insurer)—a director or senior manager  
12                                  of the insurer;
- 13                          (ii) if the body corporate is a foreign general insurer—a  
14                                  senior manager, or agent in Australia for the purpose of  
15                                  section 118, of the insurer;
- 16                          (iii) if the body corporate is an authorised NOHC—a  
17                                  director or senior manager of the NOHC; and
- 18                   (c) for a person who is a disqualified person only because he or  
19                   she was disqualified under section 25A—the person is  
20                   disqualified from being or acting as that director, senior  
21                   manager or agent in Australia (as the case requires); and
- 22                   (d) in any case—the body corporate allows the person to be or  
23                   act as a director, senior manager or agent in Australia (as the  
24                   case requires).

25                   Penalty: 60 penalty units.

26           (6) Subsection (5) is an offence of strict liability.

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

## 28       **11 Paragraph 25(1)(f)**

29                   Omit “APRA”, substitute “the Federal Court of Australia”.

## 30       **12 Subsection 25(1) (note)**

31                   Omit “APRA”, substitute “The Federal Court of Australia”.

## 32       **13 Sections 25A and 26**

33                   Repeal the sections, substitute:



- 1 (b) any other matters the Court considers relevant.
- 2 (5) As soon as practicable after the Court disqualifies a person under  
3 this section, APRA must cause particulars of the disqualification:  
4 (a) to be given:  
5 (i) if the person is, or is acting as, a person referred to in  
6 subparagraph (2)(a)(i)—to the general insurer  
7 concerned; or  
8 (ii) if the person is, or is acting as, a person referred to in  
9 subparagraph (2)(b)(i)—to the foreign general insurer  
10 concerned; or  
11 (iii) if the person is, or is acting as, a person referred to in  
12 paragraph (2)(c)(i)—to the authorised NOHC  
13 concerned; and  
14 (b) to be published in the *Gazette*.

## 15 **26 Court power to revoke or vary a disqualification etc.**

- 16 (1) A disqualified person, or APRA, may apply to the Federal Court of  
17 Australia for:  
18 (a) if the person is a disqualified person only because he or she  
19 was disqualified under section 25A—a variation or a  
20 revocation of the order made under that section; or  
21 (b) otherwise—an order that the person is not a disqualified  
22 person.
- 23 (2) If the Court revokes an order under paragraph (1)(a) or makes an  
24 order under paragraph (1)(b), then, despite section 25, the person is  
25 not a *disqualified person*.
- 26 (3) At least 21 days before commencing the proceedings, written  
27 notice of the application must be lodged:  
28 (a) if the disqualified person makes the application—by the  
29 person with APRA; or  
30 (b) if APRA makes the application—by APRA with the  
31 disqualified person.
- 32 (4) An order under paragraph (1)(b) may be expressed to be subject to  
33 exceptions and conditions determined by the Court.

## 34 **14 Paragraph 27(2)(a)**

1 Repeal the paragraph, substitute:

2 (a) either:

3 (i) for a person who is a disqualified person only because  
4 he or she was disqualified under section 25A—is  
5 disqualified from being or acting as a director or senior  
6 manager of the insurer or NOHC; or

7 (ii) otherwise—is a disqualified person; or

8 **15 Paragraph 39(3)(b)**

9 Omit “determination”, substitute “order”.

10 **16 Paragraph 43(1)(c)**

11 Repeal the paragraph, substitute:

12 (c) the person is disqualified under section 44 from holding the  
13 appointment; or

14 **17 Sections 44 and 45**

15 Repeal the sections, substitute:

16 **43A Disqualified persons must not act as auditor or actuary of**  
17 **general insurer**

18 (1) A person commits an offence if:

19 (a) the person is disqualified under section 44; and

20 (b) the person is or acts as an auditor or actuary of a general  
21 insurer; and

22 (c) the person is disqualified from being or acting as that auditor  
23 or actuary (as the case requires).

24 Penalty: Imprisonment for 2 years.

25 (2) A person commits an offence if:

26 (a) the person is disqualified under section 44; and

27 (b) the person is or acts as an auditor or actuary of a general  
28 insurer; and

29 (c) the person is disqualified from being or acting as that auditor  
30 or actuary (as the case requires).

31 Penalty: 60 penalty units.

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

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

3 (4) A body corporate commits an offence if:

4 (a) a person is disqualified under section 44; and

5 (b) the person is or acts as an actuary or auditor of the body  
6 corporate; and

7 (c) the person is disqualified from being or acting as that actuary  
8 or auditor (as the case requires); and

9 (d) the body corporate allows the person to be or act as an  
10 actuary or auditor (as the case requires).

11 Penalty: 250 penalty units.

12 (5) A body corporate commits an offence if:

13 (a) a person is disqualified under section 44; and

14 (b) the person is or acts as an actuary or auditor of the body  
15 corporate; and

16 (c) the person is disqualified from being or acting as that actuary  
17 or auditor (as the case requires); and

18 (d) the body corporate allows the person to be or act as an  
19 actuary or auditor (as the case requires).

20 Penalty: 60 penalty units.

21 (6) Subsection (5) is an offence of strict liability.

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

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

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

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

## 30 **44 Court power of disqualification**

31 (1) On application by APRA, the Federal Court of Australia may, by  
32 order, disqualify a person from holding any appointment as a  
33 person referred to in subsection (2), for a period that the Court  
34 considers appropriate, if the Court is satisfied that:

- 1 (a) any of the following applies:
- 2 (i) the person has failed to perform adequately and properly
- 3 the functions and duties of such an appointment under
- 4 this Act or the prudential standards;
- 5 (ii) the person otherwise does not meet one or more of the
- 6 criteria for fitness and propriety set out in the prudential
- 7 standards;
- 8 (iii) the person does not meet the eligibility criteria for such
- 9 an appointment as set out in the prudential standards;
- 10 and
- 11 (b) the disqualification is justified.
- 12 (2) For the purposes of subsection (1), the Court may disqualify a
- 13 person from being or acting as an auditor or actuary of:
- 14 (a) a particular general insurer; or
- 15 (b) a class of general insurers; or
- 16 (c) any general insurer.
- 17 (3) In deciding whether it is satisfied as mentioned in paragraph (1)(a),
- 18 the Court may take into account:
- 19 (a) any matters specified in the regulations for the purposes of
- 20 this paragraph; and
- 21 (b) any criteria for fitness and propriety set out in the prudential
- 22 standards; and
- 23 (c) any other matters the Court considers relevant.
- 24 (4) In deciding whether the disqualification is justified as mentioned in
- 25 paragraph (1)(b), the Court may have regard to:
- 26 (a) the person's conduct in relation to the functions or duties that
- 27 the person is required to perform under this Act and the
- 28 prudential standards; and
- 29 (b) any other matters the Court considers relevant.
- 30 (5) As soon as practicable after the Court disqualifies a person under
- 31 this section, APRA must cause particulars of the disqualification:
- 32 (a) if the person is, or is acting as, an auditor or actuary of a
- 33 general insurer—to be given to the general insurer
- 34 concerned; and
- 35 (b) to be published in the *Gazette*.

1       **45 Court power to revoke or vary a disqualification etc.**

- 2               (1) A person who is disqualified under section 44, or APRA, may  
3               apply to the Federal Court of Australia for a variation or a  
4               revocation of an order made under that section.
- 5               (2) At least 21 days before commencing the proceedings, written  
6               notice of the application must be lodged:
- 7                     (a) if the person who is disqualified makes the application—by  
8                     the person with APRA; or
- 9                     (b) if APRA makes the application—by APRA with the person  
10                  who is disqualified.

11       **18 After paragraph 48(1)(a)**

- 12               Insert:
- 13                     (aa) is disqualified under section 44 from being or acting as an  
14                     auditor of the general insurer; or

15       **19 After paragraph 48(2)(a)**

- 16               Insert:
- 17                     (aa) is disqualified under section 44 from being or acting as an  
18                     actuary of the general insurer; or

19       **20 Subsection 48(4)**

20               Repeal the subsection.

21       **21 Application and transitional provisions**

- 22       (1) For the purposes of the *Insurance Act 1973*, a disqualification by APRA  
23       that is in force under section 25A or 44 of that Act immediately before  
24       this item commences continues in force after this item commences.
- 25       (2) For the purposes of the *Insurance Act 1973*, a reference in column 1 of  
26       the table in the provision of the *Insurance Act 1973* (as in force  
27       immediately after this item commences) referred to in column 2 is taken  
28       to include the reference in column 3.
- 29



**New references to court orders to include references to disqualifications by APRA**

<b>Item</b>	<b>Column 1 Reference</b>	<b>Column 2 Provision of the Insurance Act</b>	<b>Column 3 Reference taken to be included</b>
1	a person who was disqualified under section 25A	section 24 and paragraph 26(1)(a)	a person who was disqualified under section 25A under a disqualification that is continued in force under subitem (1)
2	a person disqualified under section 25A by the Federal Court of Australia	paragraph 25(1)(f)	a person disqualified under section 25A by APRA under a disqualification that is continued in force under subitem (1)
3	an order made under section 25A	paragraph 26(1)(a) and subsection 26(2)	a disqualification made under section 25A that is continued in force under subitem (1)
4	an order made under section 44	paragraph 40(2)(b)	a disqualification made under section 44 that is continued in force under subitem (1)
5	a person disqualified under section 44	sections 43, 43A, 45 and 48	a person disqualified under section 44 under a disqualification that is continued in force under subitem (1)

1

2 (3) Sections 25A and 44 of the *Insurance Act 1973* (as in force immediately  
3 after this item commences) apply in relation to any conduct engaged in  
4 by a person, whether before or after this item commences.

5 *Waivers of disqualifications*

6 (4) If:

7 (a) either:

- 1 (i) a person applies to APRA for a determination under  
2 section 26 of the *Insurance Act 1973* that the person is  
3 not a disqualified person; or  
4 (ii) a person applies to APRA under section 45 of the  
5 *Insurance Act 1973* for the revocation of a  
6 determination under section 44 of that Act; and  
7 (b) APRA has not made a decision on the application at the time  
8 this item commences;  
9 the application is taken to be withdrawn at that time.

10 Note: See subitem (7) for the treatment of a decision by APRA under section 26 or 45 of the  
11 *Insurance Act 1973* in respect of which review proceedings are on foot at  
12 commencement.

13 (5) A determination under section 26 of the *Insurance Act 1973* that is in  
14 force immediately before this item commences continues in force after  
15 that time. However, APRA may not revoke the determination.

- 16 (6) If:  
17 (a) a determination in relation to a person continues in force  
18 under subitem (5); and  
19 (b) after this item commences, an order is made under  
20 section 25A of the *Insurance Act 1973* (as in force at that  
21 time) that the person is disqualified from being or acting as a  
22 person referred to in subsection 25A(2) of that Act;  
23 the determination ceases to be in force.

24 *Review proceedings on foot at commencement*

- 25 (7) The amendments to the *Insurance Act 1973* made by this Schedule do  
26 not affect:  
27 (a) any request, in relation to a decision made under section 25A,  
28 26, 44 or 45 of that Act, for a review that is pending under  
29 section 63 of that Act immediately before the commencement  
30 of this item; or  
31 (b) any proceeding, in relation to a decision under section 25A,  
32 26, 44 or 45 of that Act that has been confirmed or varied  
33 under subsection 63(4) of that Act, that is pending before the  
34 Administrative Appeals Tribunal immediately before the  
35 commencement of this item; or  
36 (c) any appeal to a court in relation to a proceeding referred to in  
37 paragraph (b).

1 (8) If a disqualification by APRA under section 25A or 44, or a  
2 determination under section 26, of the *Insurance Act 1973* is confirmed  
3 or varied as a result of a request, proceeding or appeal referred to in  
4 subitem (7), the disqualification or determination is, for the purposes of  
5 subitem (1) or (5) (as the case requires), taken to have been in force  
6 immediately before this item commences.

7 ***Life Insurance Act 1995***

8 **22 Paragraph 84(b)**

9 Repeal the paragraph, substitute:

10 (b) no order is in force under section 245A that the person is  
11 disqualified from being or acting as an auditor of the life  
12 company.

13 **23 Paragraph 85(1)(c)**

14 Repeal the paragraph, substitute:

15 (c) an order takes effect under section 245A that the person is  
16 disqualified from being or acting as an auditor of the life  
17 company.

18 **24 Section 86**

19 Repeal the section.

20 **25 Paragraph 93(3)(b)**

21 Repeal the paragraph, substitute:

22 (b) no order is in force under section 245A that the person is  
23 disqualified from being or acting as an actuary of the life  
24 company.

25 **26 Paragraph 94(1)(c)**

26 Repeal the paragraph, substitute:

27 (c) an order takes effect under section 245A that the person is  
28 disqualified from being or acting as an actuary of the life  
29 company.

