Banking Act 1959

No. 6, 1959

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About this compilation

This compilation

This is a compilation of the *Banking Act 1959* that shows the text of the law as amended and in force on 1 October 2020 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to regulate Banking, to make provision for the Protection of the Currency and of the Public Credit of the Commonwealth, and for other purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Banking Act 1959*.

2 Commencement

Except as otherwise provided by this Act, this Act shall come into operation on the day on which the *Reserve Bank Act 1959* comes into operation.

2A Main objects of this Act

(1) The main objects of this Act are:

(a) to protect the interests of depositors in ADIs in ways that are consistent with the continued development of a viable, competitive and innovative banking industry; and

(b) to promote financial system stability in Australia.

(2) This Act, and the prudential standards and non-ADI lender rules determined by APRA under this Act, achieve this mainly by:

(a) restricting who can carry on banking business in Australia; and

(b) providing for the prudential supervision of ADIs by APRA, by APRA determining prudential standards or taking other action to ensure prudent management of ADIs; and

(c) providing for APRA to manage or respond to circumstances in which the ability of an ADI to meet its obligations may be threatened; and

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(d) providing for certain account-holders to be paid amounts where the financial claims scheme has been declared to apply in relation to an ADI; and

(e) providing for heightened accountability for banking directors and senior executives through the Banking Executive Accountability Regime; and

(f) for the purposes of paragraph (1)(b)—providing rules in relation to the provision of certain kinds of finance by non-ADI lenders.

(3) It is intended that APRA, in taking actions to address risks to financial system stability in Australia, may consider specific sources of systemic risks, whether geographic, sectoral or otherwise.

(4) This section does not apply to the following:

(a) Divisions 4 (Mobilization of foreign currency) and 5 (Advances) of Part II;

(b) Parts III (Foreign exchange, foreign investment etc.), IV (Gold) and V (Interest rates);

(c) any other provision of this Act, to the extent that it relates to any of the provisions mentioned in paragraph (a) or (b).

4 Repeal

The following Acts are repealed:

Banking Act 1945;

Banking Act 1953.

5 Interpretation

Definitions

(1) In this Act, unless the contrary intention appears:

accountable person has the meaning given by sections 37BA and 37BB.

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account-holder means an entity (as defined in section 960-100 of the *Income Tax Assessment Act 1997*) that holds in its name, or keeps in its name, (either alone or jointly with another entity) an account or covered financial product with an ADI.

action that is likely to have a detrimental effect on financial system stability in New Zealand includes an action that prevents or interferes with an outsourcing arrangement.

ADI is short for authorised deposit-taking institution.

administrator, of a body corporate's business, means an administrator appointed under subsection 13A(1) to take control of the body corporate's business.

advance includes loan.

appointed auditor means an auditor appointed in accordance with the prudential standards.

approved form means a form approved, in writing, by APRA.

APRA means the Australian Prudential Regulation Authority.

APRA member has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

APRA Special Account has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

APRA staff member has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

ASIC means the Australian Securities and Investments Commission.

Australia includes the Territories.

Australian business assets and liabilities, of a foreign ADI, has the meaning given by subsection 11E(3).

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authorised deposit-taking institution means a body corporate in relation to which an authority under subsection 9(3) is in force.

authorised NOHC means a body corporate:

(a) in relation to which an authority under subsection 11AA(2) is in force; and

(b) that is a NOHC of an ADI or ADIs.

Banking Act statutory manager has the meaning given by subsection 13A(2).

banking business means:

(a) a business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution; or

(b) a business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent, of:

(i) both taking money on deposit (otherwise than as part-payment for identified goods or services) and making advances of money; or

(ii) other financial activities prescribed by the regulations for the purposes of this definition.

business day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

civil penalty provision: a subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if:

(a) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section); or

(b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.

Note: Schedule 2 deals with contraventions of civil penalty provisions, and treats people who are involved in various ways in such a contravention as if they had contravened the provision concerned.

covered bond has the meaning given by subsection 26(1).

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covered bond liabilities has the meaning given by subsections 26(4) and (5).

covered bond special purpose vehicle has the meaning given by subsection 26(1).

covered financial product has the meaning given by subsection (8).

cover pool has the meaning given by subsection 26(3).

declaration time for an ADI means the time the ADI becomes a declared ADI.

declared ADI means an ADI specified in a declaration under section 16AD as an ADI in relation to which Subdivision C of Division 2AA of Part II applies.

direction under this Act means a direction under any of the following provisions:

(a) section 11CA;
(b) section 11CC;
(c) section 13E;
(d) section 17;
(e) section 23;
(f) section 29;
(g) section 31F;
(h) section 37DB.

external administrator means any of the following:

(a) a liquidator;
(b) a receiver, manager, managing controller, receiver and manager or other controller (other than a Banking Act statutory manager);
(c) a voluntary administrator or administrator of a deed of a company arrangement or a scheme manager.

Expressions used in this definition have the same meanings as they have in the *Corporations Act 2001*.

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Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

Financial Claims Scheme Special Account has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

financial market has the meaning given by section 761A of the *Corporations Act 2001*.

Financial System Stability Special Account means the Financial System Stability Special Account established by section 70E.

foreign ADI means a body corporate that:

(a) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; and

(b) is authorised to carry on banking business in a foreign country; and

(c) has been granted an authority under section 9 to carry on banking business in Australia.

holding company, of a body corporate, means another body corporate of which the first body corporate is a subsidiary.

industry support contract means a contract under which emergency financial support is to be provided by parties to the contract to any ADI that is a party to the contract if a specified event occurs. The contract may also deal with matters associated with the provision of the financial support.

insolvent, in relation to a body corporate, means that the body corporate is not able to pay all its debts as and when they become due and payable.

investigator means a person APRA appoints under subsection 13(4), 13A(1) or 61(1).

issuing ADI has the meaning given by subsection 26(6).

large ADI means an ADI of a kind determined under paragraph 37G(3)(a).

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lawyer means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

liquidator includes a provisional liquidator.

listing rules has the meaning given by section 761A of the *Corporations Act 2001*.

medium ADI means an ADI of a kind determined under paragraph 37G(3)(b).

net credit balance:

(a) the ***net credit balance***, at a time, of an account means the excess of the balance of the account in credit in favour of the account-holder at that time over the amount (if any) of fees, charges and duties that are identified under the agreement under which the account is kept and are payable by the account-holder to the ADI at that time; and

(b) the ***net credit balance***, at a time, of a covered financial product that is not an account means the amount owed to the account-holder at that time under the terms of the agreement under which the covered financial product is kept.

New Zealand registered bank means a registered bank, as defined in section 2 of the Reserve Bank of New Zealand Act 1989 of New Zealand, that carries on a business in New Zealand.

NOHC is short for non-operating holding company.

NOHC authority means an authority under subsection 11AA(2).

NOHC/NOHC subsidiary has the meaning given by subsection 13D(5).

non-ADI holding company, of another body corporate, means a body corporate (other than an ADI) of which the other body corporate is a subsidiary.

non-ADI lender has the meaning given by section 38B.

non-ADI lender rule means a rule under section 38C.

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non-operating holding company means, in relation to a body corporate, a body corporate:

(a) of which the first body corporate is a subsidiary; and

(b) that does not carry on a business (other than a business consisting of the ownership or control of other bodies corporate); and

(c) that is incorporated in Australia.

outsourcing arrangement means an arrangement for the business of a New Zealand registered bank, or functions relating to such business, to be carried on by an entity other than the bank.

Part IIB provision of finance has the meaning given by section 38B.

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

prescribed New Zealand authority means the following:

(a) the Reserve Bank of New Zealand;

(b) an authority of the government of New Zealand that:

(i) has statutory responsibilities relating to prudential regulation or financial system stability; and

(ii) is prescribed by the regulations for the purposes of this definition.

protected account has the meaning given by subsections (4), (5), (6) and (7).

prudential matters means matters relating to:

(a) the conduct of any part of the affairs of, or the structuring or organising of, an ADI, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, in such a way as:

(i) to keep the ADI, NOHC, group or member or members of the group in a sound financial position; or

(ii) to facilitate resolution of the ADI, NOHC, group or member or members of the group; or

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(iii) to protect the interests of depositors of any ADI; or

(iv) not to cause or promote instability in the Australian financial system; or

(v) not to cause or promote instability in the New Zealand financial system; or

(b) the conduct of any part of the affairs of an ADI, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, with integrity, prudence and professional skill.

prudential requirement regulation means a regulation under section 11A.

prudential standard means a standard under section 11AF.

recapitalisation direction means a direction given by APRA under subsection 13E(1) or (1B).

related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body, as determined in accordance with subsection 5(2A).

relevant group of bodies corporate has the meaning given by subsection 5(3).

remuneration, of an accountable person, includes the meaning given by subsection 37E(3).

resolution means the process by which APRA or other relevant persons manage or respond to an entity:

(a) being unable to meet its obligations; or

(b) being considered likely to be unable, or being considered likely to become unable, to meet its obligations; or

(c) suspending payment, or being considered likely to suspend payment;

including through the exercise of powers and functions under this Act or another law.

section 9 authority means an authority under subsection 9(3).

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senior manager of an ADI or an authorised NOHC or the Australian operations of a foreign ADI means a person who has or exercises any of the senior management responsibilities (within the meaning of the prudential standards) for the ADI or NOHC or for the Australian operations of the foreign ADI, as the case may be.

small ADI means an ADI of a kind determined under paragraph 37G(3)(c).

subsidiary has the meaning given by subsection (2).

the Reserve Bank means the Reserve Bank of Australia.

transferred liabilities determination means a determination under subsection 16AIA(1).

ultimate termination of control has the meaning given by subsection 13C(1).

variable remuneration has the meaning given by section 37EA.

Subsidiary

(2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

Related bodies corporate

(2A) For the purposes of this Act, the question whether a body corporate is related to another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

Relevant group of bodies corporate

(3) For the purposes of this Act:

(a) an ADI and its subsidiaries together constitute a ***relevant group of bodies corporate***; and

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(b) an authorised NOHC and its subsidiaries together also constitute a ***relevant group of bodies corporate***.

Protected account

(4) Subject to subsections (5), (6) and (7), a ***protected account*** is an account or covered financial product that is kept by an account-holder (whether alone or jointly with one or more other account-holders) with an ADI and either:

(a) is an account that is prescribed by the regulations for the purposes of this paragraph; or

(b) is an account, or covered financial product, that is kept under an agreement between the account-holder and the ADI requiring the ADI to pay the account-holder, on demand by the account-holder or at a time agreed by them, the net credit balance of the account or covered financial product at the time of the demand or the agreed time (as appropriate).

Note: Paragraph (a)—the regulations may prescribe the account by reference to a class of accounts: see subsection 13(3) of the *Legislation Act 2003*.

(5) An account is not a ***protected account*** on and after 12 October 2011 unless:

(a) it is recorded in Australian currency; or

(b) it is kept with an ADI that is a declared ADI on 12 October 2011.

(6) A covered financial product that is kept with an ADI and is not an account is not a ***protected account*** if APRA applies under section 16AAA for an order that the ADI be wound up.

(7) An account or covered financial product is not a ***protected account*** if the account or covered financial product is prescribed by the regulations for the purposes of this subsection.

Note: The regulations may prescribe the account or covered financial product by reference to a class of accounts or financial products: see subsection 13(3) of the *Legislation Act 2003*.

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Covered financial product

(8) The Minister may declare that a specified financial product is a ***covered financial product***.

Note: The declaration may specify the product by reference to a class of financial products: see subsection 13(3) of the *Legislation Act 2003*.

(9) A declaration made under subsection (8), or an amendment of the declaration, is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration or amendment.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the declaration or amendment: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

(10) Despite subsection 12(1) of the *Legislation Act 2003*, the declaration or amendment commences from the time it is made.

(11) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the declaration or amendment.

6 Application of Act

(1) Nothing in Part II or V, or in sections 61 to 69 (inclusive), applies with respect to State banking.

(2) Subject to section 6A, this Act extends to all the Territories.

6A Cessation of application of Act to Territory

The Treasurer may, by legislative instrument, declare that, on a date specified in the instrument, this Act shall cease to extend to an external Territory specified in the instrument, and, on and after the date specified in such an instrument, this Act does not extend to the Territory so specified and a reference in this Act, other than this section, to a Territory does not include a reference to the Territory so specified.

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6B Application of *Criminal Code*

The *Criminal Code* applies to all offences against this Act.

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Part II—Provisions relating to the carrying on of banking business

Division 1—Authority to carry on banking business

7 Person other than a body corporate must not carry on banking business

(1) A person commits an offence if:

(a) the person carries on any banking business in Australia; and

(b) the person is not a body corporate; and

(c) there is no determination in force under section 11 that this subsection does not apply to the person.

Penalty: 200 penalty units.

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

(2) An offence against subsection (1) is an indictable offence.

(3) If a person carries on banking business in circumstances that give rise to the person committing an offence against subsection (1), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

8 Only the Reserve Bank and bodies corporate that are ADIs may carry on banking business

(1) A body corporate commits an offence if:

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(a) the body corporate carries on any banking business in Australia; and
(b) the body corporate is not the Reserve Bank; and
(c) the body corporate is not an ADI; and
(d) there is no determination in force under section 11 that this subsection does not apply to the body corporate.

Penalty: 200 penalty units.

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

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

(2) An offence against subsection (1) is an indictable offence.

(3) If a body corporate carries on banking business in circumstances that give rise to the body corporate committing an offence against subsection (1), the body corporate commits an offence against that subsection in respect of:
(a) the first day on which the offence is committed; and
(b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

9 Authority to carry on banking business

(2) A body corporate which desires authority to carry on banking business in Australia may apply in writing to APRA for authority accordingly.

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

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(2A) APRA may, by legislative instrument, set criteria for the granting of an authority to carry on banking business in Australia.

(3) If an application has been made, APRA may grant the body corporate an authority to carry on banking business in Australia. The authority must be in writing, and APRA must give the body corporate written notice of the granting of the authority.

Note: For APRA's power to revoke an authority, see section 9A.

(3A) Without limiting the circumstances in which APRA may refuse an application by a body corporate for authority to carry on banking business in Australia, APRA may refuse such an application if the body corporate is a subsidiary of another body corporate that does not hold a NOHC authority.

(4) If APRA grants an authority under subsection (3), APRA must cause notice of that authority to be published in the *Gazette*. APRA may also cause notice of that authority to be published in any other way it considers appropriate.

(5) A failure to comply with subsection (4) does not affect the validity of the authority.

(6) Part VI applies to a decision to refuse an application under this section.

9AA Conditions on an authority

(1) APRA may, at any time, by giving written notice to a body corporate:

(a) impose conditions, or additional conditions, on the body corporate's section 9 authority; or

(b) vary or revoke conditions imposed on the body corporate's section 9 authority.

The conditions must relate to prudential matters.

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

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(3) Without limiting the conditions that APRA may impose on an authority, APRA may make the authority conditional on another body corporate, of which the body corporate is a subsidiary, being an authorised NOHC.

(4) If APRA imposes, varies or revokes the conditions on a body corporate's section 9 authority, APRA must:
  (a) give written notice to the body corporate; and
  (b) ensure that notice that the action has been taken is published in the *Gazette*.

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

(6) Part VI applies to the following decisions made under this section:
  (a) a decision to impose conditions, or additional conditions, on a body corporate's section 9 authority;
  (b) a decision to vary conditions imposed on a body corporate's section 9 authority.

9AB Breach of authority conditions

(1) A body corporate commits an offence if:
  (a) the body corporate does an act or fails to do an act; and
  (b) doing the act or failing to do the act results in a contravention of a condition of the body corporate's section 9 authority; and
  (c) there is no determination in force under section 11 that this subsection does not apply to the body corporate.

Penalty: 300 penalty units.

(2) If an individual:
  (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
  (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

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he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

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

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

9A Revocation of authority etc.

(1) APRA must revoke a body corporate's section 9 authority if:
  (a) the body corporate, by notice in writing to APRA, requests the revocation of the authority; and
  (b) APRA is satisfied that the revocation of the authority:
    (i) would not be contrary to the national interest; and
    (ii) would not be contrary to the interests of depositors of the body corporate.

(2) APRA may revoke a body corporate's section 9 authority if APRA is satisfied that:
  (a) the body corporate has, whether before or after the commencement of this paragraph, provided, in connection with its application for the authority, information that was false or misleading in a material particular; or
  (b) the body corporate has failed to comply with any of the following:
    (i) a requirement of this Act;
    (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*;
    (iii) a requirement of the regulations or any other instrument made under this Act;
    (iv) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations;
    (v) a direction under this Act;
    (vi) a condition of its section 9 authority; or
  (c) it would be contrary to the national interest for the authority to remain in force; or

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(d) it would be contrary to financial system stability in Australia for the authority to remain in force; or

(e) it would be contrary to the interests of depositors of the body corporate for the authority to remain in force; or

(f) the body corporate has failed to pay:

(i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or

(ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or

(g) the body corporate is insolvent and is unlikely to return to solvency within a reasonable period of time; or

(h) the body corporate has ceased to carry on banking business in Australia; or

(j) the body corporate is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution, and:

(i) the body corporate is unlikely to be able to meet its liabilities in Australia and is unlikely to be able to do so within a reasonable period of time; or

(ii) an authority (however described) for the body corporate to carry on banking business in a foreign country has been revoked or otherwise withdrawn in that foreign country;

(k) if the section 9 authority is to cease to have effect on a day specified in the authority—it is unlikely to be appropriate, at or before that day, to grant the body corporate a section 9 authority that is not subject to a time limit.

The procedures to be undergone before a revocation under this subsection are set out in subsection (3). Those procedures apply unless APRA determines under subsection (4) that they are not to apply.

(3) Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's section 9 authority unless:

(a) APRA has given the body corporate a notice in writing advising the body corporate:

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(i) that APRA is considering revoking the authority for the reasons specified in the notice; and

(ii) that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and

(iii) of the date by which any submissions must be made; and

(b) APRA has considered any submissions that were made by the body corporate by the specified date.

(3A) The date mentioned in subparagraph (3)(a)(iii) must be:

(a) at least 90 days after the notice under paragraph (3)(a) of this section was given; or

(b) if the section 9 authority is to cease to have effect on a day specified in the authority—at least 21 days after the notice under paragraph (3)(a) of this section was given.

(4) APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:

(a) contrary to the national interest; or

(b) contrary to the interests of depositors with the body corporate.

(5) A revocation of a body corporate's section 9 authority under subsection (1) or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.

(5A) The notice of revocation of the authority may state that the authority continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

(a) a specified provision of this Act or the regulations; or

(b) a specified provision of another law of the Commonwealth that is administered by APRA; or

(c) a specified provision of the prudential standards;

and the statement has effect accordingly.

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(6) If APRA revokes a body corporate's section 9 authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the *Gazette*. APRA may also cause notice of the revocation to be published in any other way it considers appropriate.

(7) A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

(8) Part VI applies to the following decisions under this section:
  (a) a decision to refuse to revoke a body corporate's section 9 authority;
  (b) a decision to revoke a body corporate's section 9 authority, unless:
    (i) APRA has determined, under subsection (4), that the procedures in subsection (3) do not apply; or
    (ii) the section 9 authority is an authority that is to cease to have effect on a day specified in the authority.

9B Bodies that cease to exist or change their names

(1) If APRA is satisfied that a body corporate that has been granted a section 9 authority:
  (a) has ceased to exist; or
  (b) has changed its name;

APRA must cause notice of that fact to be published in the *Gazette*. APRA may also cause notice of that fact to be published in any other way it thinks appropriate.

(2) If the body corporate has ceased to exist, its section 9 authority is taken to be revoked on publication of the notice in the *Gazette*.

(3) If the body corporate has changed its name, its section 9 authority has effect after the publication of the notice in the *Gazette* as if it had been granted to the body under its changed name.

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9C Publication of list of ADIs

APRA may, from time to time, publish a list of ADIs:

(a) in the *Gazette*; or

(b) in such other manner as APRA determines.

9D Authority to carry on banking business for a limited time

(1) An application under subsection 9(2) may state that the application is for an authority to carry on banking business in Australia for a limited time.

(2) If APRA grants an authority under subsection 9(3) as a result of an application made in accordance with subsection (1) of this section:

(a) the authority must state that it ceases to have effect on a day specified in the authority; and

(b) the authority ceases to have effect at the start of that day (except to the extent, if any, that it is continued in effect under subsection 9A(5A) or section 9F, or extended under section 9E), unless it is revoked earlier.

(3) The day specified in the authority under paragraph (2)(a) must be:

(a) 2 years after the day APRA grants the authority; or

(b) if APRA considers that another day is appropriate—that other day.

(4) Despite subsection 9(6), Part VI does not apply to a decision to refuse an application made in accordance with subsection (1) of this section, or to a decision to specify a particular day in the authority under paragraph (2)(a) of this section.

Application for authority not subject to time limit

(5) A section 9 authority granted to a body corporate as a result of an application made in accordance with subsection (1) does not prevent the body corporate making, under section 9, a further application for an authority that is not subject to a time limit.

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(6) If APRA decides to grant such an application, APRA may do so by varying the section 9 authority to remove the time limit that applies to the authority under subsection (2).

9E Authority to carry on banking business in Australia for a limited time—extension

(1) This section applies to a body corporate's section 9 authority if the authority is to cease to have effect on a day (the ***expiry day***) specified in the authority.

(2) APRA may, at any time before the expiry day, vary the authority to change the expiry day to a later day.

(3) If APRA does so, APRA must:
  (a) give written notice to the body corporate; and
  (b) ensure that notice that the variation has been made is published in the Gazette.

(4) A failure to comply with subsection (3) does not affect the validity of the variation.

9F Authority to carry on banking business in Australia for a limited time—continuation after expiry

(1) This section applies to a body corporate's section 9 authority if the authority is to cease to have effect on a day (the ***expiry day***) specified in the authority.

(2) APRA may, at any time before the expiry day, give the body corporate a written notice stating that the authority continues in effect, on and after the expiry day, in relation to a specified matter or specified period for the purposes of:
  (a) a specified provision of this Act or the regulations; or
  (b) a specified provision of another law of the Commonwealth that is administered by APRA; or
  (c) a specified provision of the prudential standards;

and the statement has effect accordingly.

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10 APRA to be supplied with certain documents

(1) An application under this Part by a body corporate shall be accompanied by a copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document by which the body corporate is constituted.

(2) Every copy of an Act, charter, deed of settlement, memorandum of association, articles of association or other document furnished to APRA under subsection (1) shall be verified by a statutory declaration made by a senior officer of the body corporate concerned.

(3) An ADI commits an offence if:

(a) an alteration is made to the Act, charter, deed of settlement, memorandum of association, articles of association, constitution or other document by which the ADI was constituted as a body corporate; and

(b) the ADI does not, within 3 months of the making of the alteration, give to APRA a written statement:

(i) that sets out particulars of the alteration; and

(ii) that is verified by a statutory declaration made by a senior officer of the ADI; and

(c) there is no determination in force under section 11 that this subsection does not apply to the ADI.

Penalty: 50 penalty units.

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

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

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11 APRA may determine that provisions of this Act do not apply

(1) APRA may, in writing, determine that any or all of the following provisions of this Act do not apply to a person while the determination is in force:

(a) a provision of Division 1, 1AA or 1A of Part II (other than section 11A, 11B or 11C);

(b) section 66;

(c) section 66A;

(d) section 67;

(e) section 69.

(2) The determination:

(a) may be expressed to apply to a particular person or to a class of persons; and

(b) may specify the period during which the determination is in force; and

(c) may be made subject to specified conditions.

(2A) If APRA makes a determination that applies to a particular person, APRA must also give the person written notice of the determination.

(3) A person commits an offence if:

(a) the person does, or fails to do, an act; and

(b) doing, or failing to do, the act results in a contravention of a condition to which a determination under this section is subject (being a determination that is in force and that applies to the person).

Penalty: 200 penalty units.

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

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

(3A) An offence against subsection (3) is an indictable offence.

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(3B) If a person does or fails to do an act in circumstances that give rise to the person committing an offence against subsection (3), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(4) APRA may, in writing, vary or revoke a determination under this section.

(5) The following instruments made under this section are not legislative instruments:

(a) a determination that applies to a particular person;

(b) an instrument varying or revoking a determination that applies to a particular person.

(6) Otherwise, an instrument made under this section is a legislative instrument.

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

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

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

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Division 1AA—Authority to be a NOHC of an ADI

11AA Authority to be a NOHC

(1) A body corporate may apply in writing to APRA for an authority under this section. The authority operates as an authority in relation to the body corporate and any ADIs that are subsidiaries of the body corporate from time to time.

Note 1: The body corporate may want the authority:

(a) because APRA refuses or may refuse to grant a subsidiary of the body corporate a section 9 authority unless the body corporate holds a NOHC authority (see subsection 9(3A)); or

(b) for a purpose connected with the *Financial Sector (Shareholdings) Act 1998*.

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

(1A) APRA may, by legislative instrument, set criteria for the granting of an authority under this section.

(2) APRA may grant the authority if it considers it is appropriate to do so.

Note: For APRA's power to revoke the authority, see section 11AB.

(3) If APRA grants an authority under subsection (2), APRA must cause notice of that authority to be published in the *Gazette*. APRA may also cause notice of that authority to be published in any other way it considers appropriate.

(4) A failure to comply with subsection (3) does not affect the validity of the authority.

(5) Part VI applies to a decision to refuse an application under this section.

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11AAA Conditions on an authority

(1) APRA may, at any time, by giving written notice to a body corporate:

(a) impose conditions, or additional conditions, on the body corporate's NOHC authority; or

(b) vary or revoke conditions imposed on the body corporate's NOHC authority.

The conditions must relate to prudential matters.

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

(3) If APRA imposes, varies or revokes the conditions on a body corporate's NOHC authority, APRA must:

(a) give written notice to the body corporate; and

(b) ensure that notice that the action has been taken is published in the *Gazette*.

(4) The taking of an action is not invalid merely because of a failure to comply with subsection (3).

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

(a) a decision to impose conditions, or additional conditions, on a body corporate's NOHC authority;

(b) a decision to vary conditions imposed on a body corporate's NOHC authority.

11AAB Breach of authority conditions

(1) A body corporate commits an offence if:

(a) the body corporate does an act or fails to do an act; and

(b) doing the act or failing to do the act results in a contravention of a condition of the body corporate's NOHC authority; and

(c) there is no determination in force under section 11 that this subsection does not apply to the body corporate.

Penalty: 300 penalty units.

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(2) If an individual:

(a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

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

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

11AB Revocation of authority etc.

(1) APRA must revoke a NOHC authority granted to a body corporate if:

(a) the body corporate, by notice in writing to APRA, requests the revocation of the authority; and

(b) APRA is satisfied that revocation of the authority:

(i) would not be contrary to the national interest; and

(ii) would not be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.