30 **27 Section 94A**

31 Repeal the section.

1       **28 At the end of Division 8 of Part 6**

2           Add:

3       **125A APRA may direct removal of auditor or actuary**

- 4           (1) APRA may, if satisfied there is a ground under subsection (2), give  
5           a written direction to a life company to end the appointment of a  
6           person as:  
7           (a) the auditor of the company; or  
8           (b) the appointed actuary of the company.
- 9           (2) The grounds for giving a direction to end a person's appointment  
10          are:  
11          (a) either:  
12              (i) for a person who is a disqualified person only because  
13              he or she was disqualified under section 245A—the  
14              person is disqualified from being or acting as an auditor  
15              or actuary of the company; or  
16              (ii) otherwise—the person is a disqualified person; or  
17          (b) the person is not a fit and proper person to hold the  
18          appointment; or  
19          (c) the person has failed to perform adequately and properly the  
20          duties or functions of the appointment under this Act, the  
21          regulations or the *Financial Sector (Collection of Data) Act*  
22          2001.
- 23          (3) Before directing a life company to end a person's appointment,  
24          APRA must:  
25          (a) give written notice to:  
26              (i) the life company; and  
27              (ii) the person; and  
28          (b) give the life company and the person a reasonable  
29          opportunity to make submissions on the matter.
- 30          (4) The notice must include a statement that any submissions in  
31          response to the notice may be discussed by APRA with other  
32          persons as mentioned in paragraph (5)(b).
- 33          (5) If a submission is made in response to the notice, APRA:  
34          (a) must have regard to the submission; and

1 (b) may discuss any matter contained in the submission with any  
2 persons APRA considers appropriate for the purpose of  
3 assessing the truth of the matter.

4 (6) A direction to end a person's appointment takes effect on the day  
5 specified in the direction, which must be at least 7 days after the  
6 direction is made.

7 (7) If APRA directs a life company to end a person's appointment,  
8 APRA must give the life company and the person a copy of the  
9 direction.

10 (8) A direction to end a person's appointment is not a legislative  
11 instrument.

12 (9) A life company commits an offence if:

13 (a) the life company does or fails to do an act; and

14 (b) by doing or failing to do the act, the life company fails to  
15 comply with a direction under this section.

16 Penalty: 60 penalty units.

17 (10) Subsection (9) is an offence of strict liability.

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

19 **29 Subsection 236(1) (after paragraph (z) of the definition of**  
20 ***reviewable decision*)**

21 Insert:

22 (za) a decision to give a direction under section 125A;

23 **30 Subsection 245(1)**

24 Omit "this section", substitute "this Act".

25 **31 At the end of subsection 245(1)**

26 Add:

27 ; or (d) the Federal Court of Australia has disqualified the person  
28 under section 245A.

29 Note: The heading to section 245 is altered by omitting "**Bankrupts and persons convicted**  
30 **of certain offences**" and substituting "**Disqualified persons**".

31 **32 Subsections 245(2) to (5)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

Repeal the subsections, substitute:

- (2) A person commits an offence if:
  - (a) the person is a disqualified person; and
  - (b) the person is or acts as:
    - (i) a director of a company registered under this Act; or
    - (ii) a principal executive officer of a company registered under this Act; or
    - (iii) an appointed actuary of a company registered under this Act; or
    - (iv) an auditor of a company registered under this Act; and
  - (c) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires).

Penalty: Imprisonment for 2 years.

- (3) A person commits an offence if:
  - (a) the person is a disqualified person; and
  - (b) the person is or acts as:
    - (i) a director of a company registered under this Act; or
    - (ii) a principal executive officer of a company registered under this Act; or
    - (iii) an appointed actuary of a company registered under this Act; or
    - (iv) an auditor of a company registered under this Act; and
  - (c) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires).

Penalty: 60 penalty units.

- (4) Subsection (3) is an offence of strict liability.

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

- (5) A company commits an offence if:
  - (a) the company is registered under this Act; and
  - (b) a person is a disqualified person; and

- 1 (c) the person is or acts as:  
2 (i) a director of the company; or  
3 (ii) a principal executive officer of the company; or  
4 (iii) an appointed actuary of the company; or  
5 (iv) an auditor of the company; and  
6 (d) for a person who is a disqualified person only because he or  
7 she was disqualified under section 245A—the person is  
8 disqualified from being or acting as that director, principal  
9 executive officer, actuary or auditor (as the case requires);  
10 and  
11 (e) in any case—the company allows the person to be or act as a  
12 director, principal executive officer, actuary or auditor (as the  
13 case requires).

14 Penalty: 250 penalty units.

- 15 (5A) A company commits an offence if:  
16 (a) the company is registered under this Act; and  
17 (b) a person is a disqualified person; and  
18 (c) the person is or acts as:  
19 (i) a director of the company; or  
20 (ii) a principal executive officer of the company; or  
21 (iii) an appointed actuary of the company; or  
22 (iv) an auditor of the company; and  
23 (d) for a person who is a disqualified person only because he or  
24 she was disqualified under section 245A—the person is  
25 disqualified from being or acting as that director, principal  
26 executive officer, actuary or auditor (as the case requires);  
27 and  
28 (e) in any case—the company allows the person to be or act as a  
29 director, principal executive officer, actuary or auditor (as the  
30 case requires).

31 Penalty: 60 penalty units.

32 (5B) Subsection (5A) is an offence of strict liability.

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

### 34 **33 After section 245**

35 Insert:

1           **245A Court power of disqualification**

- 2           (1) On application by APRA, the Federal Court of Australia may, by  
3           order, disqualify a person from being or acting as someone referred  
4           to in subsection (2), for a period that the Court considers  
5           appropriate, if the Court is satisfied that:  
6           (a) the person is not a fit and proper person to be or act as such a  
7           person; and  
8           (b) the disqualification is justified.
- 9           (2) For the purposes of subsection (1), the Court may disqualify a  
10          person from being or acting as a director, principal executive  
11          officer, appointed actuary or auditor of:  
12          (a) a particular company registered under this Act; or  
13          (b) a class of companies registered under this Act; or  
14          (c) any company registered under this Act.
- 15          (3) In deciding whether it is satisfied as mentioned in paragraph (1)(a),  
16          the Court may take into account:  
17          (a) any matters specified in the regulations for the purposes of  
18          this paragraph; and  
19          (b) any criteria for fitness and propriety specified in the  
20          prudential standards; and  
21          (c) any other matters the Court considers relevant.
- 22          (4) In deciding whether the disqualification is justified as mentioned in  
23          paragraph (1)(b), the Court may have regard to:  
24          (a) if the application is for the person to be disqualified from  
25          being or acting as a director or principal executive officer—  
26          the person's conduct in relation to the management, business  
27          or property of any corporation; and  
28          (b) if the application is for the person to be disqualified from  
29          being or acting as an appointed actuary or auditor—the  
30          person's conduct in relation to the functions or duties of an  
31          actuary or auditor under this Act; and  
32          (c) in any case—any other matters the Court considers relevant.
- 33          (5) As soon as practicable after the Court disqualifies a person under  
34          this section, APRA must cause particulars of the disqualification:



- 1 (a) if the person is, or is acting as, a director, principal executive  
2 officer, appointed actuary or auditor of a company registered  
3 under this Act—to be given to the company concerned; and  
4 (b) to be published in the *Gazette*.

5 **245B Court power to revoke or vary a disqualification etc.**

- 6 (1) A disqualified person, or APRA, may apply to the Federal Court of  
7 Australia for:  
8 (a) if the person is a disqualified person only because he or she  
9 was disqualified under section 245A—a variation or a  
10 revocation of the order made under that section; or  
11 (b) otherwise—an order that the person is not a disqualified  
12 person.
- 13 (2) If the Court revokes an order under paragraph (1)(a) or makes an  
14 order under paragraph (1)(b), then, despite section 245, the person  
15 is not a *disqualified person*.
- 16 (3) At least 21 days before commencing the proceedings, written  
17 notice of the application must be lodged:  
18 (a) if the disqualified person makes the application—by the  
19 person with APRA; or  
20 (b) if APRA makes the application—by APRA with the  
21 disqualified person.
- 22 (4) An order under paragraph (1)(b) may be expressed to be subject to  
23 exceptions and conditions determined by the Court.

24 **34 Application**

25 Section 245A of the *Life Insurance Act 1995* (as inserted by this Act)  
26 applies in relation to any conduct engaged in by a person, whether  
27 before or after this item commences.

28 ***Retirement Savings Accounts Act 1997***

29 **35 Section 16 (definition of *approved auditor*)**

30 Omit “in respect of whom a disqualification order is in force under  
31 section 67”, substitute “who is disqualified from being or acting as an  
32 auditor of all RSA providers under section 67”.

1       **36 Section 16 (paragraphs (i) and (j) of the definition of**  
2                ***reviewable decision*)**

3                Repeal the paragraphs.

4       **37 After subsection 65(1)**

5                Insert:

6                (1A) For the purposes of subsection (1), a person is not an approved  
7                    auditor, in relation to an RSA provider, if the person is disqualified  
8                    from being or acting as an approved auditor of that RSA provider  
9                    under section 67.

10       **38 Section 67**

11                Repeal the section, substitute:

12       **67 Court power of disqualification**

13                (1) On application by APRA, the Federal Court of Australia may, by  
14                    order, disqualify a person from holding any appointment as a  
15                    person referred to in subsection (2), for a period that the Court  
16                    considers appropriate, if the Court is satisfied:

- 17                    (a) as mentioned in subsection (3); and  
18                    (b) that the disqualification is justified.

19                Note:       For offences relating to persons disqualified under this section, see  
20                    section 67B.

21                (2) For the purposes of subsection (1), the Court may disqualify a  
22                    person from being or acting as an auditor of:

- 23                    (a) a particular RSA provider; or  
24                    (b) a class of RSA providers; or  
25                    (c) any RSA provider.

26                (3) The Court may disqualify a person, in accordance with  
27                    subsection (1), if the Court is satisfied that:

- 28                    (a) the person has failed, whether within or outside Australia, to  
29                    carry out or perform adequately and properly:  
30                    (i) the duties of an auditor under this Act or the regulations;  
31                    or

- 1 (ii) any duties required by a law of the Commonwealth, a  
2 State or a Territory to be carried out or performed by an  
3 auditor; or  
4 (iii) any functions that an auditor is entitled to perform in  
5 relation to this Act or the regulations or the *Financial*  
6 *Sector (Collection of Data) Act 2001*; or  
7 (b) the person is otherwise not a fit and proper person to be an  
8 approved auditor for the purposes of this Act.
- 9 (4) In deciding whether it is satisfied as mentioned in subsection (3),  
10 the Court may take into account:  
11 (a) any matters specified in the regulations for the purposes of  
12 this paragraph; and  
13 (b) any other matters the Court considers relevant.
- 14 (5) In deciding whether the disqualification is justified as mentioned in  
15 paragraph (1)(b), the Court may have regard to:  
16 (a) the person's conduct in relation to the functions or duties that  
17 the person is required to perform under this Act or the  
18 regulations; and  
19 (b) any other matters the Court considers relevant.
- 20 (6) As soon as practicable after the Court disqualifies a person under  
21 this section, APRA must cause particulars of the disqualification:  
22 (a) if the person is, or is acting as, an auditor of an RSA  
23 provider—to be given to the RSA provider concerned; and  
24 (b) to be published in the *Gazette*.

## 25 **67A Court power to revoke or vary a disqualification etc.**

- 26 (1) A person who is disqualified under section 67, or APRA, may  
27 apply to the Federal Court of Australia for a variation or a  
28 revocation of an order made under that section.
- 29 (2) At least 21 days before commencing the proceedings, written  
30 notice of the application must be lodged:  
31 (a) if the person who is disqualified makes the application—by  
32 the person with APRA; or  
33 (b) if APRA makes the application—by APRA with the person  
34 who is disqualified.

1           **67B Disqualified persons not to be auditor of RSA provider**

2           (1) A person commits an offence if:

- 3                   (a) the person is, or acts as, an auditor of an RSA provider for  
4                   the purposes of this Act; and  
5                   (b) the person is disqualified under section 67 from being or  
6                   acting as an auditor of that RSA provider; and  
7                   (c) the person knows that he or she is so disqualified.

8           Penalty: Imprisonment for 2 years.

9           (2) A person commits an offence if:

- 10                   (a) the person is, or acts as, an auditor of an RSA provider for  
11                   the purposes of this Act; and  
12                   (b) the person is disqualified under section 67 from being or  
13                   acting as an auditor of that RSA provider; and  
14                   (c) the person knows that he or she is so disqualified.

15           Penalty: 60 penalty units.

16           (3) Subsection (2) is an offence of strict liability.

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

18           **39 Subsection 68(3)**

19           Repeal the subsection, substitute:

- 20           (3) The power of APRA under subsection (1) may be exercised  
21           whether or not an order disqualifying the auditor has been made  
22           under section 67.

23           **40 Application and transitional provisions**

24           (1) For the purposes of the *Retirement Savings Accounts Act 1997*, a  
25           disqualification by APRA that is in force under section 67 of that Act  
26           immediately before this item commences continues in force after this  
27           item commences.

28           (2) For the purposes of the *Retirement Savings Accounts Act 1997*, a  
29           reference in column 1 of the table in the provision of the *Retirement*  
30           *Savings Accounts Act 1997* (as in force immediately after this item  
31           commences) referred to in column 2 is taken to include the reference in  
32           column 3.

---

**New references to court orders to include references to disqualifications by APRA**

---

<b>Item</b>	<b>Column 1 Reference</b>	<b>Column 2 Provision of the Retirement Savings Accounts Act</b>	<b>Column 3 Reference taken to be included</b>
1	a person disqualified under section 67	sections 67A and 67B	a person disqualified under section 67 under a disqualification that is continued in force under subitem (1)
2	an order made under section 67	subsection 67A(1)	a disqualification made under section 67 that is continued in force under subitem (1)

---

2

3 (3) Section 67 of the *Retirement Savings Accounts Act 1997* (as in force  
4 immediately after this item commences) applies in relation to any  
5 conduct engaged in by a person, whether before or after this item  
6 commences.

7 *Waivers of disqualifications*

8 (4) If:  
9 (a) a person applies to APRA under section 67 of the *Retirement*  
10 *Savings Accounts Act 1997* for the revocation of a  
11 disqualification order under section 67 of that Act; and  
12 (b) APRA has not made a decision on the application at the time  
13 this item commences;  
14 the application is taken to be withdrawn at that time.

15 Note: See subitem (5) for the treatment of a decision by APRA under section 67 of the  
16 *Retirement Savings Accounts Act 1997* in respect of which review proceedings are on  
17 foot at commencement.

18 *Review proceedings on foot at commencement*

19 (5) The amendments to the *Retirement Savings Accounts Act 1997* made by  
20 this Schedule do not affect:

- 1 (a) any request, in relation to a decision made under section 67  
2 of that Act, for a review that is pending under section 189 of  
3 that Act immediately before the commencement of this item;  
4 or  
5 (b) any proceeding, in relation to a decision under section 67 of  
6 that Act that has been confirmed or varied under subsection  
7 189(4) of that Act, that is pending before the Administrative  
8 Appeals Tribunal immediately before the commencement of  
9 this item; or  
10 (c) any appeal to a court in relation to a proceeding referred to in  
11 paragraph (b).
- 12 (6) If a disqualification by APRA under section 67 of the *Retirement*  
13 *Savings Accounts Act 1997* is confirmed or varied as a result of a  
14 request, proceeding or appeal referred to in subitem (5), the  
15 disqualification is, for the purposes of subitem (1), taken to have been  
16 in force immediately before this item commences.

17 ***Superannuation Industry (Supervision) Act 1993***

18 **41 Subsection 10(1) (definition of *approved auditor*)**

19 Repeal the definition, substitute:

20 *approved auditor* means a person included in a class of persons  
21 specified in regulations made for the purposes of this definition,  
22 but does not include:

- 23 (a) a person who is disqualified from being or acting as an  
24 auditor of all superannuation entities under section 130D; or  
25 (b) a person in respect of whom a disqualification order is in  
26 force under section 131.

27 **42 Saving regulations**

28 The amendment made by item 41 of this Schedule does not affect the  
29 continuity of any regulations made for the purposes of the definition of  
30 *approved auditor* in subsection 10(1) of the *Superannuation Industry*  
31 *(Supervision) Act 1993* that are in force immediately before this item  
32 commences.

33 **43 Subsection 10(1) (paragraphs (pa) and (pb) of the**  
34 **definition of *reviewable decision*)**

1 Repeal the paragraphs.

2 **44 Subsection 10(1) (after paragraph (q) of the definition of**  
3 ***reviewable decision*)**

4 Insert:

5 (qa) a decision of the Regulator under subsection 126A(1), (2) or  
6 (3) to disqualify an individual; or

7 (qb) a decision of the Regulator under subsection 126A(5)  
8 refusing to revoke the disqualification of an individual; or

9 **45 Application**

10 The amendments made by items 43 and 44 of this Schedule apply to  
11 decisions made after this item commences.

12 **46 After subsection 35C(1)**

13 Insert:

14 (1A) For the purposes of subsection (1), a person is not an approved  
15 auditor, in relation to a superannuation entity, if the person is  
16 disqualified from being or acting as an approved auditor of that  
17 superannuation entity under section 130D.

18 **47 After subsection 113(1)**

19 Insert:

20 (1AA) For the purposes of subsection (1), a person is not an approved  
21 auditor, in relation to a superannuation entity, if the person is  
22 disqualified from being or acting as an approved auditor of that  
23 superannuation entity under section 130D.

24 **48 Before section 119**

25 Insert:

26 **Division 1—Object of Part and definition of disqualified**  
27 **person**

28 **49 Paragraph 120(1)(c)**

29 Repeal the paragraph, substitute:

30 (c) either:

- 1 (i) to the extent that the Regulator is the Commissioner of  
2 Taxation—the Regulator has disqualified the individual  
3 under section 126A; or  
4 (ii) to the extent that the Regulator is APRA—the Federal  
5 Court of Australia has disqualified the individual under  
6 section 126H.

7 **50 Paragraph 120(2)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) the body corporate knows, or has reasonable grounds to  
10 suspect, that a person who is, or is acting as, a responsible  
11 officer of the body corporate is:  
12 (i) for a person who is a disqualified person only because  
13 he or she was disqualified under section 126H—  
14 disqualified from being or acting as a responsible officer  
15 of the body corporate; or  
16 (ii) otherwise—a disqualified person; or

17 **51 Subsection 120(2A)**

18 Repeal the subsection (not including the heading).

19 **52 Sections 120A and 121**

20 Repeal the sections.

21 **53 Before section 122**

22 Insert:

23 **Division 2—Requirements for custodians and investment**  
24 **managers**

25 **54 Sections 126 and 126A**

26 Repeal the sections, substitute:



1       **Division 3—Disqualified persons**

2       **Subdivision A—Disqualification by the Commissioner of**  
3       **Taxation**

4       **126 Application of this Subdivision**

5                       This Subdivision applies to the extent that the Regulator is the  
6                       Commissioner of Taxation.

7       **126A The Regulator may disqualify individuals**

- 8                       (1) The Regulator may disqualify an individual if satisfied that:
- 9                               (a) the person has contravened this Act or the *Financial Sector*  
10                                       *(Collection of Data) Act 2001* on one or more occasions; and
- 11                               (b) the nature or seriousness of the contravention or  
12                                       contraventions, or the number of contraventions, provides  
13                                       grounds for disqualifying the individual.

14                       Note:       For offences relating to disqualified persons, see Subdivision C.

- 15                       (2) The Regulator may disqualify an individual who is, or was, a  
16                               responsible officer of a trustee, investment manager or custodian  
17                               (the *body corporate*) if satisfied that:
- 18                               (a) the body corporate has contravened this Act or the *Financial*  
19                                       *Sector (Collection of Data) Act 2001* on one or more  
20                                       occasions; and
- 21                               (b) at the time of one or more of the contraventions, the  
22                                       individual was a responsible officer of the body corporate;  
23                                       and
- 24                               (c) in respect of the contravention or contraventions that  
25                                       occurred while the individual was a responsible officer of the  
26                                       body corporate—the nature or seriousness of it or them, or  
27                                       the number of them, provides grounds for the disqualification  
28                                       of the individual.
- 29                       (3) The Regulator may disqualify an individual if satisfied that the  
30                               individual is otherwise not a fit and proper person to be a trustee,  
31                               investment manager or custodian, or a responsible officer of a body  
32                               corporate that is a trustee, investment manager or custodian.
- 33                       (4) A disqualification takes effect on the day on which it is made.

- 1 (5) The Regulator may revoke a disqualification on application by the  
2 disqualified individual or on its own initiative. A revocation takes  
3 effect on the day on which it is made.
- 4 (6) The Regulator must give the individual written notice of a  
5 disqualification, revocation of a disqualification or a refusal to  
6 revoke a disqualification.
- 7 (7) The Regulator must cause particulars of a notice given under  
8 subsection (6) or 344(6) (result of internal review) to be published  
9 in the *Gazette* as soon as practicable.

10 **55 Subsection 126D(1)**

11 Repeal the subsection.

12 **56 Subsection 126D(1A)**

13 Repeal the subsection, substitute:

- 14 (1A) If, having regard to any of the following:
- 15 (a) the offence to which the application relates;
- 16 (b) the time that has passed since the applicant committed the  
17 offence;
- 18 (c) the applicant's age when the applicant committed the  
19 offence;
- 20 (d) the orders made by the court in relation to the offence;
- 21 (e) any other relevant matter;
- 22 the Regulator is satisfied that the applicant is highly unlikely to:
- 23 (f) contravene this Act; and
- 24 (g) do anything that would result in a self managed  
25 superannuation fund not complying with this Act;
- 26 the Regulator must, by notice in writing given to the applicant,  
27 make a declaration waiving the applicant's status as a disqualified  
28 person for the purposes of this Part.

29 **57 After section 126F**

30 Insert:

1           **Subdivision B—Disqualification by the Federal Court of**  
2                                   **Australia**

3           **126G Application of this Subdivision**

4                                   This Subdivision applies to the extent that the Regulator is APRA.

5           **126H Court power of disqualification**

6                                   (1) On application by the Regulator, the Federal Court of Australia  
7                                   may, by order, disqualify an individual from being or acting as a  
8                                   person referred to in subsection (2), for a period that the Court  
9                                   considers appropriate, if the Court is satisfied:

- 10                                   (a) as mentioned in subsection (3), (4) or (5); and  
11                                   (b) that the disqualification is justified.

12                                   Note:       For offences relating to disqualified persons, see Subdivision C.

13                                   (2) For the purposes of subsection (1), the Court may disqualify an  
14                                   individual from being or acting as:

- 15                                   (a) a trustee of:  
16                                   (i) a particular superannuation entity; or  
17                                   (ii) a class of superannuation entities; or  
18                                   (iii) any superannuation entity; or  
19                                   (b) a responsible officer of:  
20                                   (i) a particular body corporate that is a trustee, an  
21                                   investment manager or a custodian of a superannuation  
22                                   entity; or  
23                                   (ii) a class of bodies corporate that are trustees, investment  
24                                   managers or custodians of superannuation entities; or  
25                                   (iii) any body corporate that is a trustee, investment manager  
26                                   or custodian of a superannuation entity.

27                                   (3) The Court may disqualify an individual, in accordance with  
28                                   subsection (1), if satisfied:

- 29                                   (a) that the individual has contravened this Act or the *Financial*  
30                                   *Sector (Collection of Data) Act 2001* on one or more  
31                                   occasions; and  
32                                   (b) that the nature or seriousness of the contravention or  
33                                   contraventions, or the number of contraventions, provides  
34                                   grounds for disqualifying the individual.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

- (4) The Court may disqualify an individual, in accordance with subsection (1), who is, or was, a responsible officer of a trustee, investment manager or custodian (the *body corporate*) if satisfied that:
  - (a) the body corporate has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
  - (b) at the time of one or more of the contraventions, the individual was a responsible officer of the body corporate; and
  - (c) in respect of the contravention or contraventions that occurred while the individual was a responsible officer of the body corporate—the nature or seriousness of it or them, or the number of them, provides grounds for the disqualification of the individual.
  
- (5) The Court may disqualify an individual, in accordance with subsection (1), if satisfied that the individual is otherwise not a fit and proper person to be a person referred to in subsection (2).
  
- (6) In deciding whether it is satisfied as mentioned in subsection (3), (4) or (5), the Court may take into account:
  - (a) any matters specified in the regulations for the purposes of this paragraph; and
  - (b) any other matters the Court considers relevant.
  
- (7) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:
  - (a) the individual’s conduct in relation to the management, business or property of any corporation; and
  - (b) any other matters the Court considers relevant.
  
- (8) As soon as practicable after the Court disqualifies an individual under this section, the Regulator must cause particulars of the disqualification to which the notice relates:
  - (a) to be given:
    - (i) if the individual is, or is acting as, a trustee of a superannuation entity—to the entity concerned; or
    - (ii) if the individual is, or is acting as, a responsible officer of a body corporate that is a trustee, an investment

- 1 manager or a custodian of a superannuation entity—to  
2 the body corporate concerned; and  
3 (b) to be published in the *Gazette*.