(2) APRA may revoke a NOHC authority granted to a body corporate if APRA is satisfied that:

(aa) the body corporate has, whether before or after the commencement of this paragraph, provided, in connection with its application for the authority, information that was false or misleading in a material particular; or

(a) the body corporate has failed to comply with any of the following:

(i) a requirement of this Act;

(ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*;

(iii) a requirement of the regulations or any other instrument made under this Act;

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(iv) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations;

(v) a direction under this Act;

(vi) a condition of its NOHC authority; or

(b) the body corporate has ceased to be a NOHC of any ADI or ADIs; or

(c) it would be contrary to the national interest for the authority to remain in force; or

(ca) it would be contrary to financial system stability in Australia for the authority to remain in force; or

(d) it would be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate for the authority to remain in force; or

(e) the body corporate has failed to pay:

(i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or

(ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*.

The procedures to be undergone before a revocation under this subsection are set out in subsection (3). Those procedures apply unless APRA determines under subsection (4) that they are not to apply.

(3) Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's NOHC authority unless:

(a) APRA has given the body corporate a notice in writing advising the body corporate:

(i) that APRA is considering revoking the authority for the reasons specified in the notice; and

(ii) that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and

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(iii) of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and

(b) APRA has considered any submissions that were made by the body corporate by the specified date.

(4) APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:

(a) contrary to the national interest; or

(b) contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.

(5) A revocation of a body corporate's NOHC authority under subsection (1) or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.

(5A) The notice of the revocation of the authority may state that the authority continues in effect in relation to a specified matter or specified period, as though the revocation had not happened, for the purposes of:

(a) a specified provision of this Act or the regulations; or

(b) a specified provision of another law of the Commonwealth that is administered by APRA; or

(c) a specified provision of the prudential standards;

and the statement has effect accordingly.

(6) If APRA revokes a body corporate's NOHC authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the *Gazette*. APRA may also cause notice of the revocation to be published in any other way it considers appropriate.

(7) A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

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

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(a) a decision to refuse to revoke a NOHC authority granted to a body corporate;
(b) a decision to revoke a NOHC authority granted to a body corporate, unless APRA has determined, under subsection (4), that the procedures in subsection (3) do not apply.

11AC Bodies that cease to exist or change their names

(1) If APRA is satisfied that a body corporate that has been granted a NOHC authority:
(a) has ceased to exist; or
(b) has changed its name;
APRA must cause notice of that fact to be published in the *Gazette*. APRA may also cause notice of that fact to be published in any other way it thinks appropriate.

(2) If the body corporate has ceased to exist, any NOHC authority granted to the body corporate that is still in force is taken to be revoked on publication of the notice in the *Gazette*.

(3) If the body corporate has changed its name, any NOHC authority granted to the body corporate that is still in force has effect after the publication of the notice in the *Gazette* as if it had been granted to the body under its changed name.

11AD Publication of list of NOHCs

APRA may, from time to time, publish a list of authorised NOHCs:
(a) in the *Gazette*; or
(b) in such other manner as APRA determines.

11AE APRA may give notice to ensure that ADI has an authorised NOHC

(1) This section applies if:
(a) a body corporate is a holding company of an ADI; and

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(b) the ADI is not a subsidiary of an authorised NOHC.

(2) APRA may, by notice in writing to the body corporate, require it to ensure, in accordance with the conditions (if any) specified in the notice, that either of the following occurs:

(a) the body corporate becomes an authorised NOHC of the ADI;

(b) a subsidiary of the body corporate becomes an authorised NOHC of the ADI.

Note: See Part 4A of the *Financial Sector (Transfer and Restructure) Act 1999* for other provisions that deal with a restructure arrangement to make an operating body a subsidiary of a NOHC.

(3) The notice may deal with the time by which, or period during which, it is to be complied with.

(4) The body corporate has power to comply with the notice despite anything in its constitution or any contract or arrangement to which it is a party.

(5) APRA may, by notice in writing to the body corporate, vary the notice mentioned in subsection (2) if, at the time of the variation, it considers that the variation is necessary and appropriate.

(6) The notice mentioned in subsection (2) has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the notice mentioned in subsection (2) if, at the time of revocation, it considers that the notice is no longer necessary or appropriate.

(7) Part VI applies to a decision to give a notice under subsection (2).

(8) Section 11CG applies in relation to a notice to a body corporate under subsection (2) in the same way in which it applies to a direction to an ADI under Subdivision B of Division 1BA.

(9) However, section 11CG does not apply to a contravention by a body corporate of a requirement in a notice under subsection (2) if:

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(a) the contravention happens merely because APRA refuses to grant the body corporate (or its subsidiary) an authority under subsection 11AA(2); and

(b) APRA's reasons for that refusal do not include the reason that one or more conditions specified in the notice are not satisfied.

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Division 1A—Prudential supervision and monitoring of ADIs and authorised NOHCs

Subdivision A—Prudential supervision and monitoring of ADIs and authorised NOHCs generally

11AF APRA may make prudential standards for ADIs and authorised NOHCs

(1) APRA may, in writing, determine standards in relation to prudential matters to be complied with by:

(a) all ADIs; or

(b) all authorised NOHCs; or

(c) the subsidiaries of ADIs or authorised NOHCs; or

(d) a specified class of ADIs, authorised NOHCs or subsidiaries of ADIs or authorised NOHCs; or

(e) one or more specified ADIs, authorised NOHCs or subsidiaries of ADIs or authorised NOHCs.

(1A) A standard may impose different requirements to be complied with:

(a) in different situations; or

(b) in respect of different activities;

including requirements to be complied with by different classes of ADIs, authorised NOHCs or subsidiaries of ADIs or authorised NOHCs.

(1AA) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may require:

(a) each ADI or authorised NOHC; or

(b) each ADI or authorised NOHC included in a specified class of ADIs or authorised NOHCs; or

(ba) each subsidiary of an ADI or of an authorised NOHC; or

(bb) each subsidiary of an ADI or of an authorised NOHC, included in a specified class of subsidiaries; or

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(c) a specified ADI or authorised NOHC; or
(d) each of 2 or more specified ADIs or authorised NOHCs; or
(e) a specified subsidiary of an ADI or of an authorised NOHC; or
(f) each of 2 or more specified subsidiaries of ADIs or of authorised NOHCs;

to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to prudential matters.

(1AB) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may provide for matters relating to:
(a) the appointment of auditors; or
(b) the conduct of audits.

(1AC) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may provide for matters relating to Part IIAA (the Banking Executive Accountability Regime).

(2) A standard may provide for APRA to exercise powers and discretions under the standard, including (but not limited to) discretions to approve, impose, adjust or exclude specific prudential requirements in relation to one or more specified ADIs or authorised NOHCs, or one or more specified subsidiaries of ADIs or authorised NOHCs.

(3) APRA may, in writing, vary or revoke a standard.

(3A) A standard referred to in paragraph (1)(d), or an instrument varying or revoking such a standard, has effect:
(a) from the day on which the standard, variation or revocation is made; or
(b) if the standard, variation or revocation specifies a later day—from that later day.

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(4A) If APRA determines or varies a standard referred to in paragraph (1)(e) it must, as soon as practicable:

(a) give a copy of the standard, or of the variation, to the ADI, authorised NOHC or subsidiary, or to each ADI, authorised NOHC or subsidiary, to which the standard applies; and

(b) give a copy of the standard, or of the variation, to the Treasurer.

(5A) If APRA revokes a standard referred to in paragraph (1)(e) it must, as soon as practicable:

(a) give notice of the revocation to the ADI, authorised NOHC or subsidiary, or to each ADI, authorised NOHC or subsidiary, to which the standard applied; and

(b) give a copy of the revocation to the Treasurer.

(7) A failure to comply with subsection (4A) or (5A) does not affect the validity of the action concerned.

(7A) The following instruments made under this section are not legislative instruments:

(a) a standard referred to in paragraph (1)(e);

(b) an instrument varying or revoking a standard referred to in paragraph (1)(e).

(7B) Otherwise, an instrument made under this section is a legislative instrument.

(7BA) A standard may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:

(a) section 46AA of the *Acts Interpretation Act 1901*; and

(b) section 14 of the *Legislation Act 2003*.

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

(a) a decision to determine a standard referred to in paragraph (1)(e);

(b) a decision to vary such a standard.

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(8) In this section:

Territory means a territory to which this Act extends.

11AG Obligation to comply with the prudential standards

An ADI, authorised NOHC or a subsidiary of an ADI or authorised NOHC to which a prudential standard applies must comply with the standard.

11A Prudential requirements may also be prescribed by the regulations

The regulations may make provision for and in relation to requiring ADIs, authorised NOHCs, subsidiaries of ADIs and subsidiaries of authorised NOHCs to observe such requirements in relation to prudential matters as are specified in, or ascertained in accordance with, the regulations.

11B APRA to monitor prudential matters

The functions of APRA include:

(a) the collection and analysis of information in respect of prudential matters relating to ADIs and authorised NOHCs;

(b) the encouragement and promotion of the carrying out by ADIs and authorised NOHCs of sound practices in relation to prudential matters; and

(c) the evaluation of the effectiveness and carrying out of those practices.

11C Division not to limit operation of other provisions

Nothing in this Division is intended to limit the operation of any other provision of this Act or of the *Reserve Bank Act 1959*.

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Subdivision B—Conversion and write-off provisions

11CAA Definitions

In this Subdivision:

clearing and settlement facility has the meaning given by Division 6 of Part 7.1 of the *Corporations Act 2001*.

conversion and write-off provisions means the provisions of the prudential standards that relate to the conversion or writing off of:

(a) Additional Tier 1 and Tier 2 capital; or

(b) any other instrument.

conversion entity: an entity (the ***first entity***) is a ***conversion entity*** for an instrument if:

(a) the instrument is issued by another entity, or another entity is a party to the instrument; and

(b) the instrument converts, in accordance with the terms of the instrument, into one or more ordinary shares or mutual equity interests of the first entity.

converts: an instrument ***converts*** into one or more ordinary shares or mutual equity interests of an entity including by redeeming or cancelling the instrument or rights under the instrument, and replacing the instrument or rights with ordinary shares or mutual equity interests (as the case requires).

mutual equity interests has the same meaning as in the prudential standards.

operating rules has the meaning given by section 761A of the *Corporations Act 2001*.

related subsidiary of an ADI means a subsidiary of a holding company of the ADI.

specified law means any of the following:

(a) the *Financial Sector (Shareholdings) Act 1998*;

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(b) the *Foreign Acquisitions and Takeovers Act 1975*;
(c) Chapter 6 of the *Corporations Act 2001* (takeovers);
(d) any other Australian law, or law of a foreign country or part of a foreign country, prescribed by the regulations for the purposes of this paragraph.

11CAB Conversion and write-off provisions

Application

(1) This section applies in relation to an instrument that contains terms that are for the purposes of the conversion and write-off provisions and that is issued by, or to which any of the following is a party:
(a) an ADI;
(b) a holding company of an ADI;
(c) a subsidiary or related subsidiary of an ADI;
(d) an entity of a kind prescribed by the regulations for the purposes of this paragraph.

Conversion of instrument despite other laws etc.

(2) The instrument may be converted in accordance with the terms of the instrument despite:
(a) any Australian law or any law of a foreign country or a part of a foreign country, other than a specified law; and
(b) the constitution of any of the following entities (the ***relevant entity***):
(i) the entity issuing the instrument;
(ii) any entity that is a party to the instrument;
(iii) any conversion entity for the instrument; and
(c) any contract or arrangement to which a relevant entity is a party; and
(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and
(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

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Write-off of instrument despite other laws etc.

(3) The instrument may be written off in accordance with the terms of the instrument despite:

(a) any Australian law or any law of a foreign country or a part of a foreign country; and

(b) the constitution of either of the following entities (the ***relevant entity***):

(i) the entity issuing the instrument;

(ii) any entity that is a party to the instrument; and

(c) any contract or arrangement to which a relevant entity is a party; and

(d) any listing rules or operating rules of a financial market in whose official list a relevant entity is included; and

(e) any operating rules of a clearing and settlement facility through which the instrument is traded.

11CAC Conversion or write-off etc. not grounds for denial of obligations

(1) This section applies if an entity (the ***first entity***) is party to a contract, whether the proper law of the contract is:

(a) Australian law (including the law of a State or Territory); or

(b) law of a foreign country (including the law of part of a foreign country).

(2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the first entity), to do any of the following:

(a) deny any obligation under the contract;

(b) accelerate any debt under the contract;

(c) close out any transaction relating to the contract;

(d) enforce any security under the contract.

(3) The matters are as follows:

(a) a relevant instrument being converted in accordance with the terms of the instrument;

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(b) a relevant instrument being written off in accordance with the terms of the instrument;

(c) the making of a determination (however described) by APRA that results in a relevant instrument being required to be converted or written off in accordance with the terms of the instrument.

(4) In this section:

relevant instrument means:

(a) an instrument to which section 11CAB applies:

(i) that is issued by the first entity; or

(ii) to which the first entity is a party; or

(iii) for which the first entity is a conversion entity; or

(b) if the first entity is a body corporate that is a member of a relevant group of bodies corporate—an instrument to which section 11CAB applies:

(i) that is issued by another member of the group; or

(ii) to which another member of the group is a party; or

(iii) for which another member of the group is a conversion entity.

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Division 1BA—APRA's power to issue directions

Subdivision A—Directions other than to enforce certified industry support contracts

11CA APRA may give directions in certain circumstances

(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:

(i) this Act; or

(ii) 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 the direction is reasonably necessary for one or more prudential matters relating to the body corporate; 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 material deterioration in the body corporate's financial condition; or

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(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:

(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

(k) the body corporate is conducting its affairs in a way that may cause or promote instability in the Australian financial system.

(1AA) APRA may give a body corporate that is an ADI or is an authorised NOHC a direction of a kind specified in subsection (2) if APRA has reason to believe that:

(a) a subsidiary of the body corporate has contravened a provision of:

(i) this Act; or

(ii) the *Financial Sector (Collection of Data) Act 2001*; or

(b) a subsidiary of the body corporate has contravened a prudential requirement regulation or a prudential standard; or

(c) a subsidiary of 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*; or

(d) the direction is in respect of a subsidiary of the body corporate and 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

(e) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary's liabilities; or

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(f) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or

(g) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or

(h) a subsidiary of the body corporate is conducting the subsidiary's affairs in an improper or financially unsound way; or

(j) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause or promote instability in the Australian financial system; or

(k) a subsidiary of the body corporate is conducting the subsidiary's affairs in a way that may cause it to be unable to continue to supply services to:

(i) if the body corporate is an ADI—the ADI; or

(ii) if the body corporate is an authorised NOHC—any ADI that is a subsidiary of the NOHC; or

(l) the direction is in respect of a subsidiary of the body corporate and the failure to issue a direction would materially prejudice 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.

(1AB) However, APRA can only make a direction as a result of a ground referred to in paragraph (1AA)(a), (b), (c), (e), (f), (g), (h) or (k) if APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.

(1AC) APRA may give a body corporate that is a subsidiary of an ADI or of an authorised NOHC a direction of a kind specified in subsection (2) if:

(a) APRA has given the ADI or authorised NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary; or

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(b) APRA may give the ADI or authorised NOHC a direction under subsection (1AA) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary.

(1AD) APRA cannot give a direction under subsection (1AC) to a body corporate of a kind specified in regulations (if any) made for the purposes of this subsection.

(1AE) Subsections (1), (1AA) and (1AC) do not limit each other.

(1A) The direction must:

(a) be given by notice in writing to the body corporate; and

(b) specify:

(i) in the case of a direction under subsection (1AC)—the ground referred to in subsection (1AA) as a result of which the direction is given; or

(ii) otherwise—the ground referred to in subsection (1) or (1AA) as a result of which the direction is given.

(1B) In deciding whether to give a direction under subsection (1), (1AA) or (1AC) to a body corporate, APRA may disregard any external support for the body corporate.

(1C) The regulations may specify that a particular form of support is not external support for the purposes of subsection (1B).

(2) The kinds of direction that the body corporate may be given are directions to do, or to cause a body corporate that is its subsidiary to do, any one or more of the following:

(aa) to comply with the whole or a part of:

(i) this Act; or

(ii) the *Financial Sector (Collection of Data) Act 2001*;

(ab) to comply with the whole or a part of a condition or direction referred to in paragraph (1)(d);

(a) to comply with the whole or a part of a prudential requirement regulation or a prudential standard;

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(b) to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;

(c) to remove a director or senior manager of the body corporate from office;

(d) to ensure a director or senior manager of the body corporate does not take part in the management or conduct of the business of the body corporate except as permitted by APRA;

(e) to appoint a person or persons as a director or senior manager of the body corporate for such term as APRA directs;

(f) to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;

(g) not to give any financial accommodation to any person;

(h) not to accept the deposit of any amount;

(i) not to borrow any amount;

(j) not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;

(k) not to repay any amount paid on shares;

(l) not to pay a dividend on any shares;

(m) not to repay any money on deposit or advance;

(n) not to pay or transfer any amount or asset to any person, or create an obligation (contingent or otherwise) to do so;

(o) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;

(p) to make changes to the body corporate's systems, business practices or operations;

(q) to reconstruct, amalgamate or otherwise alter all or part of any of the following:

(i) the business, structure or organisation of the body corporate;

(ii) the business, structure or organisation of the group constituted by the body corporate and its subsidiaries;

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(r) to do, or to refrain from doing, anything else in relation to the affairs of the body corporate.

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

(2AA) However, APRA must not direct, or give a direction that would cause or require, a covered bond special purpose vehicle to:

(a) deal, or not deal, with an asset to the extent that the asset secures covered bond liabilities of an ADI; or

(b) make a payment, or not make a payment, in relation to a covered bond liability of an ADI.

Note: Covered bond special purpose vehicles hold assets that secure liabilities in relation to covered bonds: see Division 3A of Part II.

(2A) Without limiting the generality of subsection (2), a direction referred to in a paragraph of that subsection may:

(a) deal with some only 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.

(2AAA) The kinds of direction that may be given as mentioned in subsection (2) are not limited by any other provision in this Part (apart from subsection (2AA)).

(2AAB) The kinds of direction that may be given as mentioned in a particular paragraph of subsection (2) are not limited by any other paragraph of that subsection.

(2B) Without limiting the generality of paragraph (2)(r), a direction under that paragraph to a foreign ADI may be any one or more of the following:

(a) a direction that the ADI act in a way so as to ensure that:

(i) a particular asset, or a particular class of assets, of the ADI is returned to the control (however described) of

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the part of the ADI's banking business that is carried on in Australia; or

(ii) a particular liability, or a particular class of liabilities, of the ADI ceases to be the responsibility (however described) of the part of the ADI's banking business that is carried on in Australia;

(b) a direction that the ADI not act in a way that has the result that:

(i) a particular asset, or a particular class of assets, of the ADI ceases to be under the control (however described) of the part of the ADI's banking business that is carried on in Australia; or

(ii) a particular liability, or a particular class of liabilities, of the ADI becomes the responsibility (however described) of the part of the ADI's banking business that is carried on in Australia.

(3) The direction may deal with the time by which, or period during which, it is to be complied with.

(4) 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.

(4A) If the direction requires the body corporate to cause a subsidiary to do, or to refrain from doing, an act or thing:

(a) the body corporate has power to cause the subsidiary to do, or to refrain from doing, the act or thing; and

(b) the subsidiary has power to do, or to refrain from doing, the act or thing;

despite anything in the subsidiary's constitution or any contract or arrangement to which the subsidiary is a party.

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

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(5) The direction has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

(5A) Part VI applies to a decision to give a direction:

(a) under subsection (1) as a result of the ground referred to in paragraph (1)(a), (b), (c), (d) or (e); or

(b) under subsection (1AA) as a result of the ground referred to in paragraph (1AA)(a), (b), (c) or (d); or

(c) under subsection (1AC) as a result of the ground referred to in paragraph (1AC)(a) or (b), to the extent that the paragraph relates to a ground referred to in paragraph (1AA)(a), (b), (c) or (d).

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

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

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

Subdivision B—Directions to enforce certified industry support contracts

11CB APRA may certify an industry support contract

(1) APRA may certify an industry support contract if all of the parties to the contract make a written request to APRA that the contract be certified and APRA considers it appropriate to certify the contract. The certification must be by notice in writing to the parties to the contract.

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

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11CC APRA may direct parties to an industry support contract to comply with the contract

(1) APRA may direct any ADI that is a party to an industry support contract that is certified under section 11CB to carry out, or cease to carry out, specified acts if APRA considers:

(a) that carrying out, or ceasing to carry out, those acts, is necessary in order for the terms of the contract to be fulfilled; and

(b) that the direction is in the interests of the depositors of one or more of the ADIs that are parties to the contract.

The direction must be by notice in writing to the ADI.

(2) The direction may deal with the time by which, or period during which, it is to be complied with.

(3) The ADI has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

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

(4) The direction has effect until:

(a) APRA revokes the direction by notice in writing to the ADI (see subsection (5)); or

(b) APRA revokes the certification of the industry support contract by notice in writing to the ADIs that are parties to it (see subsection (6)).

(5) APRA may revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.

(6) APRA may revoke the certification of the industry support contract if it considers that it is appropriate to do so for any reason.

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

(a) a decision to give a direction;

(b) a decision to vary a direction;

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(c) a revocation of the certification of an industry support contract.

Subdivision C—General provisions relating to all directions

11CD Direction not grounds for denial of obligations

(1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
   (a) Australian law (including the law of a State or Territory); or
   (b) law of a foreign country (including the law of part of a foreign country).

(1A) None of the matters mentioned in subsection (1B) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
   (a) deny any obligations under the contract;
   (b) accelerate any debt under the contract;
   (c) close out any transaction relating to the contract;
   (d) enforce any security under the contract.

This subsection has effect subject to subsections (2) and (3) of this section and section 31B.

(1B) The matters are as follows:
   (a) the body corporate being given a direction by APRA under Subdivision A or B or section 29;
   (b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being given a direction by APRA under Subdivision A or B or section 29.

(2) If the body corporate is prevented from fulfilling its obligations under the contract because of a direction under Subdivision A, other than a direction under paragraph 11CA(2)(m), or because of a direction under section 29, the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the body corporate under the contract.

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(3) A party to a contract to which subsection (2) applies may apply to the Federal Court of Australia for an order relating to the effect on the contract of a direction under Subdivision A or section 29. The order may deal with matters including (but not limited to):

(a) requiring a party to the contract to fulfil an obligation under the contract despite subsection (2);

(b) obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under Subdivision A or section 29.

11CE Supply of information about issue and revocation of directions

Power to publish notice of directions in Gazette

(1) APRA may publish in the *Gazette* notice of any direction made under Subdivision A or B or section 29. The notice must include the name of the ADI, authorised NOHC or other body corporate given the direction and a summary of the direction.

Requirement to publish notice of revocation of certain directions in Gazette

(2) If APRA publishes notice of a direction made under Subdivision A or B or section 29 and then later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about direction to Treasurer and Reserve Bank

(3) If the Treasurer or the Reserve Bank requests APRA to provide information about:

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(a) any directions under Subdivision A or B or section 29 in respect of a particular ADI, authorised NOHC or other body corporate; or

(b) any directions made during a specified period under Subdivision A or B or section 29 in respect of any ADIs, authorised NOHCs or other bodies corporate;

APRA must comply with the request.

Power to inform Treasurer and Reserve Bank of direction

(4) APRA may provide any information that it considers appropriate to the Treasurer or the Reserve Bank about any directions, or revocations of directions, made under Subdivision A or B or section 29, in respect of any ADI, authorised NOHC or other body corporate, at any time.

Requirement to inform Treasurer and Reserve Bank of revocation of direction if informed of making of direction

(5) If APRA provides the Treasurer or the Reserve Bank with information about a direction and then later revokes the direction, APRA must notify that person of the revocation of the direction as soon as practicable after the revocation. Failure to notify the person does not affect the validity of the revocation.

11CG Non-compliance with a direction

(1) An ADI, authorised NOHC or other body corporate commits an offence if:

(a) it does, or fails to do, an act; and

(b) doing, or failing to do, the act results in a contravention of a direction given to it under Subdivision A or B or section 17, 23, 29 or 37DB.

Penalty: 50 penalty units.

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

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

(1A) If an ADI, authorised NOHC or other body corporate does or fails to do an act in circumstances that give rise to the ADI, NOHC or other body corporate committing an offence against subsection (1), the ADI, NOHC or other body corporate commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the ADI, NOHC or other body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2) An officer of an ADI, authorised NOHC or other body corporate commits an offence if:

(a) the officer fails to take reasonable steps to ensure that the ADI, NOHC or other body corporate complies with a direction given to it under Subdivision A or B or section 17, 23, 29 or 37DB; and

(b) the officer's duties include ensuring that the ADI, NOHC or other body corporate complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

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

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

(2A) If an officer of an ADI, authorised NOHC or other body corporate fails to take reasonable steps to ensure that the ADI, NOHC or other body corporate complies with a direction given to it under Subdivision A or B or section 17, 23, 29 or 37DB in circumstances that give rise to the officer committing an offence against

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subsection (2), the officer commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

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

Subdivision D—Secrecy and disclosure provisions relating to all directions

11CH APRA may determine that a direction is covered by secrecy provision

(1) This section applies if APRA has given an entity (the ***directed entity***) a direction under this Act.

(2) APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the depositors of any ADI or to promote financial system stability in Australia.

Note: For repeal of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) APRA must give the directed entity a copy of the determination as soon as practicable after making it.

(4) An instrument under subsection (2) is not a legislative instrument.

(5) If APRA makes a determination under subsection (2), APRA must consider whether it is appropriate in the circumstances to also make a determination under either or both of subsections 11CK(2) and 11CK(5).

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11CI Secrecy relating to directions

(1) A person commits an offence if:

(a) APRA has given an entity (the ***directed entity***) a direction under this Act; and

(b) the direction is covered by a determination under subsection 11CH(2); and

(c) the person is, or has been, covered by subsection (2) of this section in relation to the direction; and

(d) the person discloses information; and

(e) the information reveals the fact that the direction was made.

Penalty: Imprisonment for 2 years.

(2) A person is covered by this subsection in relation to the direction if the person is:

(a) the directed entity; or

(b) an officer, employee or contractor of the directed entity at a time on or after APRA gave the directed entity the direction; or

(c) any other person who, because of his or her employment, or in the course of that employment, has acquired information that reveals the fact that the direction was made.

Exception

(3) Subsection (1) does not apply if:

(a) the disclosure is authorised by section 11CJ, 11CK, 11CL, 11CM, 11CN or 11CO; or

(b) the disclosure is required by an order or direction of a court or tribunal.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

11CJ Disclosure of publicly available information

A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was

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made, to the extent that the information has already been lawfully made available to the public.

11CK Disclosure allowed by APRA

(1) A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) a determination under subsection (2) or (5) allows the disclosure by the person; and

(b) if APRA has included conditions in the determination—those conditions are satisfied.

Determinations relating to specified person

(2) APRA may, in writing, make a determination allowing:

(a) a specified person covered by subsection 11CI(2) in relation to a specified direction; or

(b) a specified person covered by subsection 11CI(2) in relation to a direction that is in a specified class of directions;

to disclose specified information in relation to the direction.

(3) An instrument under subsection (2) is not a legislative instrument.

(4) APRA must give a copy of the determination as soon as practicable after making it to:

(a) the directed entity; and

(b) the person specified, or each person specified, in the determination.