4 **126J Court power to revoke or vary a disqualification etc.**

- 5 (1) A disqualified person, or the Regulator, may apply to the Federal  
6 Court of Australia for:  
7 (a) if an individual is a disqualified person only because he or  
8 she was disqualified under section 126H—a variation or a  
9 revocation of the order made under that section; or  
10 (b) otherwise—an order that the person is not a disqualified  
11 person.
- 12 (2) If the Court revokes an order under paragraph (1)(a) or makes an  
13 order under paragraph (1)(b), then, despite section 120, the person  
14 is not a *disqualified person*.
- 15 (3) At least 21 days before commencing the proceedings, written  
16 notice of the application must be lodged:  
17 (a) if the disqualified person makes the application—by the  
18 person with the Regulator; or  
19 (b) if the Regulator makes the application—by the Regulator  
20 with the disqualified person.
- 21 (4) An order under paragraph (1)(b) may be expressed to be subject to  
22 exceptions and conditions determined by the Court.

23 **Subdivision C—Offences relating to disqualified persons**

24 **126K Disqualified persons not to be trustees, investment managers**  
25 **or custodians of superannuation entities**

- 26 (1) A person commits an offence if:  
27 (a) the person is a disqualified person; and  
28 (b) the person knows he or she is a disqualified person; and  
29 (c) the person is or acts as a trustee, investment manager or  
30 custodian of a superannuation entity; and  
31 (d) for a person who is an individual and who is a disqualified  
32 person only because he or she was disqualified under

1 section 126H—the person is disqualified from being or  
2 acting as a trustee of that superannuation entity.

3 Penalty: Imprisonment for 2 years.

- 4 (2) A person commits an offence if:
- 5 (a) the person is a disqualified person; and
  - 6 (b) the person knows he or she is a disqualified person; and
  - 7 (c) the person is or acts as a trustee, investment manager or  
8 custodian of a superannuation entity; and
  - 9 (d) for a person who is an individual and who is a disqualified  
10 person only because he or she was disqualified under  
11 section 126H—the person is disqualified from being or  
12 acting as a trustee of that superannuation entity.

13 Penalty: 60 penalty units.

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

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

- 16 (4) A person commits an offence if:
- 17 (a) the person is a disqualified person; and
  - 18 (b) the person knows he or she is a disqualified person; and
  - 19 (c) the person is or acts as a responsible officer of a body  
20 corporate that is a trustee, investment manager or custodian  
21 of a superannuation entity; and
  - 22 (d) for a person who is an individual and who is a disqualified  
23 person only because he or she was disqualified under  
24 section 126H—the person is disqualified from being or  
25 acting as that responsible officer.

26 Penalty: Imprisonment for 2 years.

- 27 (5) A person commits an offence if:
- 28 (a) the person is a disqualified person; and
  - 29 (b) the person knows he or she is a disqualified person; and
  - 30 (c) the person is or acts as a responsible officer of a body  
31 corporate that is a trustee, investment manager or custodian  
32 of a superannuation entity; and
  - 33 (d) for a person who is an individual and who is a disqualified  
34 person only because he or she was disqualified under

1 section 126H—the person is disqualified from being or  
2 acting as that responsible officer.

3 Penalty: 60 penalty units.

4 (6) Subsection (5) is an offence of strict liability.

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

6 (7) A person commits an offence if:

7 (a) the person is a trustee of a superannuation entity; and

8 (b) the person is or becomes a disqualified person; and

9 (c) the person does not tell the Regulator in writing immediately.

10 Penalty: 50 penalty units.

11 (8) Subsection (7) is an offence of strict liability.

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

14 Note 2: For *strict liability*, see section 6.1 of the *Criminal Code*.

15 **58 Before section 127**

16 Insert:

17 **Division 4—Non-compliance not to invalidate appointment**  
18 **or transaction**

19 **59 Before section 128**

20 Insert:

21 **Division 1—Object of Part**

22 **60 Before section 129**

23 Insert:

24 **Division 2—Obligations of actuaries and auditors**

25 **61 After section 130C**

26 Insert:

1 **Division 3—Disqualifying and removing actuaries and**  
2 **auditors**

3 **130D Court power of disqualification**

- 4 (1) This section applies to the extent that the Regulator is APRA.
- 5 (2) On application by the Regulator, the Federal Court of Australia  
6 may, by order, disqualify a person from being or acting as a person  
7 referred to in subsection (3), for a period that the Court considers  
8 appropriate, if the Court is satisfied:
- 9 (a) as mentioned in subsection (4); and
  - 10 (b) that the disqualification is justified.

11 Note: For offences relating to persons disqualified under this section, see  
12 section 131C.

- 13 (3) For the purposes of subsection (2), the Court may disqualify a  
14 person from being or acting as an approved auditor or actuary, for  
15 the purposes of this Act, of:
- 16 (a) a particular superannuation entity; or
  - 17 (b) a class of superannuation entities; or
  - 18 (c) any superannuation entity.
- 19 (4) The Court may disqualify a person, in accordance with  
20 subsection (2), if the Court is satisfied that:
- 21 (a) the person has failed, whether within or outside Australia, to  
22 carry out or perform adequately and properly:
    - 23 (i) the duties of an auditor or actuary under this Act or the  
24 regulations; or
    - 25 (ii) any duties required by a law of the Commonwealth, a  
26 State or a Territory to be carried out or performed by an  
27 auditor or actuary; or
    - 28 (iii) any functions that an auditor or actuary is entitled to  
29 perform in relation to this Act or the regulations or the  
30 *Financial Sector (Collection of Data) Act 2001*; or
  - 31 (b) the person is otherwise not a fit and proper person to be a  
32 person referred to in subsection (3).
- 33 (5) In deciding whether it is satisfied as mentioned in subsection (4),  
34 the Court may take into account:



- 1 (a) any matters specified in the regulations for the purposes of  
2 this paragraph; and  
3 (b) any other matters the Court considers relevant.
- 4 (6) In deciding whether the disqualification is justified as mentioned in  
5 paragraph (2)(b), the Court may have regard to:  
6 (a) the person's conduct in relation to his or her duties under this  
7 Act and the regulations; and  
8 (b) any other matters the Court considers relevant.
- 9 (7) As soon as practicable after the Court disqualifies a person under  
10 this section, the Regulator must cause particulars of the  
11 disqualification to which the notice relates to be published in the  
12 *Gazette*.

### 13 **130E Court power to revoke or vary a disqualification etc.**

- 14 (1) A person who is disqualified under section 130D, or the Regulator  
15 (to the extent that the Regulator is APRA), may apply to the  
16 Federal Court of Australia for a variation or a revocation of an  
17 order made under section 130D.
- 18 (2) At least 21 days before commencing the proceedings, written  
19 notice of the application must be lodged:  
20 (a) if the person who is disqualified makes the application—by  
21 the person with the Regulator; or  
22 (b) if the Regulator makes the application—by the Regulator  
23 with the person who is disqualified.

### 24 **62 Subsection 131(1)**

25 Repeal the subsection, substitute:

#### 26 *Application of section*

- 27 (1A) This section applies to the extent that the Regulator is the  
28 Commissioner of Taxation.

#### 29 *Disqualification order*

- 30 (1) The Regulator may make a written order (a *disqualification order*)  
31 disqualifying a person from being an approved auditor or actuary  
32 for the purposes of this Act if:

- 1 (a) the person has failed, whether within or outside Australia, to  
2 carry out or perform adequately and properly:  
3 (i) the duties of an auditor or an actuary (as the case  
4 requires) under this Act or the regulations; or  
5 (ii) any duties required by a law of the Commonwealth, a  
6 State or a Territory to be carried out or performed by an  
7 auditor or an actuary (as the case requires); or  
8 (iii) any functions that an auditor or actuary (as the case  
9 requires) is entitled to perform in relation to this Act or  
10 the regulations or the *Financial Sector (Collection of  
11 Data) Act 2001*; or  
12 (b) the person is otherwise not a fit and proper person to be an  
13 approved auditor or actuary for the purposes of this Act.

14 Note: For offences relating to persons disqualified under this section, see  
15 section 131C.

16 Note: The heading to section 131 is altered by inserting “**and actuaries**” after “**Auditors**”.

### 17 **63 Paragraphs 131(7)(a) and (b)**

18 After “auditor”, insert “or actuary (as the case requires)”.

### 19 **64 Before 131A**

20 Insert:

## 21 **Division 4—Offences and failure to carry out duties etc.**

### 22 **65 Subsection 131A(3)**

23 Repeal the subsection, substitute:

- 24 (3) In relation to an approved auditor or actuary, the power of the  
25 Regulator under subsection (1) may be exercised whether or not an  
26 order disqualifying the auditor or actuary has been made under  
27 section 130D or 131.

### 28 **66 Paragraph 131AA(2)(a)**

29 Repeal the paragraph, substitute:

- 30 (a) the person is disqualified under section 130D or 131 from  
31 being, or acting as, an approved auditor or actuary of the  
32 superannuation entity; or

1 **67 At the end of Part 16**

2 Add:

3 **131C Disqualified persons not to be auditor or actuary of**  
4 **superannuation entities**

5 (1) A person commits an offence if:

6 (a) the person is, or acts as, an auditor or actuary of a  
7 superannuation entity for the purposes of this Act; and

8 (b) either:

9 (i) for a person who is disqualified under section 130D—  
10 the person is disqualified from being or acting as an  
11 auditor or actuary (as the case requires) of that  
12 superannuation entity; or

13 (ii) otherwise—the person is disqualified under section 131  
14 from being or acting as an auditor or actuary (as the case  
15 requires); and

16 (c) the person knows that he or she is so disqualified.

17 Penalty: Imprisonment for 2 years.

18 (2) A person commits an offence if:

19 (a) the person is, or acts as, an auditor or actuary of a  
20 superannuation entity for the purposes of this Act; and

21 (b) either:

22 (i) for a person who is disqualified under section 130D—  
23 the person is disqualified from being or acting as an  
24 auditor or actuary (as the case requires) of that  
25 superannuation entity; or

26 (ii) otherwise—the person is disqualified under section 131  
27 from being or acting as an auditor or actuary (as the case  
28 requires); and

29 (c) the person knows that he or she is so disqualified.

30 Penalty: 60 penalty units.

31 (3) Subsection (2) is an offence of strict liability.

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

33 **68 Paragraph 133(1)(a)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Repeal the paragraph, substitute:

(a) either:

- (i) for a trustee who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the individual is disqualified from being or acting as a trustee of that superannuation entity; and
- (ii) otherwise—the trustee is a disqualified person within the meaning of Part 15; or

**69 Subsection 344(12)**

Omit “(pa), (pb), (q),”, substitute “(q), (qa), (qb),”.

**70 Application and transitional provisions**

- (1) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a disqualification by the Commissioner of Taxation that is in force under section 120A of that Act immediately before this item commences continues in force after this item commences as if it were made under section 126A of that Act (as in force at that time).
- (2) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a disqualification by APRA that is in force under section 120A of that Act immediately before this item commences continues in force after this item commences.
- (3) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a disqualification by APRA or the Commissioner of Taxation that is in force under section 131 of that Act immediately before this item commences continues in force after this item commences.
- (4) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a reference in column 1 of the table in the provision of the *Superannuation Industry (Supervision) Act 1993* (as in force immediately after this item commences) referred to in column 2 is taken to include the reference in column 3.

---

**New references to court orders to include references to disqualifications by the Regulator**

---

**References**

---

<b>Item</b>	<b>Column 1 Reference</b>	<b>Column 2 Provision of the Superannuation Industry (Supervision) Act</b>	<b>Column 3 Reference taken to be included</b>
1	an individual disqualified under section 126A by the Commissioner of Taxation	subparagraph 120(1)(c)(i)	an individual disqualified under section 120A by the Commissioner of Taxation under a disqualification that is continued in force under subitem (1)
2	an individual disqualified under section 126H by the Federal Court of Australia	subparagraph 120(1)(c)(ii)	an individual disqualified under section 120A by APRA under a disqualification that is continued in force under subitem (2)
3	an individual disqualified under section 126H	paragraph 126J(1)(a)	an individual disqualified by APRA under section 120A under a disqualification that is continued in force under subitem (2)
4	an order made under section 126H	paragraph 126J(1)(a) and subsection 126J(2)	a disqualification made by APRA under section 120A that is continued in force under subitem (2)
5	a person disqualified under section 130D	section 130E, section 131C	a person disqualified by APRA under section 131 under a disqualification that is continued in force under subitem (3)
6	an order made under section 130D	section 130E	a disqualification made by APRA under section 131 that is continued in force under subitem (3)

---

1 (5) Sections 126A, 126H, 130D and 131 of the *Superannuation Industry*  
2 (*Supervision*) *Act 1993* (as in force immediately after this item  
3 commences) apply in relation to any conduct engaged in by a person,  
4 whether before or after this item commences.

5 *Waivers of disqualifications*

6 (6) If:

7 (a) either:

8 (i) a person applies to APRA for a declaration under  
9 section 126D of the *Superannuation Industry*  
10 (*Supervision*) *Act 1993* waiving his or her status as a  
11 disqualified person; or

12 (ii) a person applies to APRA under section 131 of the  
13 *Superannuation Industry (Supervision) Act 1993* for the  
14 revocation of an order under section 131 of that Act;  
15 and

16 (b) APRA has not made a decision on the application at the time  
17 this item commences;

18 the application is taken to be withdrawn at that time.

19 Note: See subitem (9) for the treatment of a decision by APRA under section 126D or 131 of  
20 the *Superannuation Industry (Supervision) Act 1993* in respect of which review  
21 proceedings are on foot at commencement.

22 (7) A declaration by APRA under section 126D of the *Superannuation*  
23 *Industry (Supervision) Act 1993* that is in force immediately before this  
24 item commences continues in force after that time. However, APRA  
25 may not revoke the declaration.

26 (8) If:

27 (a) a declaration in relation to a person continues in force under  
28 subitem (7); and

29 (b) after this item commences, an order is made under  
30 section 126H or 130D of the *Superannuation Industry*  
31 (*Supervision*) *Act 1993* (as in force at that time) that the  
32 person is disqualified from being or acting as a person  
33 referred to in subsection 126H(2) or 130D(3) (as the case  
34 requires) of that Act;

35 the declaration ceases to be in force.

1 *Review proceedings on foot at commencement*

- 2 (9) The amendments to the *Superannuation Industry (Supervision) Act*  
3 *1993* made by this Schedule do not affect:
- 4 (a) any request, in relation to a decision made by APRA or the  
5 Commissioner of Taxation under section 120A, 126D or 131  
6 of that Act, for a review that is pending under section 344 of  
7 that Act immediately before the commencement of this item;  
8 or
- 9 (b) any proceeding, in relation to a decision by APRA or the  
10 Commissioner of Taxation under section 120A, 126D or 131  
11 of that Act that has been confirmed or varied under  
12 subsection 344(4) of that Act, that is pending before the  
13 Administrative Appeals Tribunal immediately before the  
14 commencement of this item; or
- 15 (c) any appeal to a court in relation to a proceeding referred to in  
16 paragraph (b).
- 17 (10) If a disqualification under section 120A or 131, or a declaration under  
18 section 126D, of the *Superannuation Industry (Supervision) Act 1993* is  
19 confirmed or varied as a result of a request, proceeding or appeal  
20 referred to in subitem (9), the disqualification or declaration is, for the  
21 purposes of subitem (1), (2), (3) or (7) (as the case requires), taken to  
22 have been in force immediately before this item commences.

1

2 **Part 2—Amendments contingent on the Financial**  
3 **Sector Legislation Amendment**  
4 **(Discretionary Mutual Funds and Direct**  
5 **Offshore Foreign Insurers) Act 2007**

6 *Financial Sector Legislation Amendment (Discretionary*  
7 *Mutual Funds and Direct Offshore Foreign*  
8 *Insurers) Act 2007*

9 **71 Items 9A, 9B, 9D, 9E, 9F and 9G of Schedule 2**

10 Repeal the items.

11 ***Insurance Act 1973***

12 **72 Subparagraph 24(1)(b)(iii)**

13 Omit “and”.

14 **73 At the end of paragraph 24(1)(b)**

15 Add:

16 (iv) a director or senior manager of a corporate agent; and

17 **74 Subparagraph 24(2)(b)(iii)**

18 Omit “and”.

19 **75 At the end of paragraph 24(2)(b)**

20 Add:

21 (iv) a director or senior manager of a corporate agent; and

22 **76 Subparagraph 24(4)(b)(iii)**

23 Omit “and”.

24 **77 At the end of paragraph 24(4)(b)**

25 Add:

26 (iv) if the body corporate is a corporate agent—a director or  
27 senior manager of the corporate agent; and



1 **78 Subparagraph 24(5)(b)(iii)**

2 Omit “and”.

3 **79 At the end of paragraph 24(5)(b)**

4 Add:

5 (iv) if the body corporate is a corporate agent—a director or  
6 senior manager of the corporate agent; and

7 **80 At the end of subsection 25A(2)**

8 Add:

9 ; (d) a director or senior manager of:  
10 (i) a particular corporate agent; or  
11 (ii) a class of corporate agents; or  
12 (iii) any corporate agent.

13 **81 Subparagraph 25A(5)(a)(iii)**

14 Omit “and”.

15 **82 At the end of paragraph 25A(5)(a)**

16 Add:

17 or (iv) if the person is, or is acting as, a person referred to in  
18 paragraph (2)(d)(i)—to the corporate agent concerned,  
19 and to any foreign general insurer for which the agent is  
20 the corporate agent; and

21 **83 Subparagraph 27(2)(a)(i)**

22 Omit “insurer or NOHC”, substitute “insurer, NOHC or corporate  
23 agent”.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

## Schedule 2—Direction powers

### *Banking Act 1959*

#### **1 Subsection 11CA(1)**

Repeal the subsection, substitute:

- (1) APRA may give a body corporate that is an ADI or an authorised NOHC a direction of a kind specified in subsection (2) if APRA has reason to believe that:
  - (a) the body corporate has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; or
  - (b) the body corporate has contravened a prudential requirement regulation or a prudential standard; or
  - (c) the body corporate is likely to contravene this Act, a prudential requirement regulation, a prudential standard or the *Financial Sector (Collection of Data) Act 2001*, and such a contravention is likely to give rise to a prudential risk; or
  - (d) the body corporate has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or
  - (e) the direction is necessary in the interests of:
    - (i) if the body corporate is an ADI—depositors of the ADI; or
    - (ii) if the body corporate is an authorised NOHC—depositors of any ADI that is a subsidiary of the NOHC; or
  - (f) the body corporate is, or is about to become, unable to meet its liabilities; or
  - (g) there is, or there might be, a material risk to the security of the body corporate’s assets; or
  - (h) there has been, or there might be, a sudden material deterioration in the body corporate’s financial condition; or
  - (i) the body corporate is conducting its affairs in an improper or financially unsound way; or
  - (j) the failure to issue a direction would materially prejudice the interests of:

- 1 (i) if the body corporate is an ADI—depositors of the ADI;  
2 or  
3 (ii) if the body corporate is an authorised NOHC—  
4 depositors of any ADI that is a subsidiary of the NOHC;  
5 or  
6 (k) the body corporate is conducting its affairs in a way that may  
7 cause or promote instability in the Australian financial  
8 system.

9 (1A) The direction must:

- 10 (a) be given by notice in writing to the body corporate; and  
11 (b) specify the ground referred to in subsection (1) as a result of  
12 which the direction is given.

## 13 **2 Before paragraph 11CA(2)(a)**

14 Insert:

- 15 (aa) to comply with the whole or a part of this Act or the  
16 *Financial Sector (Collection of Data) Act 2001*;  
17 (ab) to comply with the whole or a part of a condition or direction  
18 referred to in paragraph (1)(d);

## 19 **3 Paragraphs 11CA(2)(c), (d) and (e)**

20 Omit “director, secretary, executive officer or employee”, substitute  
21 “director or senior manager”.

## 22 **4 After subsection 11CA(4A)**

23 Insert:

24 (4B) APRA may, by notice in writing to the body corporate, vary the  
25 direction if, at the time of the variation, it considers that the  
26 variation is necessary and appropriate.

## 27 **5 Subsection 11CA(6)**

28 Repeal the subsection, substitute:

29 (6) In this section, *director* has the same meaning as it has in the  
30 *Corporations Act 2001*, and the *affairs* of a body corporate include  
31 those set out in section 53 of that Act.

32 Note 1: *Senior manager* is defined in section 5 of this Act.

33 Note 2: For further information about directions, see Subdivision C.

1       **6 Application**

2       (1)     The amendments made by items 1 to 3 and 5 of this Schedule apply to  
3             any direction given after this item commences.

4       (2)     The amendment made by item 4 of this Schedule applies to any  
5             direction, whether given before or after this item commences.

6       ***Insurance Act 1973***

7       **7 Division 2 of Part IIIA**

8             Repeal the Division.

9       **8 Sections 49M to 49P**

10            Repeal the sections.

11       **9 Section 51**

12            Repeal the section.

13       **10 Subparagraph 60(2)(c)(ii)**

14            Omit “section 62”, substitute “section 104”.

15       **11 Section 62**

16            Repeal the section.

17       **12 After Part VIII**

18            Insert:

19       **Part IX—Directions**

20

21       **104 APRA may give directions in certain circumstances**

22            *Basis on which directions may be given*

23            (1) APRA may give a body corporate that is a general insurer or an  
24            authorised NOHC a direction of a kind specified in subsection (3)  
25            if APRA has reason to believe that:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

- (a) the body corporate has contravened a provision of this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or
- (b) the body corporate is likely to contravene this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*, and such a contravention is likely to give rise to a prudential risk; or
- (c) the body corporate has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or
- (d) the direction is necessary in the interests of:
  - (i) if the body corporate is a general insurer—policyholders of the general insurer; or
  - (ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or
- (e) the body corporate is, or is about to become, unable to meet its liabilities; or
- (f) there is, or there might be, a material risk to the security of the body corporate’s assets; or
- (g) there has been, or there might be, a sudden material deterioration in the body corporate’s financial condition; or
- (h) the body corporate is conducting its affairs in an improper or financially unsound way; or
- (i) the failure to issue a direction would materially prejudice the interests of:
  - (i) if the body corporate is a general insurer—policyholders of the general insurer; or
  - (ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or
- (j) the body corporate is conducting its affairs in a way that may cause or promote instability in the Australian financial system.

35 *Requirements for direction*

36  
37

- (2) The direction must:
  - (a) be given by notice in writing to the body corporate; and

1 (b) specify the ground referred to in subsection (1) as a result of  
2 which the direction is given.

3 *Contents of directions*

- 4 (3) The kinds of direction that the body corporate may be given are  
5 directions to do, or to cause a body corporate that is its subsidiary  
6 to do, any one or more of the following:
- 7 (a) to comply with the whole or a part of this Act, regulations  
8 made under this Act, prudential standards, or the *Financial*  
9 *Sector (Collection of Data) Act 2001*;
  - 10 (b) to comply with a condition or direction referred to in  
11 paragraph (1)(c);
  - 12 (c) to order an audit of the affairs of the body corporate, at the  
13 expense of the body corporate, by an auditor chosen by  
14 APRA;
  - 15 (d) to remove a director or senior manager from office;
  - 16 (e) to ensure a director or senior manager of the body corporate  
17 does not take part in the management or conduct of the  
18 business of the body corporate except as permitted by APRA;
  - 19 (f) to appoint a person or persons as a director or senior manager  
20 of the body corporate for such term as APRA directs;
  - 21 (g) to remove any auditor of the body corporate from office and  
22 appoint another auditor to hold office for such term as APRA  
23 directs;
  - 24 (h) not to give financial accommodation to any person;
  - 25 (i) not to renew any policy;
  - 26 (j) not to borrow any amount;
  - 27 (k) not to accept any payment on account of share capital, except  
28 payments in respect of calls that fell due before the direction  
29 was given;
  - 30 (l) not to repay any amount paid on shares;
  - 31 (m) not to pay a dividend on any shares;
  - 32 (n) not to pay or transfer any amount to any person, or create an  
33 obligation (contingent or otherwise) to do so;
  - 34 (o) not to undertake any financial obligation (contingent or  
35 otherwise) on behalf of any other person;
  - 36 (p) to provide, or further provide, in its accounts for the purposes  
37 of this Act, regulations made under this Act and the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

prudential standards, a specified amount or an amount determined in a specified way in respect of its liabilities or the value of a specified asset of the body corporate;

- (q) to order an actuarial investigation of the affairs of the body corporate, at the expense of the body corporate, by an actuary chosen by APRA;
- (r) to terminate the appointment of the actuary appointed by the body corporate and to appoint another actuary to hold office for such terms as APRA directs;
- (s) not to issue any policy, undertake any liability under any contract of insurance or collect any premium;
- (t) not to discharge any policy or other liability;
- (u) to do, or to refrain from doing, an act that relates to the way in which the affairs of the body corporate are to be conducted or not conducted.

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

- (4) Without limiting subsection (3), a direction referred to in a paragraph of that subsection may:
  - (a) deal with only some of the matters referred to in that paragraph; or
  - (b) deal with a particular class or particular classes of those matters; or
  - (c) make different provision with respect to different matters or different classes of matters.
- (5) The direction may deal with the time by which, or period during which, it is to be complied with.

*Body corporate and subsidiary have power to comply with direction*

- (6) The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (7) If the direction requires the body corporate to cause a subsidiary to do, or to refrain from doing, an act or thing:

- 1 (a) the body corporate has power to cause the subsidiary to do,  
2 or to refrain from doing, the act or thing; and  
3 (b) the subsidiary has power to do, or to refrain from doing, the  
4 act or thing;  
5 despite anything in the subsidiary's constitution or any contract or  
6 arrangement to which the subsidiary is a party.