Determinations relating to specified class of persons

(5) APRA may, by legislative instrument, make a determination allowing a specified class of persons covered by subsection 11CI(2) in relation to a direction that is in a specified class of directions to disclose:

(a) specified kinds of information in relation to the direction; or

(b) any kind of information in relation to the direction.

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Conditions in determinations

(6) APRA may include conditions in a determination under subsection (2) or (5) that relate to any of the following:
  (a) the kind of entities to which the disclosure may be made;
  (b) the way in which the disclosure is to be made;
  (c) any other matter that APRA considers appropriate.

11CL Disclosure to legal representative for purpose of seeking legal advice

A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:
  (a) the disclosure is to the person's legal representative; and
  (b) the purpose of the person making the disclosure is for the legal representative to provide legal advice, or another legal service, in relation to the direction.

11CM Disclosure allowed by APRA Act secrecy provision

(1) A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made if:
  (a) the person is:
    (i) an APRA member (within the meaning of subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*); or
    (ii) an APRA staff member (within the meaning of that subsection); or
    (iii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who is covered by paragraph (c) of the definition of ***officer*** in subsection 56(1) of the *Australian Prudential Regulation Authority Act 1998*; and

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(b) the information is protected information (within the meaning of subsection 56(1) of that Act), or is contained in a protected document (within the meaning of that subsection); and

(c) the disclosure is in accordance with a provision mentioned in paragraph 56(2)(c) of that Act.

Relationship to APRA Act secrecy provision

(2) Disclosure of information in relation to a direction is not an offence under section 56 of the *Australian Prudential Regulation Authority Act 1998* if the disclosure is authorised by section 11CJ, 11CK, 11CL, 11CN or 11CO.

11CN Disclosure in circumstances set out in the regulations

A person covered by subsection 11CI(2) in relation to a direction may disclose information that reveals the fact that the direction was made, if the disclosure is made in circumstances (if any) set out in the regulations.

11CO Disclosure for purpose

A person covered by subsection 11CI(2) (the ***relevant person***) in relation to a direction may disclose information that reveals the fact that the direction was made if:

(a) another person covered by subsection 11CI(2) in relation to the direction disclosed that information to the relevant person for a particular purpose in accordance with section 11CK, 11CL, 11CM or 11CN, or in accordance with a previous operation of this section; and

(b) the disclosure by the relevant person is for the same purpose.

11CP Exceptions operate independently

Sections 11CJ, 11CK, 11CL, 11CM, 11CN and 11CO do not limit each other.

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Division 1B—Provisions relating to certain ADIs

11E Limited application of Division 2 etc. to foreign ADIs

(1) The provisions listed in subsection (1A) do not apply in relation to:
  (a) business of a foreign ADI (other than Australian business assets and liabilities); or
  (b) the management of a foreign ADI, to the extent that the management relates to such business of the foreign ADI.

(1A) The provisions are as follows:
  (a) sections 12, 13BA and 13C, and Subdivision B of Division 2 (statutory management);
  (b) subsections 13A(1) to (2), to the extent that those subsections relate to statutory management;
  (c) sections 62B, 62C, 62D and 62E.

(1B) The following provisions do not apply in relation to a foreign ADI:
  (a) Division 2 (apart from the provisions in that Division listed in subsection (1A));
  (b) Division 2AA.

(2) A foreign ADI commits an offence if:
  (a) it accepts a deposit from a person in Australia; and
  (b) before accepting the deposit, the foreign ADI did not inform the person, in a manner approved by APRA, of the requirements of this Act to which the foreign ADI is not subject because of subsection (1B).

Penalty: 50 penalty units.

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

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

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(3) In this section:

asset has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

Australian business assets and liabilities, of a foreign ADI, means the following:

(a) the assets and liabilities of the foreign ADI in Australia;

(b) any other assets and liabilities of the foreign ADI that:

(i) are related to its operations in Australia; and

(ii) if regulations are made for the purposes of this subparagraph—are of a kind specified in those regulations.

liability has the same meaning as in the *Financial Sector (Transfer and Restructure) Act 1999*.

11EA APRA's power to apply for foreign ADI to be wound up

(1) APRA may apply to the Federal Court of Australia for an order that a foreign ADI be wound up if APRA considers that any of the following requirements are satisfied:

(a) the foreign ADI is unable to meet its liabilities in Australia, or in one or more foreign countries, as and when they become due and payable;

(b) an application for the appointment of an external administrator of the foreign ADI, or for a similar procedure in respect of the foreign ADI, has been made in a foreign country;

(c) an external administrator has been appointed to the foreign ADI, or a similar appointment has been made in respect of the foreign ADI, in a foreign country.

(2) To avoid doubt, subsection (1) applies whether or not an ADI statutory manager is in control of the Australian business assets and liabilities of the foreign ADI.

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(3) The winding up of the foreign ADI is to be conducted in accordance with the *Corporations Act 2001*.

Note: See Part 5.7 of the *Corporations Act 2001*.

(4) If APRA makes an application under subsection (1), APRA must inform the Minister of the application as soon as possible.

11F Assets of foreign ADIs

(1) If a foreign ADI (whether in or outside Australia) suspends payment or becomes unable to meet its obligations, the assets of the ADI in Australia are to be available to meet the ADI's liabilities in Australia in priority to all other liabilities of the ADI.

(2) Subsection (1) does not constrain:

(a) the exercise of powers or the performance of functions under this Act of a Banking Act statutory manager of a foreign ADI; or

(b) an entity acting at the direction or request of a Banking Act statutory manager of a foreign ADI exercising powers or performing functions under this Act.

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Division 2—Protection of depositors

Subdivision A—General provisions relating to depositor protection

12 APRA to protect depositors

(1) It is the duty of APRA to exercise its powers and functions under this Division for the protection of the depositors of the several ADIs and for the promotion of financial system stability in Australia.

(2) To avoid doubt, section 8A of the *Australian Prudential Regulation Authority Act 1998* (which deals with trans-Tasman cooperation) applies to the performance of functions and the exercise of powers by APRA under this Division.

13 ADI to supply information to APRA

APRA's power to obtain information

(1) APRA may, by notice in writing to an ADI, require the ADI to supply it, within the time specified in the notice, with such information relating to the ADI's financial stability as is specified in the notice. The requirement to supply information may include a requirement to supply books, accounts or documents.

(2) The information supplied in compliance with a requirement under subsection (1) must, if required by the notice, be verified by a statutory declaration made by an officer of the ADI concerned who is authorised by the ADI to make the declaration.

Information to be supplied if ADI unable, or likely to be unable, to meet obligations

(3) An ADI commits an offence if:

(a) the ADI considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment; and

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(b) the ADI does not immediately inform APRA of the situation.

Penalty: 200 penalty units.

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

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

(3A) An offence against subsection (3) is an indictable offence.

APRA's power to investigate or appoint an investigator if information etc. not provided

(4) APRA may investigate the affairs of an ADI, or appoint a person to do so, if the ADI fails to comply with a requirement to provide information, books, accounts or documents under this section.

Interpretation

(5) In this section:

officer, in relation to an ADI, has the same meaning as in section 11CG.

(6) To avoid doubt, this section applies to an ADI that is, or becomes, a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other ADI.

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13A Consequences of inability or failure of ADI etc. to meet certain requirements

Appointment of investigator or administrator, or investigation or control by APRA

(1) APRA may investigate the affairs of an ADI, appoint a person to investigate the affairs of an ADI, take control of the ADI's business or appoint an administrator to take control of the ADI's business if:

(a) the ADI informs APRA that the ADI considers that it is likely to become unable to meet its obligations or that it is about to suspend payment; or

(b) APRA considers that, in the absence of external support:

(i) the ADI may become unable to meet its obligations; or

(ii) the ADI may suspend payment; or

(iii) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the interests of its depositors; or

(iv) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the stability of the financial system in Australia; or

(c) the ADI becomes unable to meet its obligations or suspends payment; or

(d) an external administrator has been appointed to a holding company of the ADI (or a similar appointment has been made in a foreign country in respect of such a holding company), and APRA considers that the appointment poses a significant threat to:

(i) the operation or soundness of the ADI; or

(ii) the interests of depositors of the ADI; or

(iii) the stability of the financial system in Australia; or

(e) if the ADI is a foreign ADI:

(i) an application for the appointment of an external administrator of the foreign ADI, or for a similar

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procedure in respect of the foreign ADI, has been made in a foreign country; or

(ii) an external administrator has been appointed to the foreign ADI, or a similar appointment has been made in respect of the foreign ADI, in a foreign country.

Note: For information about another circumstance in which APRA may take control of the business of an ADI, see section 65.

(1A) The regulations may specify that a particular form of support for an ADI is not to be considered external support for the purposes of paragraph (1)(b).

(1B) APRA may take any of the actions mentioned in subsection (1C) in relation to a body corporate (the ***target body corporate***) if:

(a) the target body corporate is any of the following:

(i) an authorised NOHC of an ADI (the ***relevant ADI***);

(ii) a subsidiary of an authorised NOHC of an ADI (also the ***relevant ADI***);

(iii) a subsidiary of an ADI (also the ***relevant ADI***); and

(b) the condition in subsection (1D), (1E) or (1F) is satisfied; and

(c) the target body corporate is incorporated in Australia; and

(d) the target body corporate is not a body corporate of a kind specified in regulations (if any) made for the purposes of this paragraph.

(1C) The actions are as follows:

(a) taking control of the business of the target body corporate;

(b) appointing an administrator to take control of the business of the target body corporate.

Note: For information about another circumstance in which APRA may take control of the business of the target body corporate, see section 65.

(1D) The condition in this subsection is satisfied if:

(a) either:

(i) a Banking Act statutory manager has taken control of the relevant ADI; or

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(ii) the conditions in any or all of paragraphs (1)(a), (b), (c), (d) or (e) are satisfied in relation to the relevant ADI, and APRA intends that a Banking Act statutory manager will take control of the relevant ADI; and

(b) APRA considers that the target body corporate provides services that are, or conducts business that is, essential to the capacity of the relevant ADI to maintain its operations.

(1E) The condition in this subsection is satisfied if:

(a) either:

(i) a Banking Act statutory manager has taken control of the relevant ADI; or

(ii) the conditions in any or all of paragraphs (1)(a), (b), (c), (d) or (e) are satisfied in relation to the relevant ADI, and APRA intends that a Banking Act statutory manager will take control of the relevant ADI; and

(b) APRA considers that it is necessary for a Banking Act statutory manager to take control of the target body corporate, in order to facilitate the resolution of any of the following:

(i) the relevant ADI;

(ii) an authorised NOHC of the relevant ADI;

(iii) a relevant group of bodies corporate of which the relevant ADI is a member;

(iv) a particular member or particular members of such a group.

(1F) The condition in this subsection is satisfied if:

(a) there is an external administrator of the target body corporate, or APRA considers that, in the absence of external support:

(i) the target body corporate may become unable to meet its obligations; or

(ii) the target body corporate may suspend payment; and

(b) APRA considers that it is necessary to take an action mentioned in subsection (1C) in respect of the target body corporate in order to enable the relevant ADI to maintain its

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operations, or in order to facilitate the resolution of any of the following:

(i) the relevant ADI;

(ii) an authorised NOHC of the relevant ADI;

(iii) a relevant group of bodies corporate of which the relevant ADI is a member;

(iv) a particular member or particular members of such a group.

(2) If:

(a) APRA is in control of a body corporate's business under this Subdivision—APRA is the ***Banking Act statutory manager*** of the body corporate; or

(b) an administrator appointed by APRA is in control of a body corporate's business under this Subdivision—the administrator is the ***Banking Act statutory manager*** of the body corporate.

Note: This section and other provisions relating to statutory management do not apply to the aspects described in subsection 11E(1) of the business and management of a foreign ADI.

(2A) If APRA appoints 2 or more Banking Act statutory managers of a body corporate, or appoints one or more additional Banking Act statutory managers of a body corporate:

(a) the functions and powers under this Act of a Banking Act statutory manager of the body corporate may be performed or exercised by:

(i) all of the Banking Act statutory managers of the body corporate acting jointly; or

(ii) each of the Banking Act statutory managers of the body corporate acting individually (except to the extent (if any) specified in a notice given by APRA under paragraph (b)); and

(b) at the time of appointment, APRA may give all of the Banking Act statutory managers of the body corporate a notice in writing for the purposes of subparagraph (a)(ii),

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specifying limits or conditions on their ability to perform functions and exercise powers individually; and

(c) treat a reference in this Act to a Banking Act statutory manager as being a reference to whichever one or more of those Banking Act statutory managers the case requires.

Priorities for application of assets of ADI in Australia

(3) If an ADI becomes unable to meet its obligations or suspends payment, the assets of the ADI in Australia are to be available to meet the ADI's liabilities in the following order:

(a) first, the ADI's liabilities (if any) to APRA because of the rights APRA has against the ADI because of section 16AI or 16AIC;

(b) second, the ADI's debts (if any) to APRA under section 16AO;

(c) third, the ADI's liabilities (if any) in Australia in relation to protected accounts that account-holders keep with the ADI;

(d) fourth, the ADI's debts (if any) to the Reserve Bank;

(e) fifth, the ADI's liabilities (if any) under an industry support contract that is certified under section 11CB;

(f) sixth, the ADI's other liabilities (if any) in the order of their priority apart from this subsection.

(3AA) Subsection (3) does not constrain:

(a) the exercise of powers or the performance of functions under this Act of a Banking Act statutory manager of an ADI; or

(b) an entity acting at the direction or request of a Banking Act statutory manager of an ADI exercising powers or performing functions under this Act.

(3A) The assets of an ADI are taken for the purposes of subsection (3) not to include any interest in an asset (or a part of an asset) in a cover pool for which the ADI is the issuing ADI.

ADI's assets must at least equal its deposit liabilities

(4) An ADI commits an offence if:

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(a) it does not hold assets (excluding goodwill and any assets or other amount excluded by the prudential standards for the purposes of this subsection) in Australia of a value that is equal to or greater than the total amount of its deposit liabilities in Australia; and

(b) APRA has not authorised the ADI to hold assets of a lesser value.

Penalty: 200 penalty units.

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

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

(4A) For the purposes of subsection (4):

(a) the ADI's deposit liabilities are taken not to include an amount equal to the total of the face values of all of the covered bonds issued by the ADI; and

(b) the assets of the ADI are taken not to include:

(i) any interest in an asset (or a part of an asset) in a cover pool for which the ADI is the issuing ADI; or

(ii) any loan to a covered bond special purpose vehicle that relates to an asset (or a part of an asset) in a cover pool for which the ADI is the issuing ADI.

(5) An offence against subsection (4) is an indictable offence.

(6) If the circumstances relating to the asset holdings of an ADI are such that give rise to the ADI committing an offence against subsection (4), the ADI commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

(7) To avoid doubt, this section applies to a body corporate that is, or becomes, a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other body corporate.

13B Investigators—ADI must provide information and facilities

(1) An investigator of the affairs of an ADI under section 13 or 13A is entitled to have access to the books, accounts and documents of the ADI, and to require the ADI to give the investigator information or facilities to conduct the investigation.

(1A) An ADI commits an offence if:

(a) the ADI does not give the investigator access to its books, accounts and documents; or

(b) the ADI fails to comply with a requirement made under subsection (1) for the provision of information or facilities.

Penalty: 50 penalty units.

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

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

(1B) If the ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (1A), the ADI commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

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(2) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by investigators under this Act.

13BA Start of control of body corporate's business by Banking Act statutory manager

(1) After the decision that a Banking Act statutory manager will take control of a body corporate's business is made, APRA must give the body corporate written notice that the Banking Act statutory manager will take, or is taking, control of the business.

Note: Subsections 15A(4) and 16A(3) also require APRA to give notice of the taking of control.

(2) A Banking Act statutory manager takes control of a body corporate's business:

(a) at the time specified in a notice under this section as the time when the Banking Act statutory manager takes control of the business (which must not be earlier than the notice is given); or

(b) if a notice under this section does not specify a time as the time when the Banking Act statutory manager takes control of the business—at the time the notice is given.

(3) A notice under subsection (1) is not a legislative instrument.

13C Banking Act statutory managers—termination of control

Conditions necessary for termination of control

(1) If APRA assumes control of a body corporate's business or appoints an administrator of a body corporate's business, APRA must ensure that either it or an administrator of the body corporate's business has control of the body corporate's business until:

(a) APRA considers that it is no longer necessary for it or an administrator to remain in control of the body corporate's business; or

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(b) APRA has applied for the body corporate to be wound up.

A termination of control that is permitted under this section is called an ***ultimate termination of control***.

Note: This provision does not prevent a change, or changes, between control of a body corporate's business by APRA and an administrator or between administrators.

Events to precede termination

(2) Before making an ultimate termination of control by a Banking Act statutory manager of a body corporate's business, APRA must:

(a) ensure that directors of the body corporate have been appointed or elected under the body corporate's constitution at a meeting called by the Banking Act statutory manager in accordance with the body corporate's constitution; or

(b) appoint directors of the body corporate by instrument in writing; or

(c) ensure that a liquidator for the body corporate has been appointed.

Power to terminate control

(3) If the requirements in subsections (1) and (2) are satisfied, APRA may by instrument in writing make an ultimate termination of control of a body corporate's business by a Banking Act statutory manager.

(4) If the Banking Act statutory manager at the time of the termination is an administrator, the instrument of termination also operates as a termination of the appointment of the administrator. A copy of the instrument must be given to the administrator. However, mere failure to give the copy to the administrator does not affect the termination of the appointment.

Period of director's appointment

(5) If a director is elected or appointed under subsection (2), the director takes office on the termination of the Banking Act statutory manager's control of the body corporate's business. If the

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director was appointed by APRA, the director holds office until the body corporate's next annual general meeting, subject to any terms and conditions imposed by APRA on the director's appointment. If the director was appointed or elected under the body corporate's constitution, the constitution governs the appointment.

Note: For further information about what happens when a Banking Act statutory manager is in control of a body corporate's business, see Subdivision B.

Subdivision AA—Recapitalisation directions by APRA

13D Who this Subdivision applies to

(1) This Subdivision applies to an ADI that:
  (a) is a company that:
    (i) is registered under the *Corporations Act 2001*; and
    (ii) has a share capital; and
  (b) does not have a Banking Act statutory manager.

(2) Subsections (3) and (4) apply if:
  (a) APRA has given a recapitalisation direction to an ADI under subsection 13E(1) (the ***primary recapitalisation direction***); and
  (b) the ADI is a subsidiary of a NOHC/NOHC subsidiary; and
  (c) the NOHC/NOHC subsidiary is a company that:
    (i) is registered under the *Corporations Act 2001*; and
    (ii) has a share capital; and
  (d) the NOHC/NOHC subsidiary does not have a Banking Act statutory manager.

(3) This Subdivision applies to the NOHC/NOHC subsidiary in the same way that it does to an ADI.

(4) However, disregard the following provisions in applying this Subdivision to the NOHC/NOHC subsidiary:
  (a) subsection 13E(1);
  (b) subsection 13F(1).

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(5) In this section:

NOHC/NOHC subsidiary means a body corporate that is any of the following:

(a) an authorised NOHC;

(b) a subsidiary of an authorised NOHC.

13E Recapitalisation direction by APRA

(1) APRA may give an ADI a direction (a ***recapitalisation direction***) that requires the ADI to increase the ADI's level of capital to the level specified in the direction if:

(a) the ADI informs APRA that:

(i) the ADI considers that the ADI is likely to become unable to meet the ADI's obligations; or

(ii) the ADI is about to suspend payment; or

(b) APRA considers that, in the absence of external support:

(i) the ADI may become unable to meet the ADI's obligations; or

(ii) the ADI may suspend payment; or

(iii) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the interests of the ADI's depositors; or

(iv) it is likely that the ADI will be unable to carry on banking business in Australia consistently with the stability of the financial system in Australia; or

(c) the ADI:

(i) becomes unable to meet the ADI's obligations; or

(ii) suspends payment.

(1A) Subsection (1B) applies if subsections 13D(3) and (4) apply to a NOHC/NOHC subsidiary because of a primary recapitalisation direction given to an ADI (as mentioned in subsection 13D(2)).

(1B) For the purposes of facilitating compliance with the primary recapitalisation direction, APRA may give the NOHC/NOHC subsidiary a direction (also a ***recapitalisation direction***) that

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requires the NOHC/NOHC subsidiary to do anything that is specified in the direction.

(2) In deciding whether to give a recapitalisation direction, APRA must consult with the Australian Competition and Consumer Commission (the ***ACCC***), unless the ACCC notifies APRA, in writing, that the ACCC does not wish to be consulted about:
  (a) the direction; or
  (b) a class of directions that includes the direction.

(3) The regulations may specify that a particular form of support is not external support for the purposes of paragraph (1)(b).

(4) A recapitalisation direction is not a legislative instrument.

(5) A recapitalisation direction may deal with the time by which, or period during which, it is to be complied with.

(6) APRA may, by notice in writing to the ADI, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(7) The direction has effect until APRA revokes it by notice in writing to the ADI. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

13F Additional contents of a recapitalisation direction

(1) A recapitalisation direction may direct the ADI to issue:
  (a) shares, or rights to acquire shares, in the ADI; or
  (b) other capital instruments of a kind specified in the direction.

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), the direction may direct the NOHC/NOHC subsidiary to do any of the following:
  (a) issue:
    (i) shares, or rights to acquire shares, in the NOHC/NOHC subsidiary; or

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(ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;

(b) acquire:

(i) shares, or rights to acquire shares, in the ADI mentioned in subsection 13E(1A); or

(ii) other capital instruments in the ADI mentioned in subsection 13E(1A) of a kind specified in the direction;

(c) acquire:

(i) shares, or rights to acquire shares, in a specified body corporate covered by subsection (1B); or

(ii) other capital instruments in a specified body corporate covered by subsection (1B), of a kind specified in the direction.

(1B) This subsection covers a body corporate if:

(a) the body corporate is a subsidiary of the NOHC/NOHC subsidiary; and

(b) the ADI is a subsidiary of the body corporate.

(1C) Without limiting the generality of subsections (1), (1A) and (2), but subject to subsection (3), a direction referred to in those subsections may:

(a) deal with some only of the matters referred to in those subsections; 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.

(2) A direction for the purposes of paragraph (1)(a) or subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i) may specify that the shares or rights must:

(a) be of a kind specified in the direction; or

(b) have the characteristics specified in the direction.

(3) A direction for the purposes of paragraph (1)(b) or subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii):

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(a) must not specify a kind of capital instrument unless that kind of capital instrument is specified in the regulations; and
(b) may specify that the capital instruments must have the characteristics specified in the direction.

13G Compliance with a recapitalisation direction

Giving members of the ADI notice of share issue etc.

(1) As soon as practicable after an ADI issues shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction, the ADI must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the ADI just before the issue.

(2) The notice must:
(a) identify the issue; and
(b) explain the effect of the issue of the shares, rights to acquire shares, or other capital instruments on the members' interests.

Issue or acquisition of shares etc. despite other laws etc.

(3) An ADI may issue or acquire shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction despite:
(a) the *Corporations Act 2001* (without limiting the scope of section 70B of this Act); and
(b) the ADI's constitution; and
(c) any contract or arrangement to which the ADI is a party; and
(d) any listing rules of a financial market in whose official list the ADI is included.

13H APRA must obtain expert's report on the fair value of shares etc.

(1) APRA must comply with this section before giving a recapitalisation direction that directs an ADI to issue shares, or

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rights to acquire shares, in the ADI, unless APRA is satisfied that compliance with this section would detrimentally affect:

(a) the depositors with the ADI; or

(b) the stability of the financial system in Australia.

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), treat the reference in paragraph (1)(a) to "the depositors with the ADI" as being a reference to "the depositors with the ADI mentioned in subsection 13E(1A)".

(2) APRA must:

(a) obtain a report on the fair value of the shares, or rights to acquire shares, in the ADI from an expert who is not an associate of the company under Division 2 of Part 1.2 of the *Corporations Act 2001*; and

(b) consider the report.

(3) The report must set out:

(a) the amount that is, in the expert's opinion, the fair value for each of those shares or rights; and

(b) the reasons for forming the opinion; and

(c) any relationship between the expert and:

(i) the ADI; or

(ii) a person who is an associate of the ADI under Division 2 of Part 1.2 of the *Corporations Act 2001*;

including any circumstances in which the expert gives the ADI or person advice, or acts on behalf of the ADI or person, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with the ADI or person; and

(d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on.

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(4) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), treat the references in paragraph (3)(c) to "the ADI" as being a reference to "the NOHC/NOHC subsidiary mentioned in subsection 13E(1B)".

13J Determination of the fair value of shares by an expert

(1) In determining the fair value for each share in an ADI for the purposes of paragraph 13H(3)(a), the expert must:

(a) first, assess the value of the ADI as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the ADI; and

(b) then, allocate that value among the classes of shares in the ADI that:

(i) have been issued; or

(ii) APRA proposes to direct be issued (taking into account the relative financial risk, and voting and distribution rights, of the classes); and

(c) then, allocate the value of each class pro rata among the shares in that class that:

(i) have been issued; or

(ii) APRA proposes to direct be issued (without allowing a premium or applying a discount for particular shares in that class).

(2) The Minister may give the expert written notice of assumptions for the valuation of the company.

(3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.

(4) A notice given under subsection (2) or (3) is not a legislative instrument.

13K Determination of the fair value of rights by an expert

(1) In determining the fair value for each right to acquire shares in an ADI for the purposes of paragraph 13H(3)(a), the expert must act

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in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of that right.

(2) The Minister may give the expert written notice of assumptions for the valuation of such rights.

(3) The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions.

(4) A notice given under subsection (2) or (3) is not a legislative instrument.

13L Ascertaining the fair value of other capital instruments

(1) APRA must comply with this section before giving a recapitalisation direction that directs an ADI to issue capital instruments other than shares, or rights to acquire shares, in the ADI.

(2) APRA must comply with any requirements of the regulations relating to ascertaining the fair value of the capital instruments.

(3) Regulations made for the purposes of this section may specify different requirements in relation to different kinds of capital instruments.

13M Contravention of certain provisions does not affect the validity of recapitalisation direction etc.

A contravention of:

(a) section 13H or subsection 13J(1) or 13K(1); or

(b) section 13L or regulations made for the purposes of that subsection;

does not affect the validity of a recapitalisation direction or anything done in compliance with the direction.

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13N Recapitalisation direction not grounds for denial of obligations

(1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
  (a) Australian law (including the law of a State or Territory); or
  (b) law of a foreign country (including the law of part of a foreign country).

(2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:
  (a) deny any obligation under the contract;
  (b) accelerate any debt under the contract;
  (c) close out any transaction relating to the contract;
  (d) enforce any security under the contract.

(3) The matters are as follows:
  (a) the body corporate being subject to a recapitalisation direction;
  (b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a recapitalisation direction.

13P Supply of information about issue and revocation of recapitalisation directions

Power to publish notice of recapitalisation directions in Gazette

(1) APRA may publish in the *Gazette* notice of a recapitalisation direction.