7 *Variation and revocation of directions*

- 8 (8) APRA may, by notice in writing to the body corporate, vary the  
9 direction if, at the time of the variation, it considers that the  
10 variation is necessary or appropriate.  
11 (9) APRA may, by notice in writing to the body corporate, revoke the  
12 direction if, at the time of the revocation, it considers that the  
13 direction is no longer necessary or appropriate.

14 *Reviewable decisions*

- 15 (10) Part VI applies to a decision to give a direction under  
16 subsection (1) as a result of the ground referred to in  
17 paragraph (1)(a), (b), (c) or (d).

18 *Definitions*

- 19 (11) In this section, the expression **director** has the same meaning as it  
20 has in the *Corporations Act 2001*, and the **affairs** of a body  
21 corporate include those set out in section 53 of that Act.

22 Note: **Senior manager** is defined in section 3 of this Act.

23 **105 Direction not grounds for denial of obligations**

- 24 (1) Subject to subsections (2) and (3), the fact that a general insurer or  
25 an authorised NOHC is subject to a direction by APRA under  
26 section 104 is not a ground for any other party to a contract to  
27 which the insurer or NOHC, or a subsidiary of the insurer or the  
28 NOHC, is a party:  
29 (a) to deny any obligations under that contract; or  
30 (b) to accelerate any debt under that contract; or  
31 (c) to close out any transaction relating to that contract.



- 1 (2) If a general insurer or an authorised NOHC, or a subsidiary of a  
2 general insurer or authorised NOHC, is prevented from fulfilling  
3 its obligations under a contract because of a direction under  
4 section 104, other than a direction under paragraph 104(3)(t), the  
5 other party or parties to the contract are, subject to any orders made  
6 under subsection (3) of this section, relieved from obligations owed  
7 to the insurer or NOHC under the contract.
- 8 (3) A party to a contract to which subsection (2) applies may apply to  
9 the Federal Court of Australia for an order relating to the effect on  
10 the contract of a direction under section 104. The order may deal  
11 with matters including (but not limited to):
- 12 (a) requiring a party to the contract to fulfil an obligation under  
13 the contract despite subsection (2); or
  - 14 (b) obliging a party to the contract to take some other action (for  
15 example, paying money or transferring property) in view of  
16 obligations that were fulfilled under the contract before the  
17 direction was made.
- 18 The order must not require a person to take action that would  
19 contravene the direction, or any other direction under section 104.

## 20 **106 Supply of information about issue and revocation of directions**

### 21 *Power to publish notice of directions in Gazette*

- 22 (1) APRA may publish in the *Gazette* notice of any direction made  
23 under section 104. The notice must include the name of the general  
24 insurer or authorised NOHC given the direction and a summary of  
25 the direction.

### 26 *Requirement to publish notice of revocation of certain directions in 27 Gazette*

- 28 (2) If APRA publishes notice of a direction made under section 104  
29 and then later revokes the direction, APRA must publish in the  
30 *Gazette* notice of that revocation as soon as practicable after the  
31 revocation. Failure to publish notice of the revocation does not  
32 affect the validity of the revocation.

### 33 *Requirement to provide information about direction to Treasurer*

- 34 (3) If the Treasurer requests APRA to provide information about:

- 1 (a) any directions given under section 104 to a particular general  
2 insurer or authorised NOHC; or  
3 (b) any directions given under section 104, during a specified  
4 period, to any general insurers or authorised NOHCs;  
5 APRA must comply with the request.

6 *Power to inform Treasurer of direction*

- 7 (4) APRA may provide any information that it considers appropriate to  
8 the Treasurer about:  
9 (a) any directions given under section 104 to any general insurer  
10 or authorised NOHC at any time; or  
11 (b) any revocations of any such directions.

12 *Requirement to inform Treasurer of revocation of direction if*  
13 *informed of making of direction*

- 14 (5) If APRA provides the Treasurer with information about a direction  
15 and then later revokes the direction, APRA must notify the  
16 Treasurer of the revocation of the direction as soon as practicable  
17 after the revocation. Failure to notify the Treasurer does not affect  
18 the validity of the revocation.

19 **107 Secrecy requirements**

20 Information relating to directions and revocations of directions is  
21 subject to the secrecy requirements in Part 6 of the *Australian*  
22 *Prudential Regulation Authority Act 1998*, unless the information  
23 has been published in the *Gazette* under section 106 of this Act.

24 **108 Non-compliance with a direction**

- 25 (1) A general insurer or an authorised NOHC commits an offence if:  
26 (a) it does, or fails to do, an act; and  
27 (b) doing, or failing to do, the act results in a contravention of a  
28 direction given to it under section 104; and  
29 (c) there is no order in force under section 7 determining that this  
30 subsection does not apply to the general insurer or authorised  
31 NOHC.

32 Penalty: 50 penalty units.

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

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

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

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

8 (3) If a general insurer or authorised NOHC does or fails to do an act  
9 in circumstances that give rise to the insurer or NOHC committing  
10 an offence against subsection (1), the insurer or NOHC (as the case  
11 requires) commits an offence against that subsection in respect of:

12 (a) the first day on which the offence is committed; and

13 (b) each subsequent day (if any) on which the circumstances that  
14 gave rise to the insurer or NOHC committing the offence  
15 continue (including the day of conviction for any such  
16 offence or any later day).

17 Note: This subsection is not intended to imply that section 4K of the *Crimes*  
18 *Act 1914* does not apply to offences against this Act or the  
19 regulations.

20 (4) An officer of a general insurer or an authorised NOHC commits an  
21 offence if:

22 (a) the officer fails to take reasonable steps to ensure that the  
23 insurer or NOHC complies with a direction given to it under  
24 section 104; and

25 (b) the officer's duties include ensuring that the insurer or  
26 NOHC complies with the direction or with a class of  
27 directions that includes the direction; and

28 (c) there is no order in force under section 7 determining that  
29 subsection (1) does not apply to the general insurer or  
30 authorised NOHC.

31 Penalty: 50 penalty units.

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

34 (5) Subsection (4) is an offence of strict liability.

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

36 (6) If an officer of a general insurer or authorised NOHC fails to take  
37 reasonable steps to ensure that the insurer or NOHC complies with

1 a direction given to it under section 104 in circumstances that give  
2 rise to the officer committing an offence against subsection (4), the  
3 officer commits an offence against that subsection in respect of:

- 4 (a) the first day on which the offence is committed; and  
5 (b) each subsequent day (if any) on which the circumstances that  
6 gave rise to the officer committing the offence continue  
7 (including the day of conviction for any such offence or any  
8 later day).

9 Note: This subsection is not intended to imply that section 4K of the *Crimes*  
10 *Act 1914* does not apply to offences against this Act or the  
11 regulations.

12 (7) In this section, *officer* has the meaning given by section 9 of the  
13 *Corporations Act 2001*.

### 14 **13 Subsection 116A(4)**

15 Omit “section 49M”, substitute “section 104”.

### 16 **14 Subsection 128A(1)**

17 Omit “, 28, 37 or 49P”, substitute “or 28”.

### 18 **15 Subsection 129A(1)**

19 Omit “49M or subsection 62(9)”, substitute “108”.

### 20 **16 Saving directions**

- 21 (1) This item applies to a direction that is in force under section 36, 49M,  
22 49N, 51 or 62 of the *Insurance Act 1973* immediately before this item  
23 commences.
- 24 (2) For the purposes of the *Insurance Act 1973*, the direction continues in  
25 force after this item commences as if the direction were given under  
26 section 104 of that Act (as inserted by this Act).

### 27 ***Life Insurance Act 1995***

### 28 **17 Section 134**

29 Repeal the section.

### 30 **18 Section 150**

31 Repeal the section.

1 **19 Subsection 230B(1)**

2 Repeal the subsection, substitute:

- 3 (1) APRA may give a life company a direction of a kind specified in  
4 subsection (2) if APRA has reason to believe that:
- 5 (a) the company has contravened a provision of this Act or the  
6 *Financial Sector (Collection of Data) Act 2001*; or
  - 7 (b) the company is likely to contravene this Act or the *Financial*  
8 *Sector (Collection of Data) Act 2001*, and such a  
9 contravention is likely to give rise to a prudential risk; or
  - 10 (c) the company has contravened a condition or direction under  
11 this Act or the *Financial Sector (Collection of Data) Act*  
12 *2001*; or
  - 13 (d) the direction is necessary in the interests of policy owners or  
14 prospective policy owners of the company; or
  - 15 (e) the company is, or is about to become, unable to meet its  
16 liabilities; or
  - 17 (f) there is, or there might be, a material risk to the security of  
18 the company's assets; or
  - 19 (g) there has been, or there might be, a sudden material  
20 deterioration in the company's financial condition; or
  - 21 (h) the company is conducting its affairs in an improper or  
22 financially unsound way; or
  - 23 (i) the failure to issue a direction would materially prejudice the  
24 interests of policy owners or prospective policy owners of the  
25 company; or
  - 26 (j) the company is conducting its affairs in a way that may cause  
27 or promote instability in the Australian financial system.

28 (1A) The direction must:

- 29 (a) be given by notice in writing to the company; and
- 30 (b) specify the ground referred to in subsection (1) as a result of  
31 which the direction is given.

32 **20 Paragraph 230B(2)(a)**

33 Repeal the paragraph, substitute:

- 34 (a) a direction to comply with the whole or a part of this Act or  
35 the *Financial Sector (Collection of Data) Act 2001*;

1 (aa) a direction to comply with a condition or direction referred to  
2 in paragraph (1)(c);

3 **21 Subparagraphs 230B(2)(d)(i), (ii) and (iii)**

4 Omit “director, secretary, executive officer or employee”, substitute  
5 “director or senior manager”.

6 **22 After paragraph 230B(2)(p)**

7 Insert:

8 (pa) a direction relating to the amount of capital to be held by the  
9 company;

10 **23 Subsection 230B(10)**

11 Insert:

12 *senior manager* of a life company means a person who has or  
13 exercises any of the senior management responsibilities (within the  
14 meaning of the prudential standards) for the life company.

15 **24 Subsection 236(1) (paragraphs (zj), (zk), (zl) and (zm) of**  
16 **the definition of *reviewable decision*)**

17 Repeal the paragraphs.

18 **25 Saving directions**

19 (1) This item applies to a direction that is in force under section 134 or 150  
20 of the *Life Insurance Act 1995* immediately before this item  
21 commences.

22 (2) For the purposes of the *Life Insurance Act 1995*, the direction continues  
23 in force after this item commences as if the direction were given under  
24 section 230B of that Act (as amended by this Act).

25 ***Superannuation Industry (Supervision) Act 1993***

26 **26 Subsection 264(1)**

27 Repeal the subsection, substitute:

1 *Regulator may act to preserve values of interests*

- 2 (1) The Regulator may do any one or more of the things set out in  
3 subsections (2) to (4) if it appears to the Regulator that conduct that  
4 has been, is being, or is proposed to be, engaged in by a trustee or  
5 an investment manager of a superannuation entity is likely to:  
6 (a) if the Regulator intends to do a thing set out in  
7 subsection (2)—adversely affect the values of the interests of  
8 beneficiaries; or  
9 (b) otherwise—significantly adversely affect the values of the  
10 interests of the beneficiaries.

11 **27 Application**

12 The amendment made by item 26 of this Schedule applies to any  
13 direction given after this item commences.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

## **Schedule 3—Removal of Ministerial consent**

### **Part 1—Amendments commencing on Royal Assent**

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

##### **1 Subsection 15(2)**

Repeal the subsection.

##### **2 Subsection 15(4)**

Omit “, with the Treasurer’s written agreement,”.

##### **3 Subsection 21(2)**

Repeal the subsection.

##### **4 Subsection 21(4)**

Omit “, with the Treasurer’s written agreement,”.

##### **5 Subsection 32(3E)**

Repeal the subsection.

##### **6 Paragraph 52(1)(b)**

Repeal the paragraph, substitute:

- (b) it appears to APRA that information in its possession calls for the investigation of the whole or any part of the business of a general insurer or authorised NOHC;

##### **7 Subsection 52(1AB)**

Repeal the subsection, substitute:

(1AB) Despite subsection (1), APRA may specify a period of less than 14 days in a notice under that subsection if:

- (a) APRA considers that specifying the shorter period is necessary; and
- (b) the period specified is reasonable in the circumstances.

##### **8 Section 65**



1

Omit:

2

3

4

5

- Lloyd's, or a company nominated by Lloyd's, is required to lodge with the Treasurer a security deposit valued at \$2 million. The deposit is available to meet the costs of judicial trusteeship of designated security trust funds.

6

substitute:

7

8

9

10

- Lloyd's, or a company nominated by Lloyd's, is required to lodge with APRA a security deposit valued at \$2 million. The deposit is available to meet the costs of judicial trusteeship of designated security trust funds.

11

### **9 Subsection 74(1)**

12

Omit "with the Treasurer's agreement,".

13

### **10 Subsection 74(4)**

14

Omit "unless the Treasurer has, during that period, agreed that the direction should remain in force or be varied".