(2) The notice must include:
  (a) the name of the ADI that is given the direction; and
  (b) a summary of the direction.

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Requirement to publish notice of revocation of certain recapitalisation directions in Gazette

(3) If APRA publishes notice of a recapitalisation direction and later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation.

(4) Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about recapitalisation direction to Minister and Reserve Bank

(5) If the Minister or the Reserve Bank requests APRA to provide information about:

(a) any recapitalisation directions in respect of a particular ADI; or

(b) any recapitalisation directions made during a specified period in respect of any ADIs;

APRA must comply with the request.

Power to inform Minister and Reserve Bank of recapitalisation direction

(6) APRA may provide any information that APRA considers appropriate to the Minister or the Reserve Bank about any recapitalisation directions, or revocations of recapitalisation directions, in respect of any ADI, at any time.

Requirement to inform Minister and Reserve Bank of revocation of recapitalisation direction if informed of making of direction

(7) If APRA:

(a) provides the Minister or the Reserve Bank with information about a recapitalisation direction; and

(b) later revokes the direction;

APRA must notify that person of the revocation of the direction as soon as practicable after the revocation.

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(8) Failure to notify the person does not affect the validity of the revocation.

13Q Non-compliance with a recapitalisation direction

(1) An ADI commits an offence if:

(a) the ADI does, or refuses or fails to do, an act; and

(b) doing, or refusing or failing to do, the act results in a contravention of a recapitalisation direction given to the ADI.

Penalty: 50 penalty units.

(2) However, subsection (1) does not apply if:

(a) the ADI made reasonable efforts to comply with the recapitalisation direction; and

(b) the ADI's contravention is due to circumstances beyond the ADI's control.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) If an ADI does, or refuses or fails to do, an act in circumstances that give rise to the ADI committing an offence against subsection (1), the ADI commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

(4) An officer of an ADI commits an offence if:

(a) the officer refuses or fails to take reasonable steps to ensure that the ADI complies with a recapitalisation direction given to the ADI; and

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(b) the officer's duties include ensuring that the ADI complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

(5) If an officer of an ADI refuses or fails to take reasonable steps to ensure that the ADI complies with a recapitalisation direction given to the ADI in circumstances that give rise to the officer committing an offence against subsection (4), the officer commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

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

13R Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

(a) the acquisition of shares in an ADI as a direct result of:

(i) the issue of the shares in compliance with a recapitalisation direction given to the ADI; or

(ii) the exercise of a right to acquire shares that was issued in compliance with such a recapitalisation direction;

(b) the acquisition of other capital instruments as a direct result of the issue of the other capital instruments in compliance with a recapitalisation direction given to an ADI.

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Subdivision B—Provisions dealing with control of a body corporate's business by a Banking Act statutory manager

14A Banking Act statutory manager's powers and functions

Banking Act statutory manager's powers and functions include powers and functions of board

(1) A Banking Act statutory manager of a body corporate has the powers and functions of the members of the board of directors of the body corporate (collectively and individually), including the board's powers of delegation.

Note: When a Banking Act statutory manager takes control of the business of a body corporate, the directors of the body corporate cease to hold office (see section 15).

Banking Act statutory manager's power to obtain information

(2) A Banking Act statutory manager of a body corporate may, for the purposes of this Division, require a person who has, at any time, been an officer of the body corporate to give the statutory manager any information relating to the business of the body corporate that the statutory manager requires. A requirement to give information may include a requirement to produce books, accounts or documents.

(2A) A person who is or has been an officer of a body corporate commits an offence if:

(a) there is a Banking Act statutory manager of the body corporate; and

(b) under subsection (2), the Banking Act statutory manager requires the person to give information or to produce books, accounts or documents; and

(c) the person fails to comply with the requirement.

Penalty: Imprisonment for 12 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

(3) An individual is not excused from complying with a requirement under subsection (2) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(4) If:

(a) before giving information in compliance with a requirement under subsection (2), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information might in fact tend to incriminate the individual or make the individual so liable;

the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.

(4A) Subsections (3) and (4) apply to the production of books, accounts or documents in a corresponding way to the way in which they apply to the giving of information.

Banking Act statutory manager's power to sell whole or part of body corporate's business

(5) A Banking Act statutory manager may sell or otherwise dispose of the whole or any part of the body corporate's business. The sale or disposal may occur on any terms and conditions that the Banking Act statutory manager considers appropriate.

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Banking Act statutory manager to alter body corporate's constitution etc.

(5A) A Banking Act statutory manager may, if the body corporate concerned is registered under the *Corporations Act 2001*, alter the body corporate's constitution, rules or other arrangements for governance if the alteration:

(a) is necessary or convenient for enabling or facilitating the performance of the Banking Act statutory manager's functions and duties, or the exercise of the Banking Act statutory manager's other powers, under this Division in relation to the body corporate; and

(b) promotes:

(i) the protection of depositors of the relevant ADI mentioned in subsection 13A(1B); and

(ii) financial system stability in Australia.

(5B) A Banking Act statutory manager may do an act under subsection (5) or (5A) despite:

(a) the *Corporations Act 2001* (without limiting the scope of section 70B of this Act); and

(b) the body corporate's constitution; and

(c) any contract or arrangement to which the body corporate is party; and

(d) any listing rules of a financial market in whose official list the body corporate is included.

Interpretation

(6) In this section:

officer, in relation to a body corporate, has the same meaning as in section 11CG.

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14AAA Safeguards on exercise of Banking Act statutory manager's powers and functions

(1) Despite anything else in this Subdivision, a Banking Act statutory manager of a body corporate (the ***body corporate under management***) may not perform a function or exercise a power under section 14A if:

(a) either or both of subsections (2) and (3) apply; and

(b) the performance of the function or the exercise of the power is not for the purposes of:

(i) an act of the Banking Act statutory manager under subsection 14AA(1); or

(ii) Part 3 or 4 of the *Financial Sector (Transfer and Restructure) Act 1999*.

(2) This subsection applies if:

(a) the body corporate under management is not an ADI; and

(b) the performance or the exercise would result in:

(i) the provision of services by the body corporate under management to a related body corporate of the body corporate under management; or

(ii) the provision of services by a related body corporate of the body corporate under management to the body corporate under management; or

(iii) subject to subsection (4), the transfer of assets between the body corporate under management and another body corporate (otherwise than in the ordinary course of business); and

(c) the performance or the exercise is not required or permitted by a binding arrangement that was in existence immediately before the Banking Act statutory manager started to be in control of the business of the body corporate under management; and

(d) the provision or transfer is not for fair value.

(3) This subsection applies if:

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(a) the body corporate under management is an authorised NOHC of an ADI; and

(b) the performance or the exercise requires using funds of the body corporate or a subsidiary of the body corporate to increase the level of capital of the ADI to a specified level; and

(c) the shareholders of the body corporate have not agreed, by ordinary resolution, to that use of the funds.

(4) Treat the requirement in subparagraph (2)(b)(iii) as not being met if:

(a) the body corporate under management is an authorised NOHC of an ADI; and

(b) the transfer of assets mentioned in that subparagraph is a transfer of funds to increase the level of capital of the ADI to a specified level; and

(c) the shareholders of the body corporate have agreed, by ordinary resolution, to that use of the funds.

14AA Banking Act statutory manager's additional powers to facilitate recapitalisation

Powers

(1) A Banking Act statutory manager of a body corporate that is a company that has a share capital and is registered under the *Corporations Act 2001* may do one or more of the following acts on terms determined by the Banking Act statutory manager:

(a) issue shares, or rights to acquire shares, in the company;

(b) cancel shares, or rights to acquire shares, in the company;

(c) reduce the company's share capital by cancelling any paid-up share capital that is not represented by available assets;

(d) sell shares, or rights to acquire shares, in the company;

(e) vary or cancel rights or restrictions attached to shares in a class of shares in the company.

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Note: Before doing such an act, the Banking Act statutory manager will usually need to get and consider a report on the fair value of each share or right concerned: see section 14AB.

Giving company members notice of exercise of powers

(2) As soon as practicable after doing an act described in paragraph (1)(a), (b), (c) or (e) or subsection (3), the Banking Act statutory manager must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the company just before the act, identifying the act and explaining its effect on their interests as members.

(3) One of the acts to which subsection (2) relates is the offering of shares, or rights to acquire shares, in the company for sale under paragraph (1)(d).

Exercise of powers despite other laws etc.

(4) A Banking Act statutory manager may do an act under subsection (1) despite:
  (a) the *Corporations Act 2001* (without limiting the scope of section 70B of this Act); and
  (b) the company's constitution; and
  (c) any contract or arrangement to which the company is party; and
  (d) any listing rules of a financial market in whose official list the company is included.

14AB Considering report before acting under section 14AA

Getting and considering report on fair value of shares or rights

(1) Before determining terms for an act under subsection 14AA(1), the Banking Act statutory manager must:
  (a) obtain a report meeting the requirements in subsection (2) of this section on the fair value of the shares or rights concerned from an expert who is not an associate of the Banking Act

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statutory manager, or of the company, under Division 2 of Part 1.2 of the *Corporations Act 2001*; and

(b) consider the report;

unless APRA determines under subsection (8) that this subsection does not apply in relation to that act relating to those shares or rights.

Content of report

(2) The report must set out:

(a) the amount that is, in the expert's opinion, the fair value for each share or right concerned; and

(b) the reasons for forming the opinion; and

(c) any relationship between the expert and any of the following persons:

(i) the Banking Act statutory manager;

(ii) a person who is an associate of the Banking Act statutory manager under Division 2 of Part 1.2 of the *Corporations Act 2001*;

(iii) the body corporate;

(iv) a person who is an associate of the body corporate under Division 2 of Part 1.2 of the *Corporations Act 2001*;

including any circumstances in which the expert gives them advice, or acts on their behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with them; and

(d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on.

Determining fair value of shares

(3) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each share concerned, the expert must:

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(a) first, assess the value of the company as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the company; and

(b) then allocate that value among the classes of shares in the company that either have been issued or that the Banking Act statutory manager proposes to issue (taking into account the relative financial risk, and voting and distribution rights, of the classes); and

(c) then allocate the value of each class pro rata among the shares in that class that either have been issued or that the Banking Act statutory manager proposes to issue (without allowing a premium or applying a discount for particular shares in that class).

Assumptions for valuation of company

(4) The Minister may give the expert written notice of assumptions for the valuation of the company. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

Determining fair value of rights

(5) In determining for the purposes of paragraph (2)(a) the amount that is, in the expert's opinion, the fair value for each right concerned, the expert must act in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the right.

Assumptions for valuation of rights

(6) The Minister may give the expert written notice of assumptions for the valuation of the rights concerned. The Minister may, by further written notice given to the expert, revoke, but not vary, notice of the assumptions. A notice under this subsection is not a legislative instrument.

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Contravention does not invalidate act

(7) A contravention of subsection (1), (2), (3), (5) or (9) does not affect the validity of anything done under section 14AA.

Exemption from subsection (1)

(8) APRA may determine in writing that subsection (1) does not apply in relation to an act relating to shares or rights if APRA is satisfied that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:
  (a) depositors with:
    (i) if the company is an ADI—the ADI; or
    (ii) if the company is not an ADI—the relevant ADI mentioned in subsection 13A(1B); and
  (b) financial system stability in Australia.

(9) APRA must:
  (a) publish a copy of a determination under subsection (8) in the *Gazette*; and
  (b) give a copy of a determination under subsection (8) to the Banking Act statutory manager concerned (unless that manager is APRA).

(10) A determination made under subsection (8) is not a legislative instrument.

14AC Act under section 14AA not ground for denial of obligations

(1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:
  (a) Australian law (including the law of a State or Territory); or
  (b) law of a foreign country (including the law of part of a foreign country).

(2) None of the matters mentioned in subsection (3) allows the contract, or a party to the contract (other than the body corporate), to do any of the following:

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(a) deny any obligation under the contract;
(b) accelerate any debt under the contract;
(c) close out any transaction relating to the contract;
(d) enforce any security under the contract.

(3) The matters are as follows:
(a) a Banking Act statutory manager of the body corporate doing an act under subsection 14AA(1) relating to the body corporate;
(b) if the body corporate is a member of a relevant group of bodies corporate—a Banking Act statutory manager of another member of the group doing an act under subsection 14AA(1) relating to that other member.

14AD APRA may require a person to give information etc. for the purposes of this Division

APRA may require person to give information etc.

(1) APRA may require a person, by written notice given to the person, to give APRA information, or documents containing information, relating to the business of a body corporate that has a Banking Act statutory manager if:
(a) in a case where the Banking Act statutory manager is APRA:
(i) APRA believes, on reasonable grounds, that the person has such information or documents; and
(ii) APRA requires the information or documents for the purposes of this Division; and
(b) in a case where the Banking Act statutory manager is not APRA:
(i) the Banking Act statutory manager requests, in writing, that APRA require the person to give the information or documents under this subsection; and
(ii) APRA believes, on reasonable grounds, that the person has such information or documents; and

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(iii) APRA is satisfied that the Banking Act statutory manager requires the information or documents for the purposes of this Division.

(2) The notice:

(a) must specify a period within which the information or documents must be given to APRA; and

(b) may specify the form and manner in which the information or documents must be given to APRA.

(3) The period specified under paragraph (2)(a) must be reasonable in all the circumstances.

Offence

(4) A person commits an offence if:

(a) APRA requires the person to give APRA information or documents under subsection (1); and

(b) the person refuses or fails to give the information or documents as required.

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

Self-incrimination

(5) A person is not excused from complying with a requirement under subsection (1) to give information or documents on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(6) However, in the case of an individual:

(a) the information or document given; and

(b) giving the information or document; and

(c) any information, document or thing obtained as a direct or indirect consequence of giving the information or document;

are not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information or document.

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Section 14A not limited

(7) This section does not limit section 14A.

14B Administrator in control—additional powers to recommend action by APRA

Types of recommendation

(1) An administrator of a body corporate's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:

(a) that APRA make a particular direction under Division 1BA, subsection 14D(3) or section 29 in respect of the body corporate;

(b) that APRA apply for the body corporate to be wound up;

(c) if the body corporate is an ADI—that APRA revoke the ADI's section 9 authority;

(d) if the body corporate is an authorised NOHC—that APRA revoke the authorised NOHC's authority under subsection 11AA(2).

Effect of recommendation

(2) If an administrator of a body corporate's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

14C Banking Act statutory manager's liabilities and duties

Immunity

(1) A Banking Act statutory manager, or a person acting on behalf of a Banking Act statutory manager, is not subject to any liability (whether civil or criminal) in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred

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or imposed on the Banking Act statutory manager by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) To avoid doubt, a Banking Act statutory manager is not liable under section 588G, 588GAB or 588GAC of the *Corporations Act 2001* in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Banking Act statutory manager by or under this Act. This subsection does not limit the scope of subsection (1).

Signpost to secrecy obligations

(5) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by Banking Act statutory managers under this Act.

14CA Transaction by Banking Act statutory manager not voidable under section 588FE of the *Corporations Act 2001*

A transaction of a body corporate is not voidable under section 588FE of the *Corporations Act 2001* merely because:

(a) the transaction was entered into at a time when a Banking Act statutory manager was in control of the body corporate's business; and

(b) the transaction is:

(i) an uncommercial transaction (within the meaning of that Act) of the body corporate; or

(ii) an unfair preference (within the meaning of that Act) given by the body corporate to a creditor of the company; or

(iii) an insolvent transaction (within the meaning of that Act) of the body corporate; or

(iv) a creditor-defeating disposition (within the meaning of that Act) by the body corporate.

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14D Administrator in control—additional duties

Duty to report to APRA on request

(1) A person who is an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business is being carried out if APRA requests that such a report be provided to it. The report must be given to APRA within a reasonable time after the request.

Duty to report to APRA on termination of appointment

(2) A person who was an administrator of a body corporate's business must give to APRA a written report showing how the control of the body corporate's business was carried out over the period of the administrator's appointment if the administrator's appointment has been terminated. The report must be given to APRA within a reasonable time of the termination.

Duty to follow directions by APRA

(3) APRA may give an administrator of a body corporate's business a direction relating to the control of the body corporate's business, and may alter such a direction. If a direction (including an altered direction) is given to an administrator by APRA, the administrator must:
  (a) act in accordance with the direction; or
  (b) immediately provide to APRA information relating to the control of the body corporate's business and request APRA to alter the direction.

(4) If an administrator of a body corporate's business requests APRA to alter a direction and APRA considers the request then confirms the direction, the administrator must act in accordance with the direction.

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14DAA Administrator in control—additional duties where action may affect financial system stability in Australia

(1) If an administrator of a body corporate's business has reasonable cause to believe that an action that the administrator proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia, the administrator must:
  (a) notify APRA as soon as practicable; and
  (b) obtain APRA's written consent before taking the action.

(2) The administrator is not required to comply with subsection (1) if the administrator is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.

(3) The performance of a function or the exercise of a power by an administrator is not invalid merely because of a failure by the administrator to comply with this section.

14DA Administrator in control—additional duties where action may affect financial system stability in New Zealand

(1) If an administrator of a body corporate's business has reasonable cause to believe that an action that the administrator proposes to take is an action that is likely to have a detrimental effect on financial system stability in New Zealand, the administrator must:
  (a) notify APRA as soon as practicable; and
  (b) obtain APRA's written consent before taking the action.

(2) The administrator is not required to comply with subsection (1) if the administrator is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.

(3) The performance of a function or the exercise of a power by an administrator is not invalid merely because of a failure by the administrator to comply with this section.

(4) If APRA receives a notice under paragraph (1)(a), it must provide details of the notice to every prescribed New Zealand authority that

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APRA considers to be relevant in the circumstances before granting written consent to the administrator.

(5) APRA is not required to comply with subsection (4) if APRA is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.

(6) The performance of a function or the exercise of a power by APRA is not invalid merely because of a failure by APRA to comply with this section.

(7) An administrator of a body corporate's business may consult a prescribed New Zealand authority about whether an action the administrator proposes to take is likely to have a detrimental effect on financial system stability in New Zealand.

14E Termination of administrator's appointment

(1) APRA may terminate the appointment of an administrator of a body corporate's business and either appoint another person as administrator of the body corporate's business or itself take control of the body corporate's business if:

(a) the administrator contravenes a requirement of this Division; or

(b) APRA considers such action necessary to:

(i) facilitate the resolution of the body corporate, a relevant group of bodies corporate of which the body corporate is a member, or another member of such a group; or

(ii) if the body corporate is an ADI—protect the interests of depositors of the ADI; or

(iii) promote financial system stability in Australia.

(2) The terms and conditions of an administrator's appointment may provide for termination in circumstances in addition to those mentioned in subsection (1).

(2A) If:

(a) APRA is the statutory manager of a body corporate; and

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(b) the requirement in paragraph (1)(b) is satisfied;

it may cease to be the statutory manager of the body corporate and appoint a person as administrator of the body corporate's business.

(3) This section has effect subject to section 13C.

15 Effect on directors of Banking Act statutory manager taking control of a body corporate's business

(1) The directors of a body corporate cease to hold office when a Banking Act statutory manager takes control of the body corporate's business.

Note: For the definition of ***director***, see subsection (4).

(2) A director of a body corporate must not be appointed or elected while a Banking Act statutory manager is in control of the body corporate's business unless the appointment is made under subsection 13C(2).

(3) If a person who ceased to hold office under subsection (1), or a purported director of the body corporate appointed or elected in contravention of subsection (2), purports to act in relation to the body corporate's business while a Banking Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(3A) Subsections (1), (2) and (3) do not apply in relation to a body corporate that is a foreign ADI.

(3B) Subsection (3C) applies if:

(a) subsections (1), (2) and (3) do not apply in relation to a body corporate because of subsection (3A); and

(b) a Banking Act statutory manager takes control of the body corporate's business; and

(c) a director of the body corporate acts, or purports to act in relation to the body corporate's business while the Banking Act statutory manager has control of the body corporate's business.

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(3C) Those acts are invalid and of no effect to the extent that they relate to:

(a) the Australian business assets and liabilities of the body corporate; or

(b) the management of the body corporate, to the extent that the management relates to the Australian business assets and liabilities of the body corporate.

(4) For the purposes of this section, ***director*** has the same meaning as it has in the *Corporations Act 2001*.

15A Effect on external administrator of Banking Act statutory manager taking control of a body corporate's business

(1) The appointment of an external administrator of a body corporate is terminated when a Banking Act statutory manager takes control of the body corporate's business.

(2) An external administrator of a body corporate must not be appointed while a Banking Act statutory manager is in control of the body corporate's business unless APRA approves the appointment.

(3) If a person who ceased to be the external administrator of a body corporate under subsection (1), or a purported external administrator of the body corporate appointed in contravention of subsection (2), purports to act in relation to the body corporate's business while a Banking Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.

(4) APRA must inform the external administrator of a body corporate that a Banking Act statutory manager will take control of the body corporate's business as soon as possible after the decision that a Banking Act statutory manager will take control of the body corporate's business is made. However, failure to inform the external administrator does not affect the operation of this section.

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15B Moratorium—effect of Banking Act statutory management on court and tribunal proceedings

(1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (8) in respect of a body corporate if a Banking Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:

(a) the court or tribunal grants leave for the proceedings to be begun or continued on the ground that the person would be caused hardship if leave were not granted; and

(b) the beginning or continuing of the proceedings is in accordance with such terms (if any) as the court or tribunal imposes.

(3) A person intending to apply for leave of the court or tribunal under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the court or tribunal considers that exceptional circumstances make this necessary).

(4) APRA may apply to the court or tribunal to be joined as a party to the proceedings for leave. If APRA is joined as a party, the court or tribunal must have regard to APRA's views in deciding:

(a) whether to grant leave under paragraph (2)(a); and

(b) if the court or tribunal decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and

(c) if the court or tribunal decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:

(a) APRA consents in writing to the proceedings beginning or continuing; or

(b) the Banking Act statutory manager, after considering APRA's views, consents to the proceedings beginning or continuing.

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(6) APRA (or the Banking Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

(8) A proceeding in a court or tribunal is covered by this subsection in respect of a body corporate if it is any of the following:
  (a) a proceeding against the body corporate (including a cross-claim or third party claim against the body corporate);
  (b) a proceeding in relation to property of the body corporate;
  (c) a proceeding to enforce any security (including a mortgage or charge) granted by the body corporate, or by a related body corporate of the body corporate, over any property that the body corporate owns, uses, possesses, occupies or in which the body corporate otherwise has an interest.

(9) Subsection (8) does not cover a proceeding in respect of an offence or a contravention of a provision of a law for which a pecuniary penalty (however described) may be imposed.

(10) In this section, a reference to a tribunal includes a reference to the following:
  (a) an industrial tribunal;
  (b) an arbitral tribunal.

15BA Moratorium—effect of Banking Act statutory management on enforcement process regarding property

(1) No enforcement process in relation to property of a body corporate can be begun or proceeded with if a Banking Act statutory manager is in control of the body corporate's business.

(2) Subsection (1) does not apply if:
  (a) the Federal Court of Australia grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or

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(b) the beginning or continuing of the process is in accordance with such terms (if any) as the Federal Court imposes.

(3) A person intending to apply for leave of the Federal Court of Australia under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Federal Court considers that exceptional circumstances make this necessary).

(4) APRA may apply to the Federal Court of Australia to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Federal Court must have regard to APRA's views in deciding:
(a) whether to grant leave under paragraph (2)(a); and
(b) if the Federal Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
(c) if the Federal Court decides to impose such terms—the nature of those terms.

(5) Subsection (1) also does not apply if:
(a) APRA consents to the process beginning or continuing; or
(b) the Banking Act statutory manager consents to the process beginning or continuing.

(6) APRA (or the Banking Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).

(7) Neither APRA nor the Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

(8) This section has effect subject to section 31B.

15BB Moratorium—effect of Banking Act statutory management on disposal of property

(1) A person must not dispose of property if:
(a) the property is owned by another person; and
(b) the other person is a body corporate; and

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(c) a Banking Act statutory manager is in control of the body corporate's business.

Note: The Federal Court of Australia may grant an injunction under section 65A in respect of a contravention of this subsection.

(2) Subsection (1) does not apply if:

(a) APRA consents to the disposal; or

(b) the Banking Act statutory manager consents to the disposal.

(3) Neither APRA nor the Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

(4) This section has effect subject to section 31B.

15BC Moratorium—restrictions on exercise of third party property rights

(1) Section 440B of the *Corporations Act 2001* applies during a period in which a Banking Act statutory manager is in control of a body corporate's business in the same way it applies during the administration of a company.

(2) For the purposes of this section, treat the reference in paragraph 440B(2)(a) of the *Corporations Act 2001* to the administrator's written consent as being a reference to:

(a) the Banking Act statutory manager's written consent; or

(b) APRA's written consent.

(3) Neither APRA nor a Banking Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent as mentioned in subsection (2).

(4) This section applies despite sections 15B, 15BA and 15BB.

(5) This section has effect subject to section 31B.

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15BD Moratorium—effect of Banking Act statutory management on supply of essential services

(1) If:

(a) a Banking Act statutory manager is in control of a body corporate's business; and

(b) the Banking Act statutory manager requests, or authorises someone else to request, a person or authority (the ***supplier***) to supply an essential service to the body corporate in Australia; and

(c) the body corporate owes an amount to the supplier in respect of the supply of the essential service before the day on which the Banking Act statutory manager took control of the body corporate's business;

the supplier must not:

(d) refuse to comply with the request for the reason only that the amount is owing; or

(e) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.

Note: The Federal Court of Australia may grant an injunction under section 65A in respect of a contravention of this subsection.

(2) In this section:

essential service has the same meaning as in section 600F of the *Corporations Act 2001*.

15BE Moratorium—effect of Banking Act statutory management on annual general meeting

(1) This section applies to a body corporate that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

(2) Despite section 250N and section 601BR of that Act, if a Banking Act statutory manager is in control of the body corporate's business at the end of that period, the body corporate need not hold that annual general meeting.

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15C Certain circumstances not grounds for denial of obligations

(1) This section applies if a body corporate is party to a contract, whether the proper law of the contract is:

(a) Australian law (including the law of a State or Territory); or

(b) law of a foreign country (including the law of part of a foreign country).

(2) None of the matters mentioned in subsection (3) allow the contract, or a party to the contract (other than the body corporate), to do any of the following:

(a) deny any obligations under the contract;

(b) accelerate any debt under the contract;

(c) close out any transaction relating to the contract;

(d) enforce any security under the contract.

This subsection has effect subject to section 31B.

(3) The matters are as follows:

(a) a Banking Act statutory manager being in control, or being appointed to take control, of the business of the body corporate;

(b) if the body corporate is a member of a relevant group of bodies corporate—a Banking Act statutory manager being in control, or being appointed to take control, of the business of another member of the group.

15D Application of other provisions

(1) None of the matters mentioned in subsection (2) affect:

(a) the continued operation of other provisions of this Act or the operation of the *Financial Sector (Collection of Data) Act 2001* in relation to a body corporate; or

(b) the obligation of a body corporate to comply with those other provisions and that Act.

(2) The matters are as follows:

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(a) the appointment of a Banking Act statutory manager of the body corporate's business under this Division;
(b) the fact that a Banking Act statutory manager is in control of the body corporate's business.

(3) The *Public Governance, Performance and Accountability Act 2013* does not apply to a body corporate that has a Banking Act statutory manager.

16 Costs of statutory management

(1) APRA's costs (including costs in the nature of remuneration and expenses) of being in control of a body corporate's business, or of having an administrator in control of a body corporate's business, are payable from the body corporate's funds and are a debt due to APRA.

(2) Despite anything contained in any law relating to the winding-up of companies, but subject to subsection 13A(3), debts due to APRA by a body corporate under subsection (1) have priority in a winding-up of the body corporate over all other unsecured debts.

Note: Subsection 13A(3) applies if the body corporate is an ADI, and provides for priorities for the application of the ADI's assets in Australia.

16A APRA must report to Treasurer and publish information about statutory management

Reports to the Treasurer

(1) If the Treasurer requests APRA to give him or her a written report concerning the activities of Banking Act statutory managers in respect of specified bodies corporate or in respect of a specified period, APRA must give the Treasurer such a written report within a reasonable time after the Treasurer requests it.

(2) If a Banking Act statutory manager takes control of a body corporate's business during a financial year, or if there is an ultimate termination of control during a financial year, APRA must

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give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all Banking Act statutory managers and each ultimate termination of control that occurred during that financial year.

Requirement to publish notices in Gazette

(3) If APRA:

(a) takes control of a body corporate's business; or

(b) appoints an administrator of a body corporate's business; or

(c) makes an ultimate termination of control in respect of a body corporate's business;

APRA must publish notice of that fact in the *Gazette*. However, mere failure to publish such a notice does not affect the validity of the act.

16AA Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

(a) the acquisition of assets in a sale or disposal of the whole or part of the business of a body corporate under this Division by a Banking Act statutory manager in control of the body corporate's business (whether the assets are shares in another body corporate or other assets);

(b) the acquisition of shares in a body corporate as a direct result of:

(i) the issue or sale of the shares under this Division by a Banking Act statutory manager in control of the body corporate's business; or

(ii) the exercise of a right to acquire shares that was issued or sold under this Division by a Banking Act statutory manager in control of the body corporate's business.

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Subdivision C—APRA's powers to apply for ADI to be wound up

16AAA APRA's powers to apply for ADI to be wound up

Power to apply for ADI to be wound up

(1) APRA may apply to the Federal Court of Australia for an order that an ADI be wound up if APRA considers that the ADI is insolvent and could not be restored to solvency within a reasonable period.

Note: This section does not apply in relation to a foreign ADI (see subsection 11E(1B)).

(2) To avoid doubt, subsection (1) applies whether or not an ADI statutory manager is in control of the ADI's business.

(3) The application is to be made under section 459P of the *Corporations Act 2001*.

(4) The winding up of the ADI is to be conducted in accordance with the *Corporations Act 2001*.

(5) If APRA makes an application under subsection (1), APRA must inform the Minister of the application as soon as possible.

Note: Once informed, the Minister may choose to apply Subdivision C of Division 2AA in relation to the ADI so some depositors can receive payments earlier than they would in the winding up of the ADI.

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Division 2AA—Financial claims scheme for account-holders with insolvent ADIs

Subdivision A—Preliminary

16AB Purpose of this Division

The main purpose of this Division is to provide for a scheme that:

(a) allows the Minister to make a declaration about an ADI if:
  (i) APRA has applied under section 16AAA for the ADI to be wound up; or
  (ii) a Banking Act statutory manager is in control of the ADI's business; and

(b) entitles account-holders who have certain protected accounts with a declared ADI to be paid certain amounts to maintain the account-holders' liquidity before they would receive payment in a winding up of the ADI; and

(c) substitutes APRA for those account-holders as a creditor of the declared ADI to the extent of the entitlements; and

(d) allows APRA to facilitate a transfer of business from the declared ADI to a receiving body under the *Financial Sector (Transfer and Restructure) Act 1999* by entitling the receiving body to amounts in respect of the protected accounts.

16AC APRA's functions relating to this Division

APRA's functions include:

(a) meeting entitlements under Subdivision C; and

(b) preparing, and assisting the Minister to prepare, for the application of that Subdivision in relation to ADIs; and

(c) meeting APRA's other obligations under this Division and the regulations made for the purposes of this Division.

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Subdivision B—Declaration of ADI

16AD Declaration that Subdivision C applies in relation to ADI

(1) The Minister may declare that Subdivision C applies in relation to a specified ADI if any of the following requirements are satisfied:

(a) APRA has applied under section 16AAA for the ADI to be wound up;

(b) a Banking Act statutory manager is in control of the ADI's business.

Note: The Minister cannot make a declaration under this subsection in relation to a foreign ADI (see section 11E).

Declaration to specify amount for meeting entitlements

(2) The declaration must also specify the amount (if any) that is to be credited to the Financial Claims Scheme Special Account in connection with the application of Subdivision C in relation to the declared ADI. If APRA's application under section 16AAA was made on or after 12 October 2011, the amount must not be more than $20,000,000,000.

Declaration to specify amount for administration

(3) The declaration must also specify the amount (if any) that is to be credited to the APRA Special Account in connection with the administration of this Division in relation to the declared ADI. The amount must not be more than $100,000,000.

Amendment of specification of amounts

(4) The Minister may amend a declaration made under subsection (1), but only to change the specification of an amount under subsection (2) or (3), within the limit set in that subsection.

Declaration cannot be revoked

(5) The Minister cannot revoke a declaration made under subsection (1).

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Declaration or amendment not disallowable

(6) A declaration made under subsection (1), or an amendment of the declaration, is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration or amendment.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the declaration or amendment: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

Effect of declaration or amendment

(7) The declaration or amendment:
(a) commences from the time it is made, despite subsection 12(1) of the *Legislation Act 2003*; and
(b) has effect according to its terms.

(7A) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the declaration or amendment.

Declaration not to specify ADI by reference to class

(8) Subsection 13(3) of the *Legislation Act 2003* does not apply to a declaration under subsection (1) specifying an ADI.

Note: This ensures that a declaration must specify an ADI individually, and cannot specify it by reference to a class of ADIs.

16AE Advice and information for decision on making declaration

(1) The Minister may give APRA, ASIC or the Reserve Bank a written request for advice or information about a matter relevant to making a decision about making a declaration under section 16AD (including a matter relating to the affairs of an ADI).

(2) As soon as reasonably practicable after being given the request, APRA, ASIC or the Reserve Bank must give the Minister the advice or information about the matter.

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(3) In making the decision, the Minister must take into account the advice and information (if any) that he or she has been given before making the decision. This does not limit what the Minister may take into account in making the decision.

Subdivision C—Payment of account-holders with declared ADI

16AF Payment of account-holders with declared ADI

(1) An account-holder who has a protected account with a net credit balance with a declared ADI at the declaration time is entitled to be paid by APRA an amount equal to the sum of:

(a) that balance; and

(b) the interest (if any) accrued by, but not credited to, the account-holder in connection with the protected account before the declaration time;

increased or decreased in accordance with the regulations to take account of clearance, within the period prescribed by the regulations, of transactions connected with the protected account and entered into before the declaration time.

(1A) The interest is payable at:

(a) the rate of interest that is payable according to the terms and conditions of the protected account; or

(b) if APRA considers that that rate is not certain—the rate of interest that APRA declares, in writing, is payable.

(1B) A declaration under paragraph (1A)(b) is not a legislative instrument.

Joint protected accounts

(2) If the account mentioned in subsection (1) is held jointly by 2 or more account-holders with the declared ADI, that subsection entitles each of the account-holders to an equal share of the amount to which one of those account-holders would be entitled if it alone had the account with the declared ADI.

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Pooled accounts

(3) If:

(a) one person holds the protected account mentioned in subsection (1); and

(b) the person is the trustee of 2 or more trusts; and

(c) the net credit balance of the account consists of the trust funds of 2 or more of those trusts;

subsection (1) entitles the person to be paid, in connection with that account, the amount worked out under subsection (1).

16AG Limit on payments to account-holder with declared ADI

(1) Despite section 16AF, an account-holder is not entitled under that section to be paid, in connection with the protected account or protected accounts the account-holder has with a particular declared ADI at a particular time, one or more amounts totalling more than the limit prescribed by, or worked out under, the regulations.

(2) The regulations may prescribe, or provide for working out, different limits for the purposes of subsection (1) relating to account-holders in different classes.

(3) Despite section 16AF, if:

(a) the account-holder has 2 or more protected accounts with the declared ADI at that time; and

(b) subsection (1) of this section reduces the total amount to which the account-holder would otherwise be entitled under section 16AF in connection with those protected accounts;

APRA may determine in writing, for each of the protected accounts, the amount (if any) of the entitlement under that section connected with the protected account (so that the total of the entitlements equals the limit prescribed by, or worked out under, the regulations for the purposes of subsection (1) of this section).

Note: Amounts may be determined by reference to a class, or more than one class, of accounts: see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

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(4) In making the determination, the desirability of the account-holder receiving its entitlements as early as possible is to be taken into account. This does not limit the matters that may be taken into account in making a determination.

16AH Payment

Various ways of meeting entitlement

(1) An account-holder's entitlement under this Subdivision to be paid an amount may be met:
   (a) by paying the amount to the account-holder as a single amount or in instalments determined by APRA; or
   (b) by applying the amount, as a single amount or in instalments determined by APRA, for the account-holder's benefit, by establishing an account with an ADI on behalf of the account-holder or in another way; or
   (c) by paying part of the amount to the account-holder and applying the rest of the amount for the account-holder's benefit.

(2) The regulations may make provision for or in relation to the ways in which account-holders' entitlements under this Subdivision to be paid amounts may be met.

Establishment of account by APRA for meeting entitlement

(3) APRA may establish, on behalf of an account-holder who has an entitlement under this Subdivision, an account with an ADI (except a declared ADI) for the purposes of wholly or partly meeting the entitlement.

(4) Subsection (3) has effect:
   (a) whether or not the account-holder consents to the establishment of the account; and
   (b) despite any other law of the Commonwealth relating to the establishment of such an account.

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(5) If an account-holder has an entitlement under this Subdivision connected with a protected account of a kind prescribed by the regulations for the purposes of this subsection, APRA must establish an account of the same kind on behalf of the account-holder for the purposes of wholly or partly meeting the entitlement.

Act to meet entitlement is not provision of designated service

(6) An act done by any of the following persons for the purposes of meeting an account-holder's entitlement under this Subdivision is taken, for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, not to be the provision of a designated service by the person:

(a) APRA;

(b) the Reserve Bank.

Note: One effect of subsection (6) is that the person's act does not make the person a reporting entity for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Exemption from section 32 of Anti-Money Laundering Act

(7) Section 32 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* does not apply to a designated service described in item 1 of the table in subsection 6(2) of that Act provided by an ADI as a result of the exercise of APRA's power under subsection (3) of this section (whether or not subsection (5) required APRA to exercise that power).

16AHA Giving information about payments in a financial year

(1) This section applies if one or more amounts are paid to, or applied for the benefit of, one or more account-holders in a financial year to meet (wholly or partly) the account-holders' entitlements under this Subdivision.

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Giving each account-holder an annual statement

(2) Within 14 days after the end of the financial year, APRA must give each of those account-holders a statement about the amounts paid to, or applied for the benefit of, the account-holder in the financial year. The statement must:

(a) be in the approved form; and

(b) name the account-holder; and

(c) state the account-holder's tax file number, if APRA knows it; and

(d) state the total of the amounts and the total of the amounts (if any) withheld from them under the *Taxation Administration Act 1953*; and

(e) specify the financial year to which the statement relates.

Provisions about statements and reports in approved forms

(4) Division 388 in Schedule 1 to the *Taxation Administration Act 1953* applies as if this section were a taxation law for the purposes of that Act.

Note: That Division sets out rules about approved forms and when they can be given.

This section does not limit the Taxation Administration Act 1953

(5) Subsection (4) does not limit the operation of the *Taxation Administration Act 1953* in relation to APRA.

16AI Substitution of APRA for account-holder as ADI's creditor

(1) When an ADI becomes a declared ADI, then, by force of this subsection, the right of an account-holder who has a protected account with the ADI to be paid an amount by the ADI in connection with the account:

(a) is reduced to the extent of the account-holder's entitlement under this Subdivision connected with the account; and

(b) to the extent of the reduction, becomes a right of APRA.

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(2) APRA may exercise or assign a right it has under paragraph (1)(b).

Note: Under section 11 of the *Australian Prudential Regulation Authority Act 1998*, APRA's property is generally held on behalf of the Commonwealth.

16AIA APRA may make transferred liabilities determination where transfer of business

(1) APRA may make a determination (a ***transferred liabilities determination***) if:

(a) an ADI is a declared ADI as a result of the Minister having made a declaration under section 16AD; and

(b) APRA has made, or proposes to make, a determination under section 25 (compulsory transfer determination) of the *Financial Sector (Transfer and Restructure) Act 1999* that there is to be a total transfer or partial transfer of business from the declared ADI to a receiving body (within the meaning of that Act); and

(c) the transfer of business will transfer:

(i) the liabilities of the declared ADI in respect of every protected account kept by an account-holder with the ADI; or

(ii) the liabilities of the declared ADI in respect of every protected account kept by an account-holder with the ADI, to the extent of the amount to which each of those account-holders is entitled under this Subdivision in relation to those protected accounts; and

(d) APRA is satisfied that it will be able to identify those protected accounts; and

(e) APRA has worked out:

(i) APRA's reasonable estimate of the total amount (the ***FCS amount***) to which account-holders of those protected accounts will be entitled (disregarding the determination) under section 16AF as a result of the Minister's declaration mentioned in paragraph (a); and

(ii) APRA's reasonable estimate of the total amount (the ***administration amount***) of the costs that would be

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incurred by APRA in relation to the exercise of its powers and the performance of its functions under this Division relating to the declared ADI if it did not make the determination; and

(f) APRA has worked out a total payment amount in accordance with section 16AIB; and

(g) APRA considers that it is reasonable in the circumstances to make the determination.

(2) However, APRA cannot make the determination if APRA has already issued a certificate of transfer under section 33 of the *Financial Sector (Transfer and Restructure) Act 1999* stating that the transfer is to take effect.

(3) The determination must be in writing.

(4) The determination must specify the following:

(a) the declared ADI;

(b) the receiving body;

(c) a description, in general or detailed terms, of all the protected accounts kept with the declared ADI;

(d) the FCS amount;

(e) the administration amount;

(f) the total payment amount;

(g) the FCS payment amount;

(h) the administration payment amount;

(i) any other information that APRA considers appropriate.

(5) A determination under subsection (1) may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) A determination made under subsection (1) is not a legislative instrument.

16AIB Payment amounts under transferred liabilities determination

(1) For the purposes of paragraph 16AIA(1)(f), APRA may work out:

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(a) an amount (the ***FCS payment amount***) that:
(i) is equal to or less than the FCS amount; and
(ii) APRA considers to be appropriate; and
(b) an amount (the ***administration payment amount***) that:
(i) is equal to or less than the administration amount; and
(ii) APRA considers to be appropriate; and
(c) the amount (the ***total payment amount***) that is the sum of the FCS payment amount and the administration payment amount.

(2) In working out the FCS payment amount and the administration payment amount, APRA must have regard to the following:
(a) the total value of the assets that will be transferred from the declared ADI to the receiving body in accordance with the transfer of business;
(b) the total value of the liabilities that will be transferred from the declared ADI to the receiving body in accordance with the transfer of business;
(c) any other matter that APRA considers appropriate.

(3) The FCS payment amount or the administration payment amount may be a nil amount.

16AIC Consequences of transferred liabilities determination once certificate of transfer issued

Application of section

(1) This section applies if:
(a) APRA has made a transferred liabilities determination; and
(b) APRA has issued a certificate of transfer under section 33 of the *Financial Sector (Transfer and Restructure) Act 1999* stating that the transfer is to take effect.

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Receiving body entitled to total payment amount

(2) The receiving body is entitled to be paid by APRA an amount equal to the total payment amount specified in the determination.

Reduction of rights and entitlements of account-holder

(3) An account-holder's entitlement under this Subdivision to be paid an amount in respect of a protected account kept with the declared ADI is reduced to nil.

Declared ADI liable to APRA for total payment amount

(4) The declared ADI is liable to pay to APRA an amount equal to the sum of the total payment amount specified in the determination.

(5) That liability is due and payable to APRA when the certificate of transfer comes into force.

(6) Despite paragraph 16AI(1)(b), APRA does not have the right mentioned in that paragraph.

Subdivision D—Administration

16AJ Requiring assistance

(1) APRA may, by written notice given to any of the following persons, require the person to give APRA such reasonable assistance in the performance of its functions, and the exercise of its powers, under this Division as is specified:

(a) an ADI (whether or not it is a declared ADI);

(b) an administrator appointed under subsection 13A(1) to take control of an ADI's business;

(c) a liquidator appointed in connection with the winding up, or proposed winding up, of an ADI.

Note: APRA may amend or vary the requirement in writing: see subsection 33(3) of the *Acts Interpretation Act 1901*.

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(2) Without limiting subsection (1), APRA may require a liquidator to assist APRA in APRA's function of paying account holders their entitlements under Subdivision C.

(3) For example, APRA may, by notice issued under subsection (1), require the liquidator to do the things specified in the notice, including:

(a) carrying on the business of the ADI so far as necessary, or doing any other act or thing, to facilitate APRA's payment to account holders in accordance with Subdivision C; or

(b) seeking the re-entry of the ADI into a payment system (as defined in section 7 of the *Payment Systems (Regulation) Act 1998*); or

(c) transferring the entitlements of account holders to accounts held by the account holders in another ADI.

(4) The liquidator must give compliance with a notice issued under subsection (1) precedence over the other aspects of winding up the ADI, including any requirements under the *Corporations Act 2001*.

(5) However, the liquidator is not required to comply with a notice issued under subsection (1) unless there is sufficient available property to meet the liquidator's costs likely to be incurred in complying with the notice in full, unless APRA indemnifies the liquidator for those costs.

(6) The liquidator has the powers that are necessary or convenient to comply with a notice issued under subsection (1).

(7) The liquidator's costs of complying with a notice issued under subsection (1) are expenses properly incurred by a relevant authority for the purposes of section 556 of the *Corporations Act 2001*.

(8) A reference in this section to a liquidator's costs includes:

(a) remuneration, or fees for services, payable to the liquidator for complying with a notice issued under subsection (1); and

(b) expenses incurred by the liquidator in complying with a notice issued under subsection (1).

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16AK Obtaining information relevant to determining and paying entitlements

(1) APRA may, by written notice given to:

(a) an ADI (whether or not it is a declared ADI); or

(b) an administrator appointed under subsection 13A(1) to take control of an ADI's business; or

(c) a liquidator appointed in connection with the winding up, or proposed winding up, of an ADI; or

(d) any other person;

require the ADI, administrator, liquidator or other person to give a specified person specified information about an account-holder relevant to one or more of the actions described in subsection (4) in a specified way within a reasonable specified time for the person to use in taking one or more of those actions.

Note: APRA may amend or vary the requirement in writing: see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) The person specified in the requirement must be one of the following:

(a) APRA;

(b) an APRA member whose duties relate to an action described in subsection (4);

(c) an APRA staff member whose duties relate to an action described in subsection (4).

(3) The information specified in the requirement may be or include either or both of the following:

(a) personal information about the account-holder (if he or she is an individual);

(b) the tax file number (as defined in section 202A of the *Income Tax Assessment Act 1936*) of the account-holder.

This does not limit the information that may be specified in the requirement.

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(4) The actions are as follows:

(a) identifying an account-holder who may have an entitlement under Subdivision C;

(b) determining whether an account-holder has an entitlement under Subdivision C;

(c) determining the amount of an entitlement under Subdivision C;

(d) meeting an entitlement under Subdivision C;

(e) establishing an account under section 16AH on behalf of an account-holder with an entitlement under Subdivision C;

(ea) preparing or giving a statement required by section 16AHA;

(eb) complying with an obligation under a law relating to taxation;

(f) making a disclosure required by section 16AT in connection with the establishment of an account under section 16AH by APRA on behalf of an account-holder with an entitlement under Subdivision C;

(g) assessing whether and how information could be provided by an ADI (or a liquidator of the ADI, if one is appointed) to enable the actions described in paragraphs (a), (b), (c), (d), (e), (ea), (eb) and (f) to be taken if the ADI were to become a declared ADI.

(5) Subsection (1) does not apply in relation to a foreign ADI.

(6) This section does not limit section 16AJ.

16AL Enforcing requirement for assistance or information

Requirement made of ADI—civil penalty

(1) An ADI must comply with a requirement made of it under section 16AJ or subsection 16AK(1).

Civil penalty: 10,000 penalty units.

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Requirement made of ADI—offence

(2) An ADI commits an offence if:
  (a) it does, or fails to do, an act; and
  (b) the doing of the act, or the failure to do the act, results in a contravention of a requirement made of the ADI under section 16AJ or subsection 16AK(1).

Penalty: 200 penalty units.

(3) An offence against subsection (2) is an indictable offence.

Note: Section 4K (Continuing and multiple offences) of the *Crimes Act 1914* applies to an offence against subsection (2) relating to subsection 16AK(1), so an ADI commits an offence for each day it does not comply with a requirement under that subsection (to give information within a particular time).

Requirement made of ADI—offence by officer

(4) An officer (as defined in section 9 of the *Corporations Act 2001*) of an ADI commits an offence if:
  (a) the officer fails to take reasonable steps to ensure that the ADI complies with a requirement made of it under section 16AJ or subsection 16AK(1); and
  (b) the officer's duties include ensuring that the ADI complies with the requirement.

Penalty: 50 penalty units.

(5) Subsection (4) does not apply to an officer who is a liquidator of the ADI.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

(6) If an officer of an ADI fails to take reasonable steps to ensure that the ADI complies with a requirement made of it under subsection 16AK(1) in circumstances that give rise to the officer committing an offence against subsection (4) of this section, the officer commits an offence against that subsection in respect of:
  (a) the first day on which the offence is committed; and

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(b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection does not affect the application of section 4K of the *Crimes Act 1914* to other offences against this Act (including subsection (2)) or the regulations.

Liquidator to comply with requirement made of liquidator

(7) A liquidator must comply with a requirement made of the liquidator under section 16AJ or subsection 16AK(1).

Note: Action may be taken under the *Corporations Act 2001* against a liquidator who does not comply with such a requirement.

Requirement made of other person—civil penalty

(8) A person mentioned in paragraph 16AK(1)(d) must comply with a requirement made of the person under subsection 16AK(1).

Civil penalty: 200 penalty units.

16AM Recovery of overpayments

The regulations may make provision for and in relation to the recovery by APRA of the excess of an amount paid to, or applied for the benefit of, an account-holder purportedly to meet an entitlement of the account-holder under Subdivision C over the account-holder's entitlement (if any) under that Subdivision.

16AN APRA may delegate functions and powers under this Division

(1) APRA may, by writing under its seal, delegate any or all of APRA's functions and powers under this Division to a person.

(2) In performing or exercising functions or powers delegated under subsection (1), the delegate must comply with any directions given by APRA.

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(3) This section does not limit section 15 of the *Australian Prudential Regulation Authority Act 1998*.

Note: Section 15 of the *Australian Prudential Regulation Authority Act 1998*:

(a) makes the agreement of the Chair of ASIC a condition for a delegation to an ASIC member or an ASIC staff member; and

(b) makes the agreement of the Governor of the Reserve Bank a condition for a delegation to the Governor or Deputy Governor of the Reserve Bank or to an officer of the Reserve Bank Service.

16AO APRA's costs of administration

(1) The costs incurred by APRA in relation to the exercise of its powers and the performance of its functions under this Division relating to a declared ADI are a debt due by the declared ADI to APRA.

(2) The debt is admissible to proof against the declared ADI in the winding up of the ADI.

(3) Subsection (1) does not apply to the amounts of entitlements under Subdivision C.

Note: APRA may be able to recover those amounts through the rights it acquires under section 16AI from the account-holder.

Subdivision E—Account-holder's claims against ADI remaining after entitlement

16AP When this Subdivision applies

This Subdivision applies if:

(a) a court orders the winding up of an ADI that becomes a declared ADI before, on or after the order is made; and

(b) on making the order, the court appoints a liquidator of the ADI; and

(c) an account-holder has an entitlement under Subdivision C connected with a protected account the account-holder has with the ADI; and

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(d) after the operation of section 16AI of this Act, section 553C of the *Corporations Act 2001* and, if relevant, section 554B of that Act, there is still a debt payable by the ADI to the account-holder, or a claim of the account-holder against the ADI, based on a right to be paid an amount by the ADI in connection with the protected account.

16AQ Liquidator may admit debt or claim without normal proof

(1) The liquidator may admit the debt or claim even if it has not been proved by the account-holder in accordance with the *Corporations Act 2001* and regulations made under that Act.

(2) However, the liquidator must act in accordance with the regulations (if any) made for the purposes of this subsection in deciding whether to admit or reject the debt or claim, and the extent to which to admit or reject the debt or claim.

Note: This section overrides any requirements imposed on the liquidator by the *Corporations Act 2001* and regulations under that Act in relation to proof of the debt or claim and a decision whether to admit or reject the debt or claim: see section 70B of this Act.

16AR How liquidator must pay distributions to account-holder

(1) This section applies if, in the winding up of the ADI, a distribution attributable to the protected account is payable to the account-holder and the protected account was of a kind prescribed by the regulations for the purposes of this subsection.

(2) The liquidator must pay the distribution (so far as it is attributable to the account) into an account of the same kind that is held by the account-holder with an ADI (except a declared ADI).

(3) If the account-holder does not hold an account of that kind, the liquidator must establish, on behalf of the account-holder, an account of that kind with an ADI (except a declared ADI) for the payment of the distribution in accordance with subsection (2).

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(4) Subsection (3) empowers the liquidator to establish the account:
   (a) whether or not the account-holder consents to the establishment of the account; and
   (b) despite any other law of the Commonwealth relating to the establishment of such an account.

16AS APRA may disclose relevant personal information to liquidator

Information about account-holder's entitlement

(1) APRA may disclose to the liquidator personal information about the fact that the account-holder has an entitlement under Subdivision C, and the amount of that entitlement, for the purpose of enabling the liquidator to decide whether to admit or reject the debt or claim in whole or in part.

Information relevant to section 16AR

(2) APRA may disclose to the liquidator personal information about the account-holder for the purpose of enabling the liquidator to determine whether subsection 16AR(2) or (3) applies and, if it does, for complying with it.

Subdivision F—Disclosure of information relating to new accounts

16AT APRA or liquidator to disclose information to ADI

(1) This section applies if, on behalf of an account-holder with an entitlement under Subdivision C:
   (a) APRA establishes an account with an ADI under section 16AH; or
   (b) a liquidator establishes an account with an ADI under section 16AR.

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(2) In the circumstances prescribed by the regulations, whichever of APRA and the liquidator established the account must disclose to the ADI the information (if any) that:
  (a) is connected with the establishment of the account; and
  (b) is prescribed by the regulations for the purposes of this paragraph.