15

16

### **11 Before subsection 76(1)**

17

Insert:

18

(1A) APRA may give a written notice under subsection (1) if APRA has reason to believe that the provision for liabilities in the accounts of a designated security trust fund is insufficient.

19

20

21

### **12 Subsection 76(1)**

22

Omit "with the Treasurer's agreement, by written notice given to the trustee of a", substitute "by written notice given to the trustee of the".

23

24

### **13 Subsection 78(2)**

25

Omit "with the Treasurer's agreement,".

26

### **14 Subsection 78(5)**

27

Omit "unless the Treasurer has, during that period, agreed that the direction should remain in force or be varied".

28

1       **15 Subsection 92Q(1)**

2               Omit “the Treasurer”, substitute “APRA”.

3       **16 Subsection 92Q(2)**

4               Omit “the Treasurer”, substitute “APRA”.

5       **17 Subsection 92Q(4)**

6               Repeal the subsection, substitute:

7               (4) The deposit of securities with APRA in accordance with this  
8               section is effective to transfer the legal and beneficial interest in the  
9               securities to the Commonwealth. APRA has custody of the  
10              securities for and on behalf of the Commonwealth.

11              Note:        See subsections 11(4) and (5) of the *Australian Prudential Regulation*  
12                            *Authority Act 1998*.

13       **18 Subsections 92Q(5) and (6)**

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

15       **19 Subsection 92R(1)**

16              Omit “the Treasurer”, substitute “APRA”.

17       **20 Subsection 92R(2)**

18              Omit “The Treasurer”, substitute “APRA”.

19       **21 Subsection 92S(1)**

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

21       **22 Subsection 93(3)**

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

23       **23 Subsection 93(4)**

24              Omit “Where the Treasurer makes a determination under subsection (3),  
25              he or she shall”, substitute “If APRA makes a determination under  
26              subsection (3), it must”.

27       **24 Subsection 93(5)**

28              Omit “the Treasurer”, substitute “APRA”.

1 **25 Paragraphs 93(6)(a) and (b)**

2 Omit “the Treasurer”, substitute “APRA”.

3 **26 Paragraph 93(10)(a)**

4 Omit “the Treasurer shall”, substitute “APRA must”.

5 **27 Application**

6 (1) This item applies to any security that is lodged with the Treasurer under  
7 section 92Q of the *Insurance Act 1973* immediately before this item  
8 commences.

9 (2) Immediately after this item commences, the legal and beneficial interest  
10 in the security remains with the Commonwealth, and APRA is taken to  
11 have custody of the securities for and on behalf of the Commonwealth.

12 ***Life Insurance Act 1995***

13 **28 Subsection 21(1)**

14 Repeal the subsection, substitute:

15 (1) APRA must, in writing, register a company that applies for  
16 registration under section 20, unless APRA is satisfied that a  
17 ground for refusal specified in subsection (3) exists.

18 **29 Subsection 40(3)**

19 Repeal the subsection.

20 **30 Subsections 49(1) and (4)**

21 Omit “, with the Treasurer’s agreement,”.

22 **31 Subsections 62(4A) and 63(2A)**

23 Repeal the subsections.

24 ***Superannuation Industry (Supervision) Act 1993***

25 **32 Subsection 29G(1)**

26 Omit “Subject to subsection (3),”.

27 **33 Subsection 29G(1) (note)**

1 Omit “needs the consent of the Minister (see subsection (3)) or”.

2 **34 Subsection 29G(3)**

3 Repeal the subsection.

4 **35 Subsection 133(5)**

5 Repeal the subsection.

6 **36 Subsection 146(1)**

7 Omit “(1) APRA may”, substitute “APRA may”.

8 **37 Subsection 146(2)**

9 Repeal the subsection.

10 **38 Subsection 264(6)**

11 Repeal the subsection.

1

2 **Part 2—Amendments contingent on the Financial**  
3 **Sector Legislation Amendment**  
4 **(Discretionary Mutual Funds and Direct**  
5 **Offshore Foreign Insurers) Act 2007**

6 **Division 1—Amendments if Schedule 2 to the Financial**  
7 **Sector Legislation Amendment (Discretionary**  
8 **Mutual Funds and Direct Offshore Foreign**  
9 **Insurers) Act 2007 commences first**

10 *Insurance Act 1973*

11 **39 Subsection 3(1) (note to the definition of *insurance***  
12 ***business*)**

13 Omit “Particular contracts of insurance, or kinds of contracts of  
14 insurance,”, substitute “Some contracts of insurance”.

15 **40 Section 3A**

16 Repeal the section, substitute:

17 **3A Certain insurance contracts not taken to be insurance business**

- 18 (1) For the purposes of this Act, insurance business does not include  
19 undertaking liability under a contract of insurance, or a kind of  
20 contract of insurance:  
21 (a) specified in the regulations for the purposes of this  
22 subsection; or  
23 (b) in circumstances specified in the regulations for the purposes  
24 of this subsection.
- 25 (2) Without limiting subsection (1), the regulations may specify a  
26 contract of insurance, a kind of contract of insurance, or  
27 circumstances, by reference to:  
28 (a) particular general insurance products (within the meaning of  
29 Chapter 7 of the *Corporations Act 2001*), or particular kinds  
30 of such products; or

1 (b) particular persons, or particular kinds of persons, who are  
2 insured under a contract of insurance, or a kind of contract of  
3 insurance.

4 **41 Subsection 63(1) (definition of *decision maker*)**

5 Repeal the definition, substitute:

6 *decision maker*, in relation to a reviewable decision, means APRA.

7 **42 Subsection 63(1) (paragraph (a) of the definition of *person***  
8 ***affected by a reviewable decision*)**

9 Repeal the paragraph.

10 **43 Subsection 63(1) (definition of *reviewable decision*)**

11 Repeal the definition, substitute:

12 *reviewable decision* means a decision of APRA that is a decision to  
13 which, under this Act, this Part applies.

14 **Division 2—Amendments if Schedule 2 to the Financial**  
15 **Sector Legislation Amendment (Discretionary**  
16 **Mutual Funds and Direct Offshore Foreign**  
17 **Insurers) Act 2007 has not yet commenced**

18 ***Insurance Act 1973***

19 **44 Subsection 63(1)**

20 Insert:

21 *decision maker*, in relation to a reviewable decision, means APRA.

22 **45 Subsection 63(1)**

23 Insert:

24 *person affected by a reviewable decision*, in relation to a  
25 reviewable decision of a decision maker, means:

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

1       **46 Subsection 63(1) (definition of *person affected by a***  
2                                   ***reviewable decision of the Treasurer or APRA*)**

3                                   Repeal the definition.

4       **47 Subsection 63(1)**

5                                   Insert:

6                                               *reviewable decision* means a decision of APRA that is a decision to  
7                                               which, under this Act, this Part applies.

8       **48 Subsection 63(1) (definition of *reviewable decision of the***  
9                                   ***Treasurer or APRA*)**

10                                   Repeal the definition.

11       **49 Subsection 63(2)**

12                                   Omit “of the Treasurer or APRA”.

13       **50 Subsection 63(2)**

14                                   Omit “Treasurer or APRA, as the case may be,” (wherever occurring),  
15                                   substitute “decision maker”.

16       **51 Subsection 63(4)**

17                                   Omit “the Treasurer or APRA, as the case may be,” substitute “the  
18                                   decision maker”.

19       **52 Subsection 63(4)**

20                                   Omit “Treasurer or APRA” (last occurring), substitute “decision  
21                                   maker”.

22       **53 Subsection 63(5)**

23                                   Omit “Treasurer or APRA, as the case may be,” substitute “decision  
24                                   maker”.

25       **54 Subsection 63(5)**

26                                   Omit “Treasurer or APRA” (second and last occurring), substitute  
27                                   “decision maker”.

28       **55 Subsection 63(6)**

1 Omit “Treasurer or APRA, as the case may be,” substitute “decision  
2 maker”.

3 **56 Subsection 63(6)**

4 Omit “Treasurer or APRA” (second occurring), substitute “decision  
5 maker”.

6 **57 Subsection 63(6)**

7 Omit “Treasurer’s or APRA’s” (wherever occurring), substitute  
8 “decision maker’s”.

9 **58 Subsection 63(7)**

10 Omit “the Treasurer and decisions of APRA”, substitute “a decision  
11 maker”.

12 **59 Subsections 63(9), (12) and (13)**

13 Omit “of the Treasurer or APRA”.

14 **60 Subsection 64(1)**

15 Omit “of the Treasurer or APRA”.

16 **61 Paragraph 64(1)(a)**

17 Omit “Treasurer or APRA, as the case may be,” substitute “decision  
18 maker”.

19 **62 Paragraph 64(1)(b)**

20 Omit “Treasurer or APRA”, substitute “decision maker”.

21 **63 Subsection 64(2)**

22 Omit “the Treasurer or APRA”, substitute “a decision maker”.

23 **64 At the end of section 64**

24 Add:

25 (4) In this section:

26 *decision maker* has the meaning given by section 63.



1 **Division 3—Amendments once Schedule 2 to the**  
2 **Financial Sector Legislation Amendment**  
3 **(Discretionary Mutual Funds and Direct**  
4 **Offshore Foreign Insurers) Act 2007**  
5 **commences**

6 *Financial Sector Legislation Amendment (Discretionary*  
7 *Mutual Funds and Direct Offshore Foreign*  
8 *Insurers) Act 2007*

9 **65 Item 8 of Schedule 2**

10 Repeal the item, substitute:

11 **8 After section 3**

12 Insert:

13 **3A Certain insurance contracts not taken to be insurance business**

- 14 (1) For the purposes of this Act, insurance business does not include  
15 undertaking liability under a contract of insurance, or a kind of  
16 contract of insurance:
- 17 (a) specified in the regulations for the purposes of this  
18 subsection; or
  - 19 (b) in circumstances specified in the regulations for the purposes  
20 of this subsection.
- 21 (2) Without limiting subsection (1), the regulations may specify a  
22 contract of insurance, a kind of contract of insurance, or  
23 circumstances, by reference to:
- 24 (a) particular general insurance products (within the meaning of  
25 Chapter 7 of the *Corporations Act 2001*), or particular kinds  
26 of such products; or
  - 27 (b) particular persons, or particular kinds of persons, who are  
28 insured under a contract of insurance, or a kind of contract of  
29 insurance.

30 **66 Items 13 to 33 of Schedule 2**

31 Repeal the items.

1     ***Insurance Act 1973***

2     **67 Subsection 3(1) (note to the definition of *insurance***  
3         ***business*)**

4             Omit “Particular contracts of insurance, or kinds of contracts of  
5             insurance,” substitute “Some contracts of insurance”.

1  
2  
3

## Schedule 4—Review of decisions

### *Banking Act 1959*

#### 1 At the end of section 9

6

Add:

7

(9) Part VI applies to the following decisions under this section:

8

(a) a decision to refuse an application under this section;

9

(b) a decision to impose conditions, or additional conditions, on an authority;

10

11

(c) a decision to vary conditions imposed on an authority.

12

#### 2 At the end of section 9A

13

Add:

14

(8) Part VI applies to the following decisions under this section:

15

(a) a decision to refuse to revoke a body corporate's section 9 authority;

16

17

(b) a decision to revoke a body corporate's section 9 authority, unless APRA has determined, under subsection (4), that the procedures in subsection (3) do not apply.

18

19

20

#### 3 At the end of section 11

21

Add:

22

(5) Part VI applies to the following decisions under this section:

23

(a) a refusal to determine that one or more provisions of this Act do not apply to a particular person;

24

25

(b) a variation or revocation of an order under this section that applies to a particular person.

26

27

#### 4 At the end of section 11AA

28

Add:

29

(8) Part VI applies to the following decisions under this section:

30

(a) a decision to refuse an application under this section;

- 1 (b) a decision to impose conditions, or additional conditions, on  
2 an authority;  
3 (c) a decision to vary conditions imposed on an authority.

#### 4 **5 At the end of section 11AB**

5 Add:

- 6 (8) Part VI applies to the following decisions under this section:  
7 (a) a decision to refuse to revoke a NOHC authority granted to a  
8 body corporate;  
9 (b) a decision to revoke a NOHC authority granted to a body  
10 corporate, unless APRA has determined, under  
11 subsection (4), that the procedures in subsection (3) do not  
12 apply.

#### 13 **6 Before subsection 11AF(8)**

14 Insert:

- 15 (7C) Part VI applies to the following decisions under this section:  
16 (a) a decision to determine a standard referred to in  
17 paragraph (1)(d);  
18 (b) a decision to vary such a standard.

#### 19 **7 After subsection 11CA(5)**

20 Insert:

- 21 (5A) Part VI applies to a decision to give a direction under  
22 subsection (1) as a result of the ground referred to in  
23 paragraph (1)(a), (b), (c), (d) or (e).