(3) The regulations may prescribe different information in relation to different circumstances for disclosure.

(4) The information prescribed by the regulations may be personal information about the account-holder (if he or she is an individual). This does not limit the information that may be prescribed by the regulations.

Subdivision G—Exceptions to Part IV of the Competition and Consumer Act 2010

16AU Exceptions to Part IV of the *Competition and Consumer Act 2010*

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:
  (a) anything done in the exercise of powers, or performance of functions, under this Division, or regulations made for the purposes of this Division, except Subdivision E;
  (b) anything done to enable or facilitate the exercise of those powers or performance of those functions;
  (c) anything incidental to the exercise of those powers or performance of those functions.

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Division 2A—Auditors of ADIs and authorised NOHCs and their subsidiaries

16AV Appointed auditor's functions and duties

(1) This section applies if the prudential standards require an auditor to be appointed.

(2) The appointed auditor must perform the functions and duties of an auditor that are set out in the prudential standards.

(3) The appointed auditor must comply with the prudential standards in performing the functions and duties.

(4) The ADI or authorised NOHC, or subsidiary of an ADI or authorised NOHC, to whom the prudential standards apply must make any arrangements that are necessary to enable the appointed auditor to perform the functions and duties.

16B Auditors to give information to APRA on request

Duty to give information when required

(1) APRA may, by notice in writing, require a person who is, or has been, an auditor of:
  (a) an ADI; or
  (b) an authorised NOHC; or
  (c) a subsidiary of an ADI or authorised NOHC; or
  (d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):
    (i) another subsidiary (a ***relevant Australian-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is incorporated in Australia; or
    (ii) another subsidiary (a ***relevant foreign-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a

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subsidiary that is not incorporated in Australia and carries on business in Australia;

to provide information, or to produce books, accounts or documents, to APRA about the ADI, authorised NOHC, subsidiary of the ADI or authorised NOHC, or relevant Australian-incorporated subsidiary, or about the Australian operations of the relevant foreign-incorporated subsidiary, if APRA considers that the provision of the information, or the production of the books, accounts or documents, will assist APRA in performing its functions under this Act.

(1A) A person commits an offence if:

(a) under subsection (1), APRA requires the person to provide information or to produce books, accounts or documents; and

(b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

16BA Requirement for auditors to give information about ADIs

Persons to whom requirements apply

(1) This section applies to a person who is or has been an auditor of a body corporate that is:

(a) an ADI; or

(b) an authorised NOHC; or

(c) a subsidiary of an ADI or an authorised NOHC; or

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(d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):

(i) another subsidiary (a ***relevant Australian-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is incorporated in Australia; or

(ii) another subsidiary (a ***relevant foreign-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is not incorporated in Australia and carries on business in Australia.

Matters requiring immediate notice

(2) If the person has reasonable grounds for believing that:

(a) the body corporate is insolvent or there is a significant risk that the body corporate will become insolvent; or

(b) an existing or proposed state of affairs may materially prejudice the interests of:

(i) if the body corporate is an ADI or a subsidiary of an ADI—the depositors of the ADI; or

(ii) if the body corporate is an authorised NOHC or a subsidiary of an authorised NOHC—the depositors of any ADI that is a subsidiary of the authorised NOHC; or

(iii) if the body corporate is a relevant Australian-incorporated subsidiary or a relevant foreign-incorporated subsidiary of a foreign corporation—the depositors of any ADI that is a subsidiary of the foreign corporation;

the person must immediately notify APRA in writing of the matter.

Offences in relation to matters requiring immediate notice

(3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 6 months.

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

Penalty: 60 penalty units.

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

Defence if matter already notified

(5) Subsections (3) and (4) do not apply to a person in relation to a matter referred to in subsection (2) if:

(a) the person becomes aware of the matter because the person is informed of it by a director or senior manager of the body corporate; and

(b) the director or senior manager informs the person that the body corporate has notified APRA in writing of the matter; and

(c) the person has no reason to disbelieve the director or senior manager.

Note: The defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

Matters requiring notice as soon as practicable

(6) If the person has reasonable grounds for believing that:

(a) the body corporate has failed or will fail to comply with:

(i) a provision of this Act, the regulations or the *Financial Sector (Collection of Data) Act 2001*; or

(ii) if the body corporate is an ADI or authorised NOHC, or a subsidiary of an ADI or authorised NOHC—a prudential standard; or

(iii) if the body corporate is an ADI or authorised NOHC, or a subsidiary of an ADI or authorised NOHC—a direction under Division 1BA of Part II or section 29; or

(iv) if the body corporate is an ADI—a condition of the body corporate's section 9 authority; or

(v) if the body corporate is an authorised NOHC—a condition of the body corporate's NOHC authority; and

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(b) the failure to comply is or will be significant (see subsection (7));

the person must give APRA a written report about the failure as soon as practicable, and in any event no later than 10 business days.

(7) For the purposes of paragraph (6)(b), a failure to comply is or will be ***significant*** if the failure is or will be significant having regard to any one or more of the following:

(a) the number or frequency of similar failures;

(b) the impact the failure has or will have on the body corporate's ability to conduct its business;

(c) the extent to which the failure indicates that the body corporate's arrangements to ensure compliance with this Act, the prudential standards or the regulations might be inadequate;

(d) the actual or potential financial loss arising or that will arise from the failure:

(i) if the body corporate is an ADI—to the depositors of the body corporate; or

(ii) to the body corporate;

(e) any matters prescribed by the regulations for the purposes of this paragraph.

Offences in relation to matters requiring notice as soon as practicable

(8) A person commits an offence if the person contravenes subsection (6).

Penalty: Imprisonment for 6 months.

(9) A person commits an offence if the person contravenes subsection (6). This is an offence of strict liability.

Penalty: 60 penalty units.

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

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Defence if failure already notified

(10) Subsections (8) and (9) do not apply to a person in relation to a failure to comply referred to in subsection (6) if:

(a) a director or senior manager of the body corporate informs the person that the body corporate has informed APRA in writing of the failure; and

(b) the person has no reason to disbelieve the director or senior manager.

Note: The defendant bears an evidential burden in relation to the matters in subsection (10). See subsection 13.3(3) of the *Criminal Code*.

Offence in relation to subsections (5) and (10)

(11) A person commits an offence if:

(a) the person is a director or senior manager of a body corporate referred to in subsection (1); and

(b) the person knows that there are reasonable grounds for believing a thing referred to in subsection (2) or (6); and

(c) the person informs an auditor of the body corporate that the body corporate has informed APRA in writing of the thing; and

(d) the body corporate has not done so.

Penalty: Imprisonment for 12 months.

16C Auditor may provide information to APRA

A person who is, or has been, an auditor of:

(a) an ADI; or

(b) an authorised NOHC; or

(c) a subsidiary of an ADI or authorised NOHC; or

(d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):

(i) another subsidiary (a ***relevant Australian-incorporated subsidiary***) of the foreign corporation (other than a body

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mentioned in paragraph (a), (b) or (c)), being a subsidiary that is incorporated in Australia; or

(ii) another subsidiary (a ***relevant foreign-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is not incorporated in Australia and carries on business in Australia;

may provide information, or produce books, accounts or documents, to APRA about the ADI, authorised NOHC, subsidiary of the ADI or authorised NOHC, or relevant Australian-incorporated subsidiary, or about the Australian operations of the relevant foreign-incorporated subsidiary, if the person considers that the provision of the information, or the production of the books, accounts or documents, to APRA will assist APRA in performing its functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.

16D Appointed auditor must notify APRA of attempts to unduly influence etc. the appointed auditor

(1) If an appointed auditor of an ADI or authorised NOHC is aware of circumstances that amount to:

(a) an attempt by any person to unduly influence, coerce, manipulate or mislead the appointed auditor in connection with the performance of the appointed auditor's functions or duties; or

(b) an attempt by any person to otherwise interfere with the performance of the appointed auditor's functions or duties;

the appointed auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the appointed auditor becomes aware of those circumstances.

(2) An appointed auditor commits an offence if the appointed auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

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16E Giving false or misleading information to auditor

Offence—person knows the information is false or misleading etc.

(1) A person commits an offence if:

(a) the person is an employee or officer of a body corporate that is an ADI or authorised NOHC; and

(b) the person gives information, or allows information to be given, to an auditor of the body corporate; and

(c) the information relates to the affairs of the body corporate; and

(d) the person knows that the information:

(i) is false or misleading in a material particular; or

(ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

Offence—person fails to ensure the information is not false or misleading etc.

(2) A person commits an offence if:

(a) the person is an employee or officer of a body corporate that is an ADI or authorised NOHC; and

(b) the person gives information, or allows information to be given, to an auditor of the body corporate; and

(c) the information relates to the affairs of the body corporate; and

(d) the information:

(i) is false or misleading in a material particular; or

(ii) is missing something that makes the information misleading in a material respect; and

(e) the person did not take reasonable steps to ensure that the information:

(i) was not false or misleading in a material particular; or

(ii) was not missing something that makes the information misleading in a material respect.

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Penalty: Imprisonment for 2 years or 100 penalty units, or both.

Determining whether information is false or misleading

(3) If information is given to the appointed auditor in response to a question asked by the appointed auditor, the information and the question must be considered together in determining whether the information is false or misleading.

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Division 2B—Removal of auditors of ADIs

17 APRA may remove an auditor of an ADI

(1) This section applies to a person who is an appointed auditor of an ADI.

(2) APRA may direct (in writing) that an ADI remove the person from the position if APRA is satisfied that the person:
  (a) has failed to perform adequately and properly the functions and duties of the position as required under this Act or the prudential standards; or
  (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards; or
  (c) either:
    (i) for a person who is a disqualified person only because he or she was disqualified under section 21—is disqualified from being or acting as an auditor of the ADI; or
    (ii) otherwise—is a disqualified person.

(3) Before directing an ADI to remove a person, APRA must give written notice to:
  (a) the person; and
  (b) the ADI;
giving each of them a reasonable opportunity to make submissions on the matter.

(4) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.

(5) A notice given under subsection (3) to a person or an ADI must state that any submissions made in response to the notice may be discussed by APRA with other persons as mentioned in subsection (4).

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(6) A direction takes effect on the day specified in it, which must be not earlier than 7 days after it is made.

(7) If APRA directs an ADI to remove a person, APRA must give a copy of the direction to the person and to the ADI.

(7A) An ADI must comply with a direction under this section.

Note: For enforcement of the direction, see section 11CG.

(7B) The power of an ADI to comply with a direction under this section may be exercised by giving a written notice to the person who is the subject of the direction.

(7C) Subsection (7B) does not, by implication, limit any other powers of an ADI to remove a person.

(8) Part VI applies to a direction given by APRA under this section.

18 Referring matters to professional associations for auditors

(1) If APRA is of the opinion that an auditor of a relevant body corporate (see subsection (2)):

(a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties or functions as an auditor under:

(i) this Act, the regulations or the prudential standards; or

(ii) any other law of the Commonwealth, a State or a Territory; or

(b) is otherwise not a fit and proper person to be the auditor of a relevant body corporate;

APRA may refer the details of the matter to either or both of the following:

(c) the Companies Auditors Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;

(d) those members of the professional association of the auditor whom APRA believes will be involved in considering or

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

(2) For the purposes of this section, each of the following is a ***relevant body corporate***:

(a) an ADI;

(b) an authorised NOHC;

(c) a subsidiary of an ADI or authorised NOHC;

(d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign corporation)—a subsidiary of that foreign corporation that is incorporated in, or carries on business in, Australia.

(3) If APRA refers details of a matter under this section, APRA must also give written notice of the referral (including the nature of the matter) to the auditor.

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Division 2C—Enforceable undertakings

18A Enforceable undertakings

(1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a power or function under this Act.

(2) The person may, with APRA's consent, vary or withdraw the undertaking.

(3) If APRA considers that a person who has given an undertaking has breached any of the terms of the undertaking, APRA may apply to the Federal Court of Australia for an order under subsection (4).

(4) If the Federal Court is satisfied that a person who has given an undertaking has breached any of the terms of the undertaking, the Court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

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Division 3—Governance

19 Disqualified persons must not act for ADIs or authorised NOHCs

(1) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) a director or senior manager of an ADI (other than a foreign ADI);

(ii) a senior manager of the Australian operations of a foreign ADI;

(iii) a director or senior manager of an authorised NOHC;

(iv) an auditor of an ADI or an authorised NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires).

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) a director or senior manager of an ADI (other than a foreign ADI);

(ii) a senior manager of the Australian operations of a foreign ADI;

(iii) a director or senior manager of an authorised NOHC;

(iv) an auditor of an ADI or an authorised NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires).

Penalty: 60 penalty units.

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

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

(4) A body corporate commits an offence if:

(a) a person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) if the body corporate is an ADI (other than a foreign ADI)—a director or senior manager of the body corporate;

(ii) if the body corporate is a foreign ADI—a senior manager of the Australian operations of the body corporate;

(iii) if the body corporate is an authorised NOHC—a director or senior manager of the body corporate;

(iv) if the body corporate is an ADI or an authorised NOHC—an auditor of the body corporate; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires); and

(d) in any case—the body corporate allows the person to be or act as a director, senior manager or auditor (as the case requires).

Penalty: 250 penalty units.

(5) A body corporate commits an offence if:

(a) a person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) if the body corporate is an ADI (other than a foreign ADI)—a director or senior manager of the body corporate;

(ii) if the body corporate is a foreign ADI—a senior manager of the Australian operations of the body corporate;

(iii) if the body corporate is an authorised NOHC—a director or senior manager of the body corporate;

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(iv) if the body corporate is an ADI or an authorised NOHC—an auditor of the body corporate; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires); and

(d) in any case—the body corporate allows the person to be or act as a director, senior manager or auditor (as the case requires).

Penalty: 60 penalty units.

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

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

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

(9) Subsections (1) to (8) have no effect until the end of the 3-month period that begins at the commencement of this section.

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

20 Who is a *disqualified person*?

(1) A person is a ***disqualified person*** if, at any time (whether before or after the commencement of this section):

(a) the person has been convicted of an offence against or arising out of:

(i) this Act; or

(ii) the *Financial Sector (Collection of Data) Act 2001*; or

(iii) the *Corporations Act 2001*, the Corporations Law that was previously in force, or any law of a foreign country that corresponds to that Act or to that Corporations Law; or

(b) the person has been convicted of an offence against or arising out of a law in force in Australia, or the law of a foreign country, where the offence related or relates to dishonest

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conduct, or to conduct relating to a company that carries on business in the financial sector; or

(c) the person has been or becomes bankrupt; or

(d) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(e) the person has compounded with his or her creditors; or

(f) the Federal Court of Australia has disqualified the person under section 21; or

(g) the person has been disqualified under the law of a foreign country from managing, or taking part in the management of, an entity that carries on the business of banking or insurance or otherwise deals in financial matters.

Note: The Federal Court of Australia may determine that a person is not a disqualified person (see section 22).

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

(a) section 19B of the *Crimes Act 1914*; or

(b) a corresponding provision of a law of a State, a Territory or a foreign country.

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

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21 Court power of disqualification

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

(a) the person is not a fit and proper person to be or act as such a person; and

(b) the disqualification is justified.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as one or more of the following:

(a) a director or senior manager of:

(i) a particular ADI; or

(ii) a class of ADIs; or

(iii) any ADI;

(other than a particular foreign ADI, a class of foreign ADIs or any foreign ADI);

(b) a senior manager of the Australian operations of:

(i) a particular foreign ADI; or

(ii) a class of foreign ADIs; or

(iii) any foreign ADI;

(c) a director or senior manager of:

(i) a particular authorised NOHC; or

(ii) a class of authorised NOHCs; or

(iii) any authorised NOHC;

(d) an auditor of:

(i) a particular ADI or a particular authorised NOHC; or

(ii) a class of ADIs or a class of authorised NOHCs; or

(iii) any ADI or any authorised NOHC.

(3) In deciding whether it is satisfied as mentioned in paragraph (1)(a), the Court may take into account:

(a) any matters specified in the regulations for the purposes of this paragraph; and

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(b) any criteria for fitness and propriety set out in the prudential standards; and

(c) any other matters the Court considers relevant.

(4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:

(a) if the application is for the person to be disqualified from being or acting as a director or senior manager—the person's conduct in relation to the management, business or property of any corporation; and

(b) if the application is for the person to be disqualified from being or acting as an auditor—the person's conduct in relation to the functions or duties of the person as required under this Act and the prudential standards; and

(c) in any case—any other matters the Court considers relevant.

(5) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) to be given:

(i) if the person is, or is acting as, a person referred to in subparagraph (2)(a)(i)—to the ADI concerned; or

(ii) if the person is, or is acting as, a person referred to in subparagraph (2)(b)(i)—to the foreign ADI concerned; or

(iii) if the person is, or is acting as, a person referred to in subparagraph (2)(c)(i)—to the authorised NOHC concerned; or

(iv) if the person is, or is acting as, a person referred to in subparagraph (2)(d)(i)—to the ADI or authorised NOHC concerned; and

(b) to be published in the *Gazette*.

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22 Court power to revoke or vary a disqualification etc.

(1) A disqualified person, or APRA, may apply to the Federal Court of Australia for:

(a) if the person is a disqualified person only because he or she was disqualified under section 21—a variation or a revocation of the order made under that section; or

(b) otherwise—an order that the person is not a disqualified person.

(2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 20, the person is not a ***disqualified person***.

(3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the disqualified person makes the application—by the person with APRA; or

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

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

22A Privilege against exposure to penalty—disqualification under section 21

Proceedings

(1) In the case of any proceeding under, or arising out of, this Act, a person is not entitled to refuse or fail to comply with a requirement:

(a) to answer a question or give information; or

(b) to produce books, accounts or other documents; or

(c) to do any other act;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be,

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might tend to make the person liable to a penalty by way of a disqualification under section 21.

(2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

Statutory requirements

(3) A person is not entitled to refuse or fail to comply with a requirement under this Act:

(a) to answer a question or give information; or

(b) to produce books, accounts or other documents; or

(c) to do any other act;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of a disqualification under section 21.

Admissibility

(4) Subsections 14A(4), 14AD(6) and 52F(2) do not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 21.

Other provisions

(5) Subsections (1) and (3) of this section have effect despite anything in:

(a) clause 5 of Schedule 2; or

(b) any other provision of this Act; or

(c) the *Administrative Appeals Tribunal Act 1975*.

Definition

(6) In this section:

penalty includes forfeiture.

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23 APRA may remove a director or senior manager of an ADI or authorised NOHC

(1) This section applies to a person who is:
  (a) a director or senior manager of an ADI (other than a foreign ADI); or
  (b) a senior manager of the Australian operations of a foreign ADI; or
  (c) a director or senior manager of an authorised NOHC.

(2) APRA may direct (in writing) that the ADI or authorised NOHC remove the person from the position if APRA is satisfied that the person:
  (a) either:
    (i) for a person who is a disqualified person only because he or she was disqualified under section 21—is disqualified from being or acting as a director or senior manager of the ADI or NOHC; or
    (ii) otherwise—is a disqualified person; or
  (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.

(3) Before directing an ADI or authorised NOHC to remove a person, APRA must give written notice to:
  (a) the person; and
  (b) the ADI or NOHC;
giving each of them a reasonable opportunity to make submissions on the matter.

(4) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.

(5) A notice given under subsection (3) to a person, an ADI or an authorised NOHC must state that any submissions made in response to the notice may be discussed by APRA with other persons as mentioned in subsection (4).

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(6) A direction takes effect on the day specified in it, which must be not earlier than 7 days after it is signed.

(7) If APRA directs an ADI or authorised NOHC to remove a person, APRA must give a copy of the direction to the person and to the ADI or NOHC.

(7A) An ADI or authorised NOHC must comply with a direction under this section.

Note: For enforcement of the direction, see section 11CG.

(7B) The power of an ADI to comply with a direction under this section may be exercised on behalf of the ADI as set out in the table:

Power to comply with a direction		
Item	**Who may exercise the power**	**How the power may be exercised**
1	The chair of the board of directors of the ADI	by signing a written notice.
2	A majority of the directors of the ADI (excluding any director who is the subject of the direction)	by jointly signing a written notice.

(7C) The power of an authorised NOHC to comply with a direction under this section may be exercised on behalf of the NOHC as set out in the table:

Power to comply with a direction		
Item	**Who may exercise the power**	**How the power may be exercised**
1	The chair of the board of directors of the NOHC	by signing a written notice.
2	A majority of the directors of the NOHC (excluding any director who is the subject of the direction)	by jointly signing a written notice.

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(7D) Subsections (7B) and (7C) do not, by implication, limit any other powers of an ADI or authorised NOHC to remove a person.

(8) Part VI applies to a direction given by APRA under this section.

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Division 3A—Covered bonds

24 Guide to this Division

This Division provides for the issue of covered bonds by ADIs.

An ADI issuing covered bonds must provide assets to secure the covered bonds and related liabilities. These assets are held by a covered bond special purpose vehicle. Some of the assets held by the covered bond special purpose vehicle form the cover pool for the covered bonds.

The ADI must not issue covered bonds if the combined value of assets in cover pools securing covered bonds issued by the ADI would exceed 8%, or such other percentage as is prescribed by the regulations, of the value of the ADI's assets in Australia.

25 Application of Division

This Division does not apply in relation to:

(a) a foreign ADI; or

(b) a bond, note or other debenture, liabilities in relation to which are secured wholly by assets that are not in Australia.

26 Covered bonds

(1) ***Covered bonds*** are bonds, notes or other debentures issued by an ADI, liabilities to the holders of which, or their representatives, are:

(a) recoverable from the ADI; and

(b) secured by assets beneficially owned by a ***covered bond special purpose vehicle***.

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Purposes of covered bond special purpose vehicle

(2) The purposes of the covered bond special purpose vehicle must relate only to the covered bonds.

Cover pool

(3) The ***cover pool*** for the covered bonds consists of the assets beneficially owned by the covered bond special purpose vehicle to the extent that they secure the liabilities to the holders or representatives equally or in priority to any other liabilities.

Note 1: The value of the cover pool will usually exceed the value of the liabilities to the holders or representatives.

Note 2: Assets in cover pools may change from time to time.

Covered bond liabilities

(4) The liabilities to the holders or representatives, and any other liabilities secured by assets beneficially owned by the covered bond special purpose vehicle, are ***covered bond liabilities*** of the ADI.

Note: This means that liabilities incurred by the covered bond special purpose vehicle can be ***covered bond liabilities*** of the ADI.

(5) However, a liability to the ADI, other than a liability in relation to a derivative or the provision of services, secured in priority to any liability to the holders or representatives is not a ***covered bond liability*** of the ADI.

Issuing ADI

(6) The ADI is the ***issuing ADI*** for:
(a) the cover pool; and
(b) the covered bond special purpose vehicle.

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27 Arrangements involving several ADIs

Aggregated issuing of covered bonds

(1) Two or more ADIs may enter into an arrangement with another entity (the ***aggregating entity***) under which the aggregating entity issues bonds, notes or other debentures secured by covered bonds issued by each of the ADIs to the aggregating entity.

Other arrangements

(2) The regulations may prescribe other arrangements that may be entered into by 2 or more ADIs for the purposes of issuing or dealing with covered bonds.

28 Restrictions on issuing covered bonds—8% rule

An ADI must not issue a covered bond if the combined value of assets in cover pools securing covered bonds issued by the ADI would exceed 8%, or such other percentage as is prescribed by the regulations, of the value of the ADI's assets in Australia.

29 Restrictions on issuing covered bonds—APRA directions

(1) APRA may direct an ADI not to issue a covered bond.

(2) APRA may, by written notice given to the ADI, give the ADI such a direction if:

(a) APRA has reason to believe that the ADI has contravened:

(i) this Division; or

(ii) another provision of this Act, a prudential requirement regulation or a prudential standard relating to covered bonds; or

(b) APRA has given the ADI a direction under section 11CA.

(3) A notice under subsection (2) is not a legislative instrument.

(4) The direction may deal with the time by which, or period during which, it is to be complied with.

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(5) The ADI has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

(6) APRA may, by notice in writing to the ADI, vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(7) The direction has effect until APRA revokes it by notice in writing to the ADI. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

(8) Part VI applies to a decision to give a direction under subsection (1).

(10) This section does not limit any other powers of APRA to give directions.

30 Cover pool monitors

(1) Each cover pool must have a cover pool monitor.

(2) The cover pool monitor must:
  (a) be registered as an auditor under Part 9.2 of the *Corporations Act 2001*; or
  (b) hold an Australian financial services licence under that Act that covers the provision of financial services as the cover pool monitor; or
  (c) be exempt under that Act from holding an Australian financial services licence for the provision of financial services as the cover pool monitor.

(3) However, the cover pool monitor must not be:
  (a) the issuing ADI for the cover pool; or
  (b) an associated entity (within the meaning of the *Corporations Act 2001*) of the issuing ADI.

(4) The functions of the cover pool monitor are as follows:

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(a) to assess the keeping, by the issuing ADI or covered bond special purpose vehicle concerned, of an accurate register of the assets in the cover pool;
(b) to assess compliance by the issuing ADI with sections 31 and 31A;
(c) to make reports relating to the matters in paragraphs (a) and (b) available to the issuing ADI (or any substituted entity) for distribution to the holders of covered bonds or their representatives;
(d) to provide reports relating to the cover pool to APRA on written request by APRA;
(e) such functions (if any) as are prescribed by the regulations.

(5) Copies of reports provided under paragraph (4)(d) must be provided to the issuing ADI (or any substituted entity) and the covered bond special purpose vehicle concerned.

(6) The functions covered by paragraphs (4)(a) to (c) must be performed at least every 6 months.

(7) The functions covered by paragraphs (4)(a) and (b) may be performed by sampling in accordance with auditing standards made under the *Corporations Act 2001*.

31 Assets that may be in cover pools

(1) An asset in a cover pool must be one of the following:
(a) an at call deposit held with an ADI and convertible into cash within 2 business days;
(b) a bank accepted bill or certificate of deposit that:
(i) matures within 100 days; and
(ii) is eligible for repurchase transactions with the Reserve Bank; and
(iii) was not issued by the ADI that issued the covered bonds secured by the assets in the cover pool;
(c) a bond, note, debenture or other instrument issued or guaranteed by the Commonwealth, a State or a Territory;

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(d) a loan secured by a mortgage, charge or other security interest over residential property in Australia;

(e) a loan secured by a mortgage, charge or other security interest over commercial property in Australia;

(f) a mortgage insurance policy or other asset related to a loan covered by paragraph (d) or (e);

(g) a contractual right relating to the holding or management of another asset in the cover pool;

(h) a derivative held for one or more of the following purposes:

(i) to protect the value of another asset in the cover pool;

(ii) to hedge risks in relation to another asset in the cover pool;

(iii) to hedge risks in relation to liabilities secured by the assets in the cover pool;

(i) an asset of a kind prescribed by the regulations for the purposes of this paragraph.

(2) Paragraph (1)(i) is not limited by paragraphs (1)(a) to (h).

(3) Despite subsection (1), a cover pool must not contain an asset of a kind prescribed by the regulations for the purposes of this subsection.

31A Maintenance of cover pools

(1) The value of assets in a cover pool must be at least 103%, or such other percentage as is prescribed by the regulations, of the face value of the covered bonds secured by the assets.

Note: An exception to this rule is set out in subsection (5).

(2) The value of assets covered by paragraph 31(1)(b) (bank accepted bills or certificates of deposit) in a cover pool must not exceed 15% of the face value of the covered bonds secured by the assets.

Note: An exception to this rule is set out in subsection (6).

(3) For the purposes of subsection (1), if the sum of:

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(a) the outstanding principal amount of a loan secured by a residential property; and

(b) the outstanding principal amounts of any prior or equal ranking loans secured by the property;

exceeds 80%, or such other percentage as is prescribed by the regulations, of the value of the property (as determined by the most recent valuation of the property), then the value of the loan is reduced by the amount of the excess.

(4) For the purposes of subsection (1), if the sum of:

(a) the outstanding principal amount of a loan secured by a commercial property; and

(b) the outstanding principal amounts of any prior or equal ranking loans secured by the property;

exceeds 60%, or such other percentage as is prescribed by the regulations, of the value of the property (as determined by the most recent valuation of the property), then the value of the loan is reduced by the amount of the excess.

Exceptions

(5) Subsection (1) does not apply to the extent that compliance would be inconsistent with a direction given by APRA.

(6) Subsection (2) does not apply to the extent that compliance would be inconsistent with the need to deal with an asset to satisfy a call on security in relation to a covered bond.

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31B Protection of certain contractual rights

Directions by APRA

(1) Subsection 11CD(1A) (direction not grounds for denial of obligations) does not prevent the exercise of a contractual right in relation to an asset that secures liabilities to holders of covered bonds, or their representatives, if payments under the covered bonds to the holders or representatives are not made.

Banking Act statutory manager in control

(2) The following provisions do not prevent the exercise of a contractual right in relation to an asset that secures liabilities to holders of covered bonds, or their representatives, if payments under the covered bonds to the holders or representatives are not made:
   (a) section 15BA (moratorium—effect of Banking Act statutory management on enforcement process regarding property);
   (b) section 15BB (moratorium—effect of Banking Act statutory management on disposal of property);
   (c) section 15BC (moratorium—restrictions on exercise of third party property rights);
   (d) section 15C (Banking Act statutory manager being in control not grounds for denial of obligations).

31C Powers and obligations of Banking Act statutory manager or external administrator

To the extent that an asset secures covered bond liabilities of an ADI, a Banking Act statutory manager or an external administrator has:
   (a) no powers in relation to the asset apart from the contractual powers of the ADI; and
   (b) the contractual obligations of the ADI in relation to the asset.

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31D Prudential standards—treatment of assets and liabilities

(1) This section applies for the purposes of applying:
  (a) prudential standards in relation to assets in cover pools securing covered bonds issued by an ADI; and
  (b) any other prudential standard in relation to the ADI.

(2) Treat those assets as assets of the ADI to the extent that the total value of those assets at the time does not exceed 8%, or such other percentage as is prescribed by regulations made for the purposes of section 28, of the ADI's assets in Australia.

(3) Disregard any liability of the ADI to a covered bond special purpose vehicle that relates to an asset, or a part of an asset, that is to be treated as an asset of the ADI under subsection (2).

(4) Disregard any liability of a covered bond special purpose vehicle to the ADI that relates to an asset, or a part of an asset, that is to be treated as an asset of the ADI under subsection (2).

31E Prudential standards for covered bonds

(1) A prudential standard may provide for any matter relating to covered bonds, including the following:
  (a) the issuing of covered bonds;
  (b) assets in cover pools;
  (c) maintenance of cover pools.

Note: Prudential standards are made under section 11AF.

(2) A prudential standard relating to covered bonds may:
  (a) require that the following together satisfy particular requirements in relation to prudential matters:
    (i) an ADI;
    (ii) one or more covered bond special purpose vehicles that beneficially own assets securing covered bond liabilities of the ADI; and
  (b) impose, in relation to assets, or parts of assets, in cover pools that are not treated as assets of an ADI under section 31D,

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requirements that are different from requirements imposed in relation to assets, or parts of assets, in cover pools that are treated as assets of the ADI under that section; and

(c) impose, in relation to a liability of an ADI to a covered bond special purpose vehicle that is not covered by subsection 31D(3), requirements that are different from requirements imposed in relation to liabilities that are covered by that subsection; and

(d) impose, in relation to a liability of a covered bond special purpose vehicle to an ADI that is not covered by subsection 31D(4), requirements that are different from requirements imposed in relation to liabilities that are covered by that subsection.

(3) This section does not limit the prudential matters in relation to which APRA may determine standards under section 11AF.

31F APRA may direct covered bond special purpose vehicles to return certain assets

(1) APRA may, by written notice given to a covered bond special purpose vehicle, direct the covered bond special purpose vehicle to return to its issuing ADI an asset to the extent that, at the time the direction is given, the asset does not secure covered bond liabilities of the issuing ADI.

(2) Subsection (1) applies only if APRA may give the issuing ADI a direction under section 11CA.

(3) A notice under subsection (1) is not a legislative instrument.

(4) The direction may deal with the time by which, or period during which, it is to be complied with.

(5) The covered bond special purpose vehicle has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

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(6) APRA may, by notice in writing to the covered bond special purpose vehicle, vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(7) The direction has effect until APRA revokes it by notice in writing to the covered bond special purpose vehicle. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

(8) Part VI applies to a decision to give a direction under subsection (1).

(10) This section does not limit any other powers of APRA to give directions.

(11) If a direction is given under subsection (1), this Act applies in relation to the direction as if:

(a) the covered bond special purpose vehicle were an ADI; and

(b) the direction were given under section 29.

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Division 4—Mobilization of foreign currency

32 Interpretation

In this Division:

excess receipts of foreign currency, in relation to an ADI as at a date, means the amount by which the amount of that ADI's surplus foreign currency as at that date exceeds the amount (if any) of its surplus foreign currency as at the commencement of this Part.

sterling means currency that is legal tender in the United Kingdom.

surplus foreign currency, in relation to an ADI, means the amount by which the amount of that ADI's assets outside Australia attributable to, or acquired by virtue of, its Australian business exceeds the amount of its liabilities outside Australia attributable to, or incurred by virtue of, its Australian business.

33 Transfer of foreign currency to Reserve Bank

(1) The Reserve Bank may, from time to time, by notice in writing, require each ADI to transfer to the Reserve Bank an amount of sterling equivalent to such proportion as is specified in the notice of that ADI's excess receipts of foreign currency as at the close of business on a date specified in the notice, not being more than 21 days before the date on which the notice is given.

(2) The proportion specified in a notice under subsection (1) shall be the same in respect of each ADI.

(3) Where, as at the close of business on a date specified in a notice under subsection (1), an ADI has not transferred an amount of sterling that it has been required to transfer in pursuance of any previous notice under that subsection, the excess receipts of foreign currency to which that amount of sterling is equivalent shall not, for the purpose of calculating the amount of sterling required to be transferred in pursuance of the first-mentioned notice, be taken into

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account as part of the excess receipts of foreign currency of that ADI.

(4) An ADI commits an offence if:

(a) the ADI receives a notice under subsection (1); and

(b) the ADI does not comply with the notice within:

(i) 7 days after receiving the notice; or

(ii) if a longer period for compliance is specified by the Reserve Bank—the period so specified.

Penalty: 200 penalty units.

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

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

(4A) An offence against subsection (4) is an indictable offence.

(4B) If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (4), the ADI commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

(5) An ADI shall be deemed to have complied with the requirements of a notice under subsection (1) if it transfers to the Reserve Bank an amount of sterling equivalent to the specified proportion of that ADI's excess receipts of foreign currency, as shown in that ADI's books of account, as at the close of business on the date in question.

(6) Where an ADI's assets outside Australia attributable to, or acquired by virtue of, its Australian business include foreign

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currency that is not freely convertible into sterling, the Reserve Bank shall make such adjustment in the amount of sterling required to be transferred by that ADI to the Reserve Bank under this section as appears to the Reserve Bank to be necessary in the circumstances.

34 Payment for transferred foreign currency

The Reserve Bank shall pay to an ADI transferring sterling in compliance with a notice under section 33 such amount in Australian currency as is agreed upon between the Reserve Bank and the ADI transferring the sterling or, in default of agreement, as is determined in an action for compensation by the ADI against the Reserve Bank.

35 Sale of foreign currency by Reserve Bank

The Reserve Bank may sell foreign currency to an ADI:

(a) where the Reserve Bank is satisfied that the ADI has complied with the provisions of this Division and is likely to suffer a shortage of foreign currency; or

(b) if the Reserve Bank considers that, for any other reason, it is desirable to do so.

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Division 5—Advances

36 Advance policy

(1) Where the Reserve Bank is satisfied that it is necessary or expedient to do so in the public interest, the Reserve Bank may determine the policy in relation to advances to be followed by ADIs.

(1A) An ADI commits an offence if:

(a) the Reserve Bank has made a determination under subsection (1) of a policy that applies to the ADI; and

(b) the ADI fails to follow the policy.

Penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

(2) Without limiting the generality of subsection (1), the Reserve Bank may give directions as to the classes of purposes for which advances may or may not be made by ADIs.

(2A) An ADI commits an offence if:

(a) the Reserve Bank has given a direction under subsection (2) that applies to the ADI; and

(b) the ADI fails to comply with the directions.

Penalty: 200 penalty units.

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

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

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(2B) An offence against subsection (2A) is an indictable offence.

(3) Nothing in this section:

(a) authorizes the Reserve Bank to make a determination or give a direction with respect to an advance made, or proposed to be made, to a particular person; or

(b) affects the validity of a transaction entered into in relation to an advance or affects the right of an ADI to recover an advance or enforce the security given in respect of an advance.

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Part IIAA—The Banking Executive Accountability Regime

Division 1—Obligations under the Banking Executive Accountability Regime

Subdivision A—ADIs

37 Obligations of ADIs

(1) An ADI must comply with:
  (a) its accountability obligations under Division 2; and
  (b) its key personnel obligations under Division 3; and
  (c) its deferred remuneration obligations under Division 4; and
  (d) its notification obligations under Division 5.

(2) However, this section does not apply to:
  (a) an ADI:
    (i) that the Minister has exempted under section 37A; or
    (ii) that is included in a class of ADIs that the Minister has exempted under section 37A; or
  (b) a foreign ADI, except to the extent that it operates a branch of the foreign ADI in Australia.

37A Minister may exempt ADIs

Exemption of particular ADIs

(1) The Minister may, by written notice given to an ADI, exempt the ADI from compliance with this Part.

Class exemptions

(2) The Minister may, by legislative instrument, exempt a class of ADIs from compliance with this Part.

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37AA Inconsistency with corresponding foreign laws

(1) If APRA is satisfied that an ADI would contravene a law of a foreign country if the ADI were to comply with a particular obligation under section 37, APRA:

(a) may give to the ADI a written notice specifying that obligation; and

(b) may specify in the notice:

(i) the extent to which the ADI need not comply with that obligation; and

(ii) conditions to which the notice is subject.

(2) An ADI is not required to comply with that obligation:

(a) to the extent compliance would result in the ADI contravening that law of a foreign country; or

(b) if the notice specifies the extent to which the ADI need not comply with that obligation—to the extent so specified;

if the conditions (if any) specified in the notice are complied with.

Subdivision B—Accountable persons

37B Obligations of accountable persons

(1) An accountable person must comply with his or her accountability obligations under Division 2 in relation to each of the responsibilities that cause him or her to be an accountable person of an ADI, or of a subsidiary of an ADI.

(2) However, this section does not apply to an accountable person to the extent that he or she is an accountable person of an ADI, or a subsidiary of an ADI, to which section 37 does not apply because of subsection 37(2).

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37BA Meaning of *accountable person*

General principle

(1) An individual is an ***accountable person***, of an ADI or a subsidiary of an ADI, if he or she:

(a) either:

(i) in the case of the ADI—holds a position in the ADI or in another body corporate of which the ADI is a subsidiary; or

(ii) in the case of a subsidiary of the ADI—holds a position in the subsidiary; and

(b) because of that position, has actual or effective senior executive responsibility:

(i) for management or control of the ADI; or

(ii) for management or control of a significant or substantial part or aspect of the operations of the ADI or the relevant group of bodies corporate that is constituted by the ADI and its subsidiaries.

Particular responsibilities

(2) Without limiting subsection (1), an individual is also an ***accountable person*** of an ADI if he or she:

(a) holds a position in, or relating to, the ADI; and

(b) because of that position, has a responsibility, relating to the ADI:

(i) of a kind set out in subsection (3); or

(ii) of a kind determined under subsection (4).

(3) For the purposes of subparagraph (2)(b)(i), the following are the responsibilities:

(a) responsibility for oversight of the ADI as a member of the Board of the ADI;

(b) senior executive responsibility for carrying out the management of all the business activities of the ADI and its subsidiaries, including:

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(i) allocating to accountable persons responsibility for all parts or aspects of the relevant group of bodies corporate that is constituted by the ADI and its subsidiaries; and

(ii) reporting directly to the Board of the ADI;

(c) senior executive responsibility for management of the ADI's financial resources;

(d) senior executive responsibility for overall risk controls and/or overall risk management arrangements of the ADI;

(e) senior executive responsibility for management of the ADI's operations;

(f) senior executive responsibility for information management, including information technology systems, for the ADI;

(g) senior executive responsibility for management of the ADI's internal audit function;

(h) senior executive responsibility for management of the ADI's compliance function;

(i) senior executive responsibility for management of the ADI's human resources function;

(j) senior executive responsibility for management of the ADI's anti-money laundering function.

(4) APRA may, by legislative instrument, determine a responsibility for the purposes of subparagraph (2)(b)(ii) (other than a responsibility set out in subsection (3)).

(5) Subsection (2) does not apply in relation to a position that a person holds in an Australian branch of a foreign ADI.

Head of an Australian branch of a foreign ADI

(6) Without limiting subsection (1), an individual is also an ***accountable person***, of an ADI that is a foreign ADI, if he or she has senior executive responsibility for the conduct of all the activities of an Australian branch of the foreign ADI.

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37BB Exception for responsibilities excluded by APRA

(1) Despite section 37BA, a person is not an ***accountable person***, of an ADI or a subsidiary of an ADI, if each of the person's responsibilities that would, apart from this section, cause the person to be an accountable person of the ADI or subsidiary is either:

(a) a responsibility excluded under subsection (2) of this section in relation to that ADI or subsidiary; or

(b) a responsibility excluded under subsection (3) of this section in relation to a class of ADIs or subsidiaries that includes that ADI or subsidiary.

(2) APRA may, by written notice given to an ADI or a subsidiary of an ADI, exclude specified responsibilities that would, apart from this section, cause any person who holds a position in, or relating to, the ADI or subsidiary to be an accountable person.

(3) APRA may, by legislative instrument, exclude specified responsibilities that would, apart from this section, cause any person who holds a position in, or relating to:

(a) an ADI included in a class of ADIs specified in the instrument; or

(b) a subsidiary an ADI included in a class of such subsidiaries specified in the instrument;

to be an accountable person.

37BC Inconsistency with corresponding foreign laws

(1) If APRA is satisfied that an accountable person, of an ADI or a subsidiary of an ADI, would contravene a law of a foreign country if he or she were to comply with a particular obligation under section 37B, APRA:

(a) may give to the accountable person a written notice specifying that obligation; and

(b) may specify in the notice:

(i) the extent to which the accountable person need not comply with that obligation; and

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(ii) conditions to which the notice is subject.

(2) An accountable person is not required to comply with that obligation:

(a) to the extent compliance would result in the accountable person contravening that law of a foreign country; or

(b) if the notice specifies the extent to which the accountable person need not comply with that obligation—to the extent so specified;

if the conditions (if any) specified in the notice are complied with.

(3) APRA must give a copy of the notice to the ADI or subsidiary.

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Division 2—Accountability obligations

37C The accountability obligations of an ADI

The accountability obligations of an ADI are to take reasonable steps to:

(a) conduct its business with honesty and integrity, and with due skill, care and diligence; and

(b) deal with APRA in an open, constructive and cooperative way; and

(c) in conducting its business, prevent matters from arising that would adversely affect the ADI's prudential standing or prudential reputation; and

(d) ensure that each of its accountable persons meets his or her accountability obligations under section 37CA; and

(e) ensure that each of its subsidiaries that is not an ADI complies with paragraphs (a), (b), (c) and (d) as if the subsidiary were an ADI.

37CA The accountability obligations of an accountable person

(1) The accountability obligations of an accountable person of an ADI, or of a subsidiary of an ADI, are to conduct the responsibilities of his or her position as an accountable person:

(a) by acting with honesty and integrity, and with due skill, care and diligence; and

(b) by dealing with APRA in an open, constructive and cooperative way; and

(c) by taking reasonable steps in conducting those responsibilities to prevent matters from arising that would adversely affect the prudential standing or prudential reputation of the ADI.

(2) If more than one of the accountable persons of an ADI or a subsidiary of an ADI have the same responsibility mentioned in section 37BA in relation to the ADI or subsidiary, all of those

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accountable persons have the accountability obligations jointly in relation to that responsibility.

Note: Under section 37DB, APRA may direct an ADI to reallocate a responsibility of an accountable person.

37CB Taking reasonable steps

Without limiting what constitutes the taking of reasonable steps in relation to a matter for the purposes of this Division, the taking of reasonable steps in relation to that matter includes having:

(a) appropriate governance, control and risk management in relation to that matter; and

(b) safeguards against inappropriate delegations of responsibility in relation to that matter; and

(c) appropriate procedures for identifying and remediating problems that arise or may arise in relation to that matter.

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Division 3—Key personnel obligations

37D The key personnel obligations of an ADI

(1) The key personnel obligations of an ADI are:

(a) subject to subsections (2) and (3), to ensure that the responsibilities of the accountable persons of the ADI and its subsidiaries cover:

(i) all parts or aspects of the operations of the relevant group of bodies corporate that is constituted by the ADI and its subsidiaries; and

(ii) each of the responsibilities to which subsection 37BA(2) applies; and

(b) to ensure none of the accountable persons of the ADI are prohibited under section 37DA; and

(c) to comply with any directions APRA gives to the ADI under section 37DB; and

(d) to take reasonable steps to ensure that each of the ADI's subsidiaries that is not an ADI complies with paragraphs (b) and (c) as if the subsidiary were an ADI.

(2) Paragraph (1)(a) does not apply in relation to a responsibility excluded by APRA under subsection 37BB(2) or (3).

(3) If the ADI is a foreign ADI, the ADI's obligation under paragraph (1)(a) is taken to be an obligation to ensure that the responsibilities of the ADI's accountable persons cover:

(a) all parts or aspects of the operations of each Australian branch of the ADI; and

(b) for each Australian branch of the ADI, the responsibility to which subsection 37BA(6) applies.

37DA People prohibited from being an accountable person

(1) A person is prohibited from being an accountable person if the person:

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(a) is not registered under Subdivision B of Division 6; or
(b) is disqualified under section 37J.

(2) However, if a person becomes an accountable person of an ADI, or a subsidiary of an ADI, by filling a temporary vacancy or a vacancy that was not foreseen at the time it arose, paragraph (1)(a) does not apply to the person until the person has been an accountable person for:
(a) 28 days; or
(b) such other period as is determined under subsection (3) or (4).

(3) APRA may, by written notice given to an ADI, determine a period for the purposes of paragraph (2)(b) in relation to the ADI or a subsidiary of the ADI.

(4) APRA may, by legislative instrument, determine a period for the purposes of paragraph (2)(b).

37DB APRA may direct an ADI to reallocate responsibilities

(1) APRA may give an ADI a written direction to reallocate a responsibility to which paragraph 37D(1)(a) applies if APRA has reason to believe that the current allocation of the responsibility is likely to give rise to a prudential risk.

(2) In deciding whether to issue a direction under subsection (1), APRA must have regard to the responsibilities of the accountable person set out in the accountability statement for the person under section 37F.

(3) The direction may specify the period within which it is to be complied with.

(4) APRA may, by written notice given to the ADI, vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

(5) The direction has effect until APRA revokes it by written notice given to the ADI. APRA may revoke the direction if, at the time of

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revocation, it considers that the direction is no longer necessary or appropriate.

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Division 4—Deferred remuneration obligations

37E The deferred remuneration obligations of an ADI

(1) The deferred remuneration obligations of an ADI are:

(a) to ensure that, in relation to the variable remuneration of an accountable person of the ADI:

(i) the payment of a portion of that variable remuneration is deferred for a period; and

(ii) the amount of that portion is at least the amount required under section 37EB; and

(iii) that period is at least the period required under section 37EC; and

(b) to have a remuneration policy in force that requires that, if the person has failed to comply with his or her accountability obligations under section 37CA, the person's variable remuneration is to be reduced by an amount that is proportionate to the failure; and

(c) to ensure that, if the remuneration policy requires the variable remuneration to be reduced because of that failure, the amount of the reduction is not paid to the person; and

(d) to take reasonable steps to ensure that, if:

(i) variable remuneration may become payable to an accountable person of a subsidiary of the ADI; and

(ii) the subsidiary is not an ADI;

the subsidiary complies with paragraphs (a), (b) and (c) as if the subsidiary were an ADI.

(2) A reduction of variable remuneration:

(a) need not be a reduction of variable remuneration relating to a period in which the failure occurred; and

(b) may be a reduction to zero.

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(3) ***Remuneration***, of an accountable person, includes:

(a) in relation to an accountable person of an ADI—any amount of remuneration that:

(i) is paid or payable to the accountable person by a related body corporate of the ADI; and

(ii) if that related body corporate is a non-ADI holding company of the ADI—does not relate only to the accountable person holding a position in the related body corporate; or

(b) in relation to an accountable person of a subsidiary of an ADI—any amount of remuneration that:

(i) is paid or payable to the accountable person by a related body corporate of the subsidiary; and

(ii) if that related body corporate is a non-ADI holding company of the subsidiary—does not relate only to the accountable person holding a position in the related body corporate.

37EA Meaning of *variable remuneration*

(1) The ***variable remuneration*** of an accountable person of an ADI, or a subsidiary of an ADI:

(a) means so much of the accountable person's total remuneration as is conditional on the achievement of objectives; and

(b) includes so much of the accountable person's total remuneration as is remuneration of a kind determined under paragraph (3)(a) or (4)(a).

(2) However, remuneration of a kind determined under paragraph (3)(b) or (4)(b) is not ***variable remuneration*** of an accountable person of an ADI, or a subsidiary of an ADI.

(3) APRA may, by written notice given to an ADI, or a subsidiary of an ADI, determine that:

(a) remuneration of a particular kind, of one or more accountable persons of the ADI or subsidiary, is variable remuneration; or

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(b) remuneration of a particular kind, of one or more accountable persons of the ADI or subsidiary, is not variable remuneration.

A determination under this subsection may apply to all accountable persons of the ADI or subsidiary, or be limited to a particular accountable person or class of accountable persons of the ADI or subsidiary.

(4) APRA may, by legislative instrument, determine that:
(a) remuneration of a particular kind is variable remuneration; or
(b) remuneration of a particular kind is not variable remuneration.

37EB Minimum amount of variable remuneration to be deferred

(1) The amount of an accountable person's variable remuneration that is required to be deferred under subparagraph 37E(1)(a)(ii) is as follows:

Minimum amount of variable remuneration to be deferred

Item	If the accountable person is:	... the amount is:
1	The Chief Executive Officer of a large ADI	The lesser of: (a) 60% of the Chief Executive Officer's variable remuneration for the financial year (the ***relevant financial year***) in which the decision was made granting the variable remuneration; or (b) 40% of the Chief Executive Officer's total remuneration for the relevant financial year.
2	An accountable person of: (a) a large ADI; or (b) a subsidiary of a large ADI; other than the Chief Executive Officer of a large ADI	The lesser of: (a) 40% of the accountable person's variable remuneration for the relevant financial year; or (b) 20% of the accountable person's total remuneration for the relevant financial year.

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Minimum amount of variable remuneration to be deferred		
Item	**If the accountable person is:**	**... the amount is:**
3	An accountable person of: (a) a medium ADI; or (b) a subsidiary of a medium ADI	The lesser of: (a) 40% of the accountable person's variable remuneration for the relevant financial year; or (b) 20% of the accountable person's total remuneration for the relevant financial year.
4	An accountable person of: (a) a small ADI; or (b) a subsidiary of a small ADI	The lesser of: (a) 40% of the accountable person's variable remuneration for the relevant financial year; or (b) 10% of the accountable person's total remuneration for the relevant financial year.

(2) For the purposes of this section, the value of variable remuneration of an accountable person of an ADI, or a subsidiary of an ADI, that has been deferred is taken to be:

(a) the value worked out, for the accountable person, in the way determined under subsection (3) or (4); or

(b) if no such determination applies in relation to the accountable person—what would have been the value of that remuneration if it had instead been paid to the person at the time the decision to grant it was made.

(3) APRA may, by written notice given to an ADI or to a subsidiary of an ADI, determine the way to work out, for the purposes of this section, the value of variable remuneration of accountable persons of the ADI or subsidiary.

(4) APRA may, by legislative instrument, determine the way to work out, for the purposes of this section, the value of variable remuneration of:

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(a) accountable persons of an ADI included in a specified class of ADIs; or
(b) accountable persons of a subsidiary of an ADI included in a specified class of subsidiaries of ADIs.

37EC Minimum period of deferral

(1) The required period under subparagraph 37E(1)(a)(iii) in relation to variable remuneration of an accountable person of an ADI, or a subsidiary of an ADI, is:
(a) 4 years; or
(b) a shorter period approved by APRA under subsection (4) in relation to the variable remuneration;
starting on the day after the day on which the decision was made granting the accountable person the variable remuneration.

(2) However, if, at the end of the period under subsection (1), the ADI or subsidiary considers that the accountable person is likely to have failed to comply with his or her accountability obligations under section 37CA, that period is extended until the day the ADI or subsidiary determines whether he or she has failed to comply.

(3) An ADI may apply to APRA for APRA to approve a shorter period under subsection (4) in relation to the variable remuneration of an accountable person of an ADI, or a subsidiary of an ADI, if the ADI is satisfied that:
(a) based on the information known at the time of the application, the accountable person has complied with his or her accountability obligations under section 37CA; and
(b) it is unlikely that further information will become known, before the end of the 4 year period mentioned in paragraph (1)(a), that indicates that the accountable person did not comply with those obligations.

(4) APRA may approve a shorter period in relation to the variable remuneration of a person if APRA is satisfied that:
(a) either:

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(i) the person is no longer an accountable person of the ADI or subsidiary, because of the person's death, serious incapacity, serious disability or serious illness; or

(ii) a circumstance determined under subsection (5) or (6) exists relation to the person; and

(b) the ADI or subsidiary has taken all reasonable steps to satisfy itself of the matters mentioned in paragraphs (3)(a) and (b).

(5) APRA may, by written notice given to an ADI, determine circumstances for the purposes of subparagraph (4)(a)(ii) in relation to the ADI and/or one or more subsidiaries of the ADI.