#### 24 **8 Section 11CB**

25 Before “APRA may”, insert “(1)”.

#### 26 **9 At the end of section 11CB**

27 Add:

- 28 (2) Part VI applies to a refusal under this section to certify an industry  
29 support contract.

#### 30 **10 After subsection 11CC(3)**

1                   Insert:

2                   (3A) APRA may vary the direction if, at the time of the variation, it  
3                   considers that the variation is necessary and appropriate.

4                   **11 At the end of section 11CC**

5                   Add:

6                   (7) Part VI applies to the following decisions made under this section:

- 7                   (a) a decision to give a direction;  
8                   (b) a decision to vary a direction;  
9                   (c) a revocation of the certification of an industry support  
10                  contract.

11                  **12 Subsection 51C(4)**

12                  Repeal the subsection.

13                  **13 After subsection 66(2B)**

14                  Insert:

15                  (2C) Part VI applies to the following decisions made under this section:

- 16                  (a) a decision to refuse consent to a particular person;  
17                  (b) a decision to impose conditions, or additional conditions, on  
18                  a consent that applies to a particular person;  
19                  (c) a decision to vary conditions imposed on a consent that  
20                  applies to a particular person;  
21                  (d) a decision to revoke a consent that applies to a particular  
22                  person.

23                  **14 At the end of section 67**

24                  Add:

25                  (5) Part VI applies to the following decisions made under this section:

- 26                  (a) a decision to refuse consent;  
27                  (b) a decision to impose conditions, or additional conditions, on  
28                  a consent;  
29                  (c) a decision to vary conditions imposed on a consent;  
30                  (d) a decision to revoke a consent.

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

1 **15 After Part 3**

2 Insert:

3 **Part 3A—Review of decisions**  
4

5 **25A Notice of reviewable decision**

- 6 (1) If APRA makes a reviewable decision (the *original decision*), then  
7 APRA must give a notice in writing of the original decision to the  
8 person in relation to whom the decision is made.
- 9 (2) The notice must include a statement to the effect that:
- 10 (a) the person may, if dissatisfied with the original decision, seek  
11 a reconsideration of that decision by APRA in accordance  
12 with sections 25B and 25C; and
- 13 (b) a person whose interests are affected by the original decision  
14 may, subject to the *Administrative Appeals Tribunal Act*  
15 *1975*, if dissatisfied with a decision made by APRA on that  
16 reconsideration confirming or varying the original decision,  
17 make application to the Administrative Appeals Tribunal for  
18 a review of the decision so confirmed or varied.

19 **25B Request for review of decisions**

- 20 (1) A person in relation to whom a reviewable decision is made, may,  
21 if dissatisfied with the decision, request APRA to reconsider the  
22 decision.
- 23 (2) The request must:
- 24 (a) be made by notice in writing; and
- 25 (b) be given to APRA within:
- 26 (i) the period of 21 days after the day on which the  
27 decision first comes to the notice of the person; or
- 28 (ii) within such further period as APRA allows; and
- 29 (c) set out the reasons for making the request.

30 **25C Review of decision**

- 31 (1) On receiving the request, APRA:
- 32 (a) must reconsider the decision; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

(b) may, in such manner as APRA thinks fit:

- (i) confirm the decision; or
- (ii) revoke the decision; or
- (iii) vary the decision.

(2) If APRA does not confirm, revoke or vary a decision within the period of 21 days after receiving the request to reconsider the decision, APRA is, at the end of that period, taken to have confirmed the decision under subsection (1).

(3) If APRA confirms, revokes or varies a decision (including because of the application of subsection (2)) by the end of the period referred to in subsection (2), APRA must serve a notice on the person who made the request. The notice must:

- (a) inform the person of the result of APRA's reconsideration of the decision; and
- (b) set out the findings on material questions of fact; and
- (c) refer to the evidence or other material on which those findings were based; and
- (d) give APRA's reasons for confirming, revoking or varying the decision; and
- (e) include a statement that:
  - (i) the person may, if dissatisfied with the decision, seek a reconsideration of the decision; and
  - (ii) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision, apply to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.

(4) Any failure to comply with the requirements of subsection (3) in relation to a decision does not affect the validity of the decision.

## **25D Applications to Administrative Appeals Tribunal**

30  
31  
32  
33  
34  
35

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of APRA that have been confirmed or varied under section 25C.

(2) If a decision is, under subsection 25C(2), taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies

- 1 as if the prescribed time for making an application for review of  
2 the decision were the period:
- 3 (a) beginning on the day on which the decision is taken to be  
4 confirmed; and  
5 (b) ending 28 days later.
- 6 (3) If a person makes a request under section 25B in respect of a  
7 reviewable decision, section 41 of the *Administrative Appeals*  
8 *Tribunal Act 1975* applies as if the making of the request were the  
9 making of an application to the Administrative Appeals Tribunal  
10 for a review of that decision.
- 11 (4) For the purposes of:
- 12 (a) a review of a decision of APRA that has been confirmed or  
13 varied under section 25C; or  
14 (b) a request under subsection 41(2) of the *Administrative*  
15 *Appeals Tribunal Act 1975* in respect of such a decision;  
16 a non-presidential member of the Administrative Appeals Tribunal  
17 must not sit as a member of the Administrative Appeals Tribunal if  
18 he or she is a director or employee of:
- 19 (c) an entity of any kind carrying on (whether in Australia or  
20 elsewhere) insurance business (within the meaning of the  
21 *Insurance Act 1973*) or life insurance business (within the  
22 meaning of the *Life Insurance Act 1995*); or  
23 (d) if an entity referred to in paragraph (c) is a body corporate—  
24 a body corporate that is related to it.
- 25 (5) The question whether 2 bodies corporate are related to each other  
26 for the purposes of paragraph (4)(d) is to be determined in the same  
27 way as that question is determined for the purposes of the  
28 *Corporations Act 2001*.
- 29 (6) An order must not be made under subsection 41(2) of the  
30 *Administrative Appeals Tribunal Act 1975* in respect of a decision  
31 except by the Administrative Appeals Tribunal.

## 32 **16 Section 31**

33 Insert:

34 *decision*, in Part 3A, has the same meaning as in the *Administrative*  
35 *Appeals Tribunal Act 1975*.



1 **17 Section 31**

2 Insert:

3 *reviewable decision* means any of the following decisions:

- 4 (a) a decision not to exempt an organisation under paragraph  
5 7(2)(j);
- 6 (b) a decision not to allow a longer period under subsection 9(3);
- 7 (c) a decision to include (including by transfer) a registered  
8 entity in a particular category under section 11;
- 9 (d) a decision under section 13 to determine a reporting standard  
10 for a particular financial sector entity;
- 11 (e) a decision to vary a reporting standard determined under  
12 section 13 for a particular financial sector entity.

13 ***Insurance Act 1973***

14 **18 At the end of section 7**

15 Add:

- 16 (6) Part VI applies to the following decisions made under this section:
- 17 (a) a refusal to determine that one or more provisions of this Act  
18 do not apply to a particular person;
- 19 (b) a decision to impose conditions on, or specify a period in, a  
20 determination made under this section in relation to a  
21 particular person;
- 22 (c) a decision to vary or revoke a determination made under this  
23 section in relation to a particular person.

24 **19 At the end of section 13**

25 Add:

- 26 (6) Part VI applies to the following decisions made under this section:
- 27 (a) a decision to impose conditions, or additional conditions, on  
28 an insurer's authorisation under section 12;
- 29 (b) a decision to vary conditions imposed on an insurer's  
30 authorisation under section 12.

31 **20 At the end of section 15**

32 Add:

1 (7) Part VI applies to a decision to revoke a general insurer's  
2 authorisation under section 12.

3 **21 At the end of section 17**

4 Add:

5 (10) Part VI applies to the following decisions made under this section:

- 6 (a) a decision to give a direction under subsection (1);  
7 (b) a refusal to approve a proposed assignment under  
8 subsection (4);  
9 (c) a decision to impose conditions on an approval.

10 **22 At the end of section 19**

11 Add:

12 (5) Part VI applies to the following decisions made under this section:

- 13 (a) a decision to impose conditions, or additional conditions, on  
14 a NOHC authorisation;  
15 (b) a decision to vary conditions imposed on a NOHC  
16 authorisation.

17 **23 At the end of section 21**

18 Add:

19 (7) Part VI applies to a decision to revoke a NOHC authorisation.

20 **24 At the end of section 32**

21 Add:

22 (7) Part VI applies to a decision to determine, vary or revoke a  
23 standard referred to in paragraph (1)(e).

24 **25 At the end of section 49H**

25 Add:

26 (5) Part VI applies to a decision by APRA under subsection (3) or (4)  
27 to confirm or vary a delegate's decision.

28 **26 Subsection 63(14)**

29 Repeal the subsection.

1       **27 At the end of section 116A**

2               Add:

- 3                       (7) Part VI applies to a decision by APRA under subsection (5) or (6)  
4                       to determine an amount or to vary such a determination.

5       ***Life Insurance Act 1995***

6       **28 Subsection 236(1) (definition of *reviewable decision*)**

7               Omit “, subject to subsection (1A),”.

8       **29 Subsection 236(1) (paragraphs (ca) and (cb) of the**  
9       **definition of *reviewable decision*)**

10               Repeal the paragraphs, substitute:

- 11                       (ca) a determination under subsection 16C(2);  
12                       (cb) a variation or revocation, under subsection 16C(3), of a  
13                       determination under subsection 16C(2);  
14                       (cc) a decision under section 16E;  
15                       (cd) a refusal to give an approval under subsection 16L(3) or  
16                       16Q(3);  
17                       (ce) a decision under subsection 16R(2) to give a notice;  
18                       (cf) a determination of an amendment, or a refusal to approve an  
19                       amendment, under subsection 16R(4);  
20                       (cg) a refusal to give an approval under subsection 16U(3);  
21                       (ch) a decision under subsection 16V(2) to give a notice;  
22                       (ci) a refusal to approve consequential amendments under  
23                       subsection 16V(4);  
24                       (cj) a determination of consequential amendments under  
25                       subsection 16V(5);  
26                       (ck) a refusal to register a company under section 21;

27       **30 Subsection 236(1) (after paragraph (g) of the definition of**  
28       ***reviewable decision*)**

29               Insert:

- 30                       (ga) a refusal to cancel the registration of a company under  
31                       section 27;

1 **31 Subsection 236(1) (after paragraph (h) of the definition of**  
2 ***reviewable decision*)**

3 (ha) a refusal to give an approval under subsection 40(1);

4 (hb) a decision to impose conditions on an approval granted under  
5 subsection 40(1);

6 (hc) a refusal to give an approval under paragraph 43(3)(c);

7 (hd) a refusal to give an approval under paragraph 48(8)(b);

8 **32 Subsection 236(1) (paragraphs (i) and (j) of the definition**  
9 ***of reviewable decision*)**

10 Repeal the paragraphs.

11 **33 Subsection 236(1) (after paragraph (l) of the definition of**  
12 ***reviewable decision*)**

13 Insert:

14 (la) a refusal to give an approval under paragraph 62(1)(c);

15 **34 Subsection 236(1) (after paragraph (zn) of the definition of**  
16 ***reviewable decision*)**

17 Insert:

18 (zna) a refusal under section 208 to suspend or vary a life  
19 company's obligation to make payments;

20 **35 Subsection 236(1) (at the end of the definition of**  
21 ***reviewable decision*)**

22 Add:

23 ; (zq) a decision to give a direction under section 230B as a result  
24 of the ground referred to in paragraph 230B(1)(a), (b), (c) or  
25 (d).

26 **36 Subsection 236(1A)**

27 Repeal the subsection.

28 **37 Subsection 237(5)**

29 Repeal the subsection.

30 ***Superannuation Industry (Supervision) Act 1993***

1       **38 Subsection 10(1) (after paragraph (dl) of the definition of**  
2               ***reviewable decision*)**

3               Insert:

4                       (dla) a decision of APRA to give a direction under subsection  
5                       29HB(3); or

6       **39 Subsection 10(1) (after paragraph (dn) of the definition of**  
7               ***reviewable decision*)**

8               Insert:

9                       (do) a decision of APRA to give a direction under subsection  
10                      29PB(3); or

11       **40 Subsection 10(1) (after paragraph (fa) of the definition of**  
12               ***reviewable decision*)**

13               Insert:

14                      (fb) a refusal of the Regulator to give an approval under  
15                      subparagraph 62(1)(b)(v); or

16       **41 Subsection 10(1) (before paragraph (u) of the definition of**  
17               ***reviewable decision*)**

18               Insert:

19                      (taa) a decision of the Regulator to suspend or remove a trustee of  
20                      a superannuation entity under section 133; or

21       **42 Subsection 344(11)**

22               Repeal the subsection.

23       **43 Application**

24               The amendments made by this Schedule apply to decisions made on or  
25               after the day on which this Schedule commences.