(6) APRA may, by legislative instrument, determine circumstances for the purposes of subparagraph (4)(a)(ii).

37ED Exemption for small amounts of variable remuneration

(1) Paragraph 37E(1)(a) does not apply in relation to the variable remuneration of an accountable person for a financial year if the amount of the person's variable remuneration that is required, or would apart from this section be required, under subparagraph 37E(1)(a)(ii) to be deferred for that financial year is less than:

(a) the amount determined under subsection (2); or

(b) if a determination under subsection (2) is not in force— $50,000.

(2) The Minister may, by legislative instrument, determine an amount for the purposes of paragraph (1)(a).

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Division 5—Notification obligations

37F The notification obligations of an ADI

(1) The notification obligations of an ADI are:

(a) to give to APRA a document complying with section 37FA (an ***accountability statement***) for each of its accountable persons, and to ensure that APRA is notified of any change to the accountability statement within the period, after the change, provided under subsection (2); and

(b) to give to APRA a document complying with section 37FB (an ***accountability map***), and to ensure that APRA is notified of any change to the accountability map within the period, after the change, provided under subsection (2); and

(c) to notify APRA of an event mentioned in section 37FC within the period, after the event, provided under subsection (2); and

(d) to take reasonable steps to ensure that each of its subsidiaries that is not an ADI complies with paragraphs (a) and (c) as if the subsidiary were an ADI.

(2) For the purposes of paragraph (1)(a), (b) or (c), the period is:

(a) 14 days; or

(b) such other period as determined under subsection (3).

(3) APRA may, by legislative instrument, determine, for the purposes of paragraph (2)(b), a period mentioned in paragraph (1)(a), (b) or (c).

37FA Accountability statements

(1) For the purposes of paragraph 37F(1)(a), an accountability statement of an ADI, or of a subsidiary of an ADI, for an accountable person of the ADI or subsidiary must contain a comprehensive statement of:

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(a) the part or aspect of the ADI's or subsidiary's operations of which the accountable person has actual or effective responsibility for management or control; and
(b) the responsibilities of the accountable person, including any responsibilities to which paragraph 37D(1)(a) applies or subsection 37D(3) applies, as the case requires; and
(c) the matters determined by APRA under subsection (2).

(2) APRA may, by legislative instrument, determine matters for the purposes of paragraph (1)(c).

37FB Accountability map

(1) For the purposes of paragraph 37F(1)(b), an accountability map of an ADI must contain the following information:
(a) the names of all of the accountable persons of the ADI and its subsidiaries;
(b) details of the reporting lines and lines of responsibility of those accountable persons;
(c) sufficient information to identify an accountable person for each of the responsibilities to which paragraph 37D(1)(a) applies or subsection 37D(3) applies, as the case requires;
(d) information of a kind determined by APRA under subsection (2).

(2) APRA may, by legislative instrument, determine kinds of information for the purposes of paragraph (1)(d).

37FC Events for which APRA must be notified

For the purposes of paragraph 37F(1)(c), the following events must be notified to APRA by an ADI:
(a) a person ceasing to be an accountable person of the ADI or a subsidiary of the ADI;
(b) the dismissal or suspension of an accountable person by the ADI, or subsidiary of the ADI, because the person has failed

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to comply with his or her accountability obligations under 37CA;

(c) the reduction of the variable remuneration of a person by the ADI, or subsidiary of the ADI, because the person has failed to comply with his or her accountability obligations under section 37CA;

(d) the ADI becoming aware of:

(i) a breach by the ADI of its accountability obligations under section 37C; or

(ii) a breach by an accountable person of the ADI, or of a subsidiary of the ADI, of his or her accountability obligations under section 37CA.

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Division 6—Enforcement and administration

Subdivision A—Civil penalties

37G Pecuniary penalty for non-compliance with this Part

(1) An ADI is liable to a pecuniary penalty if:
  (a) the ADI contravenes its obligations under this Part (other than this Division); and
  (b) the contravention relates to prudential matters.

(2) The amount of the pecuniary penalty is an amount not exceeding:
  (a) if the ADI is a large ADI—1,000,000 penalty units; or
  (b) if the ADI is a medium ADI—250,000 penalty units; or
  (c) if the ADI is a small ADI—50,000 penalty units.

(3) The Minister may, by legislative instrument, determine:
  (a) the kinds of ADIs that are large ADIs; and
  (b) the kinds of ADIs that are medium ADIs; and
  (c) the kinds of ADIs that are small ADIs.

(4) In determining the pecuniary penalty, the Federal Court of Australia must have regard to the impact that the penalty would have on the viability of the ADI.

(5) Subsection (4) does not limit subclause 1(3) of Schedule 2.

(6) This section is a civil penalty provision.

Subdivision B—Registration of accountable persons

37H Register of accountable persons

(1) APRA must establish and keep a register of accountable persons.

(2) The register may be kept by electronic means.

(3) The register is not a legislative instrument.

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(4) The register must contain, for each accountable person:
  (a) the person's name; and
  (b) the date of the person's registration as an accountable person; and
  (c) the date the person ceases to be an accountable person; and
  (d) details of any disqualification of the person under section 21 or 37J; and
  (e) details of any variation or revocation of disqualification under section 22 or 37JA; and
  (f) details of any direction APRA has given in relation to the person that is:
    (i) a direction under section 11CA of a kind mentioned in paragraph 11CA(2)(c) or (d); or
    (ii) a direction under section 23; and
  (g) such other information as APRA considers appropriate.

Note: For disclosure of information on the register, see section 56 of the *Australian Prudential Regulation Authority Act 1998*.

37HA Registration of a person as an accountable person

(1) An ADI may apply to APRA to register a person as an accountable person.

(2) The application must:
  (a) be in the form approved in writing by APRA; and
  (b) contain the information that the form requires; and
  (c) include a signed declaration that the ADI is satisfied the person is suitable be an accountable person; and
  (d) include the accountability statement for the person under section 37F.

(3) APRA may, by written notice given to the ADI, request the ADI to give to APRA further information in relation to the application.

(4) APRA must, within the period provided under subsection (5), register a person as an accountable person if:
  (a) the application meets the requirements of subsection (2); and

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(b) the ADI gives to APRA any further information requested under subsection (3) in relation to the application;

unless the ADI withdraws the application before the day of registration.

(5) The period for registration under subsection (4) is the period of 14 days after:

(a) the day the application is made; or

(b) if APRA requests the ADI to give further information under subsection (3) in relation to the application—the day the ADI gives the further information to APRA.

Subdivision C—Disqualification of accountable persons

37J APRA may disqualify an accountable person

Disqualification by APRA

(1) APRA may disqualify a person from being or acting as an accountable person, for a period that APRA considers appropriate, if APRA is satisfied that:

(a) the person has not complied with his or her accountability obligations under section 37CA; and

(b) having regard to the seriousness of the non-compliance, the disqualification is justified.

(2) For the purposes of subsection (1), APRA may disqualify a person from being or acting as an accountable person of one or more of the following:

(a) a particular ADI;

(b) a particular subsidiary of an ADI;

(c) a class of ADIs;

(d) a class of subsidiaries of ADIs;

(e) any ADI;

(f) any subsidiary of an ADI.

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Written notice

(3) APRA must give written notice of a disqualification to the person and the ADI.

(4) A disqualification takes effect on the day specified in the notice, which must be not earlier than 7 days after it is signed.

(5) Before disqualifying a person, APRA must give written notice to:
  (a) the person; and
  (b) the ADI;
giving each of them an opportunity to make submissions on the matter.

(6) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.

(7) A notice given under subsection (5) to an accountable person and an ADI must state that any submissions made in response to the notice may be discussed by APRA with any other persons as mentioned in subsection (6).

(8) Part VI applies to a decision by APRA under this section to disqualify a person.

37JA APRA may vary or revoke a disqualification

(1) APRA may vary or revoke a disqualification made under section 37J on its own initiative or on application by a person disqualified under that section.

(2) A variation or revocation of a disqualification takes effect on the day on which it is made.

(3) APRA must give the person written notice of:
  (a) a variation or revocation of a disqualification; or
  (b) if the person applied for a disqualification to be varied or revoked—a refusal to vary or revoke the disqualification.

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(4) Part VI applies to a decision by APRA under this section to:
  (a) vary a disqualification; or
  (b) refuse to vary or revoke a disqualification.

37JB Self-incrimination

To avoid doubt, subsection 52F(2) does not apply to APRA's consideration of whether to make a decision under section 37J or 37JA.

37JC Allowing a person disqualified by APRA to act as an accountable person

(1) An ADI, or a subsidiary of an ADI, contravenes this subsection if:
  (a) a person is disqualified under section 37J; and
  (b) the person is or acts as an accountable person of the ADI or subsidiary; and
  (c) the person is disqualified from being or acting as an accountable person in the ADI or subsidiary; and
  (d) the ADI or subsidiary allows the person to be or act as an accountable person.

Fault-based offence

(2) An ADI, or a subsidiary of an ADI, commits an offence if it contravenes subsection (1).

Penalty: 250 penalty units.

Strict liability offence

(3) An ADI, or a subsidiary of an ADI, commits an offence of strict liability if it contravenes subsection (1).

Penalty: 60 penalty units.

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Division 7—Miscellaneous

37K General administration of this Part

APRA has the general administration of this Part.

37KA Indemnifying ADIs and accountable persons

(1) A related body corporate of an ADI must not (whether by agreement or by making a payment and whether directly or through an interposed entity):

(a) indemnify the ADI against the consequences of breaching an obligation under this Part; or

(b) pay, or agree to pay, a premium for a contract insuring the ADI against the consequences of breaching an obligation under this Part.

(2) An ADI, or a related body corporate of an ADI, must not (whether by agreement or by making a payment and whether directly or through an interposed entity):

(a) indemnify a person who is or was an accountable person of the ADI against the consequences of breaching an obligation under this Part; or

(b) pay, or agree to pay, a premium for a contract insuring such a person against the consequences of breaching an obligation under this Part.

(3) This section does not apply to a liability for legal costs.

37KB Causes of action not created

This Part does not have the effect of creating a cause of action that would not have existed if this Part had not been enacted.

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37KC Review of operation of Part

(1) The Minister must cause a review of the operation of this Part to be undertaken.

(2) The review must:
  (a) start 3 years after the commencement of this section; and
  (b) be completed within 6 months.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

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Part IIA—ADI mergers (operation of State and Territory laws)

38A Operation of certain State and Territory laws relating to ADI mergers

(1) Any law of the Commonwealth with which a provision of a law of a State or Territory referred to in Schedule 1 would, but for this subsection, be inconsistent has effect subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision.

(2) Without prejudice to its effect apart from this subsection, each provision of a law of a State or Territory referred to in Schedule 1 has or shall be deemed to have had, as the case may be, by force of this subsection, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory and of the Northern Territory.

(3) If, at any time after the commencement of this Part, a law of a State or Territory is passed or made for the purpose of, or for the purpose of making provision consequent upon or in relation to, the merger of 2 or more ADIs, the Treasurer may, in his or her discretion, by signed writing published in the *Gazette*, declare that law to be a law to which this subsection applies.

(4) Where a declaration is made under subsection (3) in relation to a law of a State or Territory:

(a) any law of the Commonwealth with which a provision of that law of a State or Territory would, but for this paragraph, be inconsistent has effect, subject to that provision, or shall be deemed to have had effect subject to that provision, as the

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case may be, on and from the day that is the prescribed day in relation to that provision; and

(b) without prejudice to its effect apart from this paragraph, each provision of that law of a State or Territory has, or shall be deemed to have had, as the case may be, by force of this paragraph, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory and of the Northern Territory.

(5) A reference in this section to the prescribed day in relation to a provision of a law of a State or Territory is a reference to the day on which that provision comes or came into operation.

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Part IIB—Provisions relating to the non-ADI lenders

Division 1—Main concepts

38B Meaning of *non-ADI lender* and *Part IIB provision of finance*

(1) A ***non-ADI lender*** is a registrable corporation (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) that is engaged in the Part IIB provision of finance.

(2) ***Part IIB provision of finance*** means the provision of finance (within the meaning of the *Financial Sector (Collection of Data) Act 2001*), other than:

(a) the activities mentioned in paragraphs 32(1)(e), (f), (g) and (h) of that Act; and

(b) the provision of finance (within the meaning of that Act) outside Australia; and

(c) the entry into an arrangement that is a derivative (within the meaning of the *Corporations Act 2001*).

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Division 2—Non-ADI lender rules

38C APRA may make non-ADI lender rules for non-ADI lenders

(1) Subsection (2) applies if:

(a) APRA considers that the Part IIB provision of finance by one or more non-ADI lenders materially contributes to risks of instability in the Australian financial system; and

(b) APRA considers that it is necessary, in order to address those risks, to make rules under subsection (2).

(2) APRA may, in writing, determine rules for the purpose of addressing those risks, to be complied with by:

(a) all non-ADI lenders; or

(b) a specified class of non-ADI lenders; or

(c) one or more specified non-ADI lenders.

(3) To avoid doubt, a rule cannot require a non-ADI lender to conduct its business and activities in a particular way to the extent that the business and activities are unrelated to the Part IIB provision of finance.

(4) A rule may impose different requirements to be complied with in different situations or in respect of different activities.

(5) Without limiting the matters in relation to which APRA may determine a rule, a rule may require:

(a) each non-ADI lender; or

(b) each non-ADI lender included in a specified class of non-ADI lenders; or

(c) a specified non-ADI lender; or

(d) each of 2 or more specified non-ADI lenders;

to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to the risks mentioned in subsection (1).

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(6) A rule may provide for APRA to exercise powers and discretions under the rule, including (but not limited to) discretions to approve, impose, adjust or exclude specific requirements in relation to one or more specified non-ADI lenders.

(7) A rule may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:
  (a) section 46AA of the *Acts Interpretation Act 1901*; and
  (b) section 14 of the *Legislation Act 2003*.

(8) A rule referred to in paragraph (2)(c) has effect:
  (a) from the day on which the rule is made; or
  (b) if the rule specifies a later day—from that later day.

38D Non-ADI lender rules revoked after 2 years

(1) A non-ADI lender rule is revoked at the end of the period of 2 years beginning on the day the rule is made.

(2) If, at any time during that period, APRA considers that the conditions in subsection 38C(1) still apply in relation to the non-ADI lender rule, APRA may, by written instrument, extend (or further extend) the period for a period of 2 years beginning on the day the instrument is made.

Note: An extension under this subsection does not affect the operation of Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*.

38E Variation and revocation of non-ADI lender rules

(1) APRA may, in writing, vary or revoke a non-ADI lender rule.

(2) An instrument varying or revoking a non-ADI lender rule referred to in paragraph 38C(2)(c) has effect:
  (a) from the day on which the instrument is made; or
  (b) if the instrument specifies a later day—from that later day.

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38F Notification and consultation regarding non-ADI lender rules

Notification

(1) If APRA makes or varies a non-ADI lender rule referred to in paragraph 38C(2)(c) it must, as soon as practicable, give a copy of the rule, or of the variation, to the non-ADI lender, or to each non-ADI lender, to which the rule applies.

(2) If APRA revokes a non-ADI lender rule referred to in paragraph 38C(2)(c) it must, as soon as practicable, give notice of the revocation to the non-ADI lender, or to each non-ADI lender, to which the rule applied.

(3) If APRA extends the period mentioned in subsection 38D(1) in relation to a non-ADI lender rule referred to in paragraph 38C(2)(c) it must, as soon as practicable, give notice of the extension to the non-ADI lender, or to each non-ADI lender, to which the rule applies.

Consultation

(4) Before making a non-ADI lender rule, or varying or revoking a non-ADI lender rule, APRA must consult with ASIC.

(5) A failure to comply with subsection (4) does not affect the validity of the action concerned.

38G Which non-ADI lender rules, etc., are legislative instruments

(1) The following instruments are not legislative instruments:
  (a) a non-ADI lender rule referred to in paragraph 38C(2)(c);
  (b) an instrument under section 38E varying or revoking a non-ADI lender rule referred to in paragraph 38C(2)(c);
  (c) an instrument under subsection 38D(2) extending the period mentioned in subsection 38D(1) in relation to a non-ADI lender rule referred to in paragraph 38C(2)(c).

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(2) Otherwise, an instrument made under section 38C, 38D or 38E is a legislative instrument.

38H Review of decisions relating to non-ADI lender rules

Part VI applies to the following decisions:

(a) a decision to make a non-ADI lender rule referred to in paragraph 38C(2)(c);

(b) a decision to vary such a rule;

(c) a decision to make an instrument under subsection 38D(2) in relation to such a rule.

38J Division not to limit operation of other provisions

Nothing in this Division is intended to limit the operation of any other provision of this Act or of the *Reserve Bank Act 1959*.

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Division 3—APRA's power to issue directions

38K APRA may give directions in certain circumstances

(1) APRA may give a body corporate that is a non-ADI lender a direction to take specified action to comply with the whole or a part of a non-ADI lender rule if APRA has reason to believe that:

(a) the body corporate has contravened the non-ADI lender rule; or

(b) the body corporate is likely to contravene the non-ADI lender rule.

(2) The direction must:

(a) be given by notice in writing to the body corporate; and

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

(3) In deciding whether to give a direction under subsection (1), APRA must consider whether the body corporate has taken reasonable steps in the past to comply with the non-ADI lender rule.

(4) The direction may deal with the time by which, or period during which, it is to be complied with.

(5) 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.

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

(7) The direction has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

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(8) Part VI applies to a decision to give a direction under subsection (1).

38L Non-compliance with a direction under section 38K

(1) A non-ADI lender commits an offence if:
  (a) it does, or fails to do, an act; and
  (b) doing, or failing to do, the act results in a contravention of a direction given to it under section 38K.

Penalty: 50 penalty units.

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

(2) If a non-ADI lender does or fails to do an act in circumstances that give rise to the non-ADI lender committing an offence against subsection (1), the non-ADI lender commits an offence against that subsection in respect of:
  (a) the first day on which the offence is committed; and
  (b) each subsequent day (if any) on which the circumstances that gave rise to the non-ADI lender committing the offence continue (including the day of conviction for any such offence or any later day).

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

(3) An officer of a non-ADI lender commits an offence if:
  (a) the officer fails to take reasonable steps to ensure that the non-ADI lender complies with a direction given to it under section 38K; and
  (b) the officer's duties include ensuring that the non-ADI lender complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

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

(4) If an officer of a non-ADI lender fails to take reasonable steps to ensure that the non-ADI lender complies with a direction given to it under section 38K in circumstances that give rise to the officer committing an offence against subsection (3), the officer commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

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

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Part III—Foreign exchange, foreign investment etc.

39 Power to make regulations

(1) Where the Governor-General considers it expedient to do so for purposes related to:

(a) foreign exchange or the foreign exchange resources of Australia;

(b) the protection of the currency or the protection of the public credit or revenue of Australia; or

(c) foreign investment in Australia, Australian investment outside Australia, foreign ownership or control of property in Australia or of Australian property outside Australia or Australian ownership or control of property outside Australia or of foreign property in Australia;

the Governor-General may make regulations, not inconsistent with this Act, in accordance with this section.

(2) The regulations authorized to be made by this section are regulations (being regulations with respect to matters with respect to which the Parliament has power to make laws) making provision for or in relation to:

(a) rates of exchange;

(b) the control or prohibition of the buying, borrowing, selling, lending or exchanging in Australia of, or other dealing in Australia with, foreign currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, foreign currency by or on behalf of a person who is a resident;

(c) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, foreign currency, being a transaction that takes place in whole or in part in Australia or to which a person who is a resident is a party;

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(d) the control or prohibition of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, Australian currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging in Australia, or other dealing in Australia with, Australian currency by or on behalf of a person who is not a resident;

(e) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, Australian currency, being a transaction that takes place in whole or in part outside Australia or to which a person who is not a resident is a party;

(f) the control or prohibition of the taking or sending out of Australia, and of the bringing or sending into Australia, of Australian currency or foreign currency;

(g) requiring any person who is a resident and who has power to sell, or to procure the sale of, any foreign currency, or any person (whether a resident or not) who has power to sell in Australia, or to procure the sale in Australia of, any foreign currency, to sell, or to procure the sale of, that currency as prescribed;

(h) requiring any person who is not a resident and who has power to sell, or to procure the sale of, any Australian currency, or any person (whether a resident or not) who has power to sell outside Australia, or to procure the sale outside Australia of, any Australian currency, to sell, or to procure the sale of, that currency as prescribed;

(i) the control or prohibition of the taking, sending or transfer of any securities to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia), and of the bringing, sending or transfer of any securities to Australia from a place outside Australia (including the transfer of securities from a register outside Australia to a register in Australia);

(j) the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that

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is in Australia, or of Australian securities that are outside Australia, by or on behalf of a person who is not a resident;

(k) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is in Australia, or of Australian securities that are outside Australia, being a transaction to which a person who is not a resident is a party;

(l) the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is outside Australia, or of foreign securities that are in Australia, by or on behalf of a person who is a resident;

(m) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is outside Australia, or of foreign securities that are in Australia, being a transaction to which a person who is a resident is a party;

(n) requiring any person who is a resident and by whom moneys are payable to a person who is not a resident to pay those moneys within such time as is fixed by or under the regulations;

(o) the control or prohibition of the importation or exportation of goods;

(p) the obtaining by the Reserve Bank (or by a person authorized by the Bank for the purpose) of information, and the examination by the Bank (or by a person authorized by the Bank for the purpose) of accounts, books, documents or other papers, for purposes related to the exercise of the Bank's powers or the performance of the Bank's functions under the regulations;

(q) prescribing penalties not exceeding a fine of 1,000 penalty units, or imprisonment for a period not exceeding 5 years, for offences against the regulations made under this section; and

(r) empowering a court to order the forfeiture, or the disposal in accordance with the directions of the Reserve Bank, of Australian currency, foreign currency, goods or other

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property in respect of which an offence against the regulations made under this section has been committed.

(3) Without limiting the generality of the power of the Governor-General to make regulations under this section, the regulations may:

(a) for any purpose of the regulations, prohibit the doing of any act or thing (including the importation or exportation of goods) specified in the regulations either absolutely or subject to conditions, being conditions which may prohibit the doing of the act or thing without the authority of the Reserve Bank or except in pursuance of a licence granted under the regulations;

(b) make provision for or in relation to terms and conditions subject to which such authorities or licences shall or may be granted, being terms and conditions which may require the deposit of money with the Reserve Bank; and

(c) make provision for or in relation to the granting of exemptions, either unconditionally or subject to conditions determined by the Reserve Bank, from the application of any provision of the regulations.

(4) Regulations under this section may provide:

(a) that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a resident included in a prescribed class of persons as if the person were not a resident; and

(b) that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a person who is not a resident but is included in a prescribed class of persons, as if the person were a resident.

(5) Regulations under this section may provide:

(a) that, where a body corporate that is not a resident has a place of business in Australia, the body corporate shall be deemed,

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for the purposes of the regulations or a particular provision of the regulations specified in the regulations, to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business; and

(b) that, where a body corporate that is a resident has a place of business outside Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, not to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business.

(6) Regulations under this section may provide that no act or thing done, or contract or other transaction entered into, is invalid or unenforceable by reason only that the provisions of the regulations have not, or a particular provision of the regulations specified in the regulations has not, been complied with, but regulations so made shall not be construed as having the effect of preventing a person from being convicted of an offence against the regulations by reason of having failed to comply with a provision of the regulations.

(7) Regulations under this section may provide that, in the exercise of its powers or the performance of its functions under the regulations, or under a particular provision of the regulations specified in the regulations, the Reserve Bank is subject to the directions of the Treasurer.

(8) In this section:

Australian currency includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed in Australian money,

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and also includes rights, and instruments of title, to Australian money.

Australian securities means securities or other property included in a class of securities or property specified in the regulations as Australian securities.

foreign currency includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed otherwise than in Australian money, and also includes rights and instruments of title, to money other than Australian money.

foreign securities means securities or other property included in a class of securities or property specified in the regulations as foreign securities.

property includes securities and rights under securities.

resident means:

(a) a person, not being a body corporate, who is ordinarily resident in Australia; and

(b) a body corporate which is incorporated in Australia.

securities includes shares, stock, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities.

(9) Nothing in Part IV shall be taken as limiting the power of the Governor-General to make regulations under this section for or in relation to the control or prohibition of the importation or exportation of gold, or otherwise with respect to gold.

(10) A reference in this section to property that is in Australia shall be read as including a reference to a right, not being property, that is exercisable in Australia, and a reference in this section to property that is outside Australia shall be read as including a reference to a right, not being property, that is not exercisable in Australia.

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(11) Nothing in subsection (1) shall be taken to affect, by implication or otherwise, the interpretation or operation of regulations made under this section.

39A Extra-territorial application of regulations

(1) Regulations made under section 39 shall, except where the contrary intention appears, apply both within and without Australia.

(2) A provision of the *Judiciary Act 1903* by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against the regulations made under section 39 of this Act not committed within any State, as if that jurisdiction were so invested without limitation as to locality.

(3) Subject to the Constitution, jurisdiction is conferred on the several courts of a Territory, within the limits of their several jurisdictions other than limits as to locality, with respect to offences against the regulations made under section 39 not committed within a State or within another Territory.

(4) The trial on indictment of an offence against the regulations made under section 39 not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

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Part IV—Gold

40 Operation of Part

(1) This Part shall not be in operation except as provided by this section.

(2) Where the Governor-General is satisfied that it is expedient so to do, for the protection of the currency or of the public credit of the Commonwealth, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall come into operation, and this Part, or the provisions so specified, shall thereupon come into operation.

(3) Where the Governor-General is satisfied that it is no longer expedient, for the protection of the currency or of the public credit of the Commonwealth, that this Part, or any of the provisions of this Part, should remain in operation, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall cease to be in operation, and thereupon this Part, or the provisions so specified, shall cease to be in operation.

41 Transfer of gold out of Australia

(1) A person shall not, except with the consent in writing of the Reserve Bank, take or send any gold out of Australia.

(2) A person commits an offence if:

(a) the person contravenes subsection (1); and

(c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Penalty: 200 penalty units.

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

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

(3) An offence against subsection (2) is an indictable offence.

42 Delivery of gold

(1) Subject to this Part, a person who has any gold in the person's possession or under the person's control, not being:

(a) gold coins the total value of the gold content of which does not exceed the prescribed amount; or

(b) gold lawfully in the possession of that person for the purpose of being worked or used by that person in connexion with the person's profession or trade;

shall deliver the gold to the Reserve Bank, or as prescribed, within one month after the gold comes into the person's possession or under the person's control or, if the gold is in the person's possession or under the person's control on any date on which this Part comes into operation, within one month after that date.

(1A) A person commits an offence if:

(a) the person fails to comply with subsection (1); and

(c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Penalty: 50 penalty units.

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

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

(2) Where a person who has gold lawfully in the person's possession for the purpose of being worked or used by the person in connexion with the person's profession or trade ceases to have that purpose in respect of that gold, the person shall deliver the gold to the Reserve Bank, or as prescribed, within one month after the person has ceased to have that purpose in respect of that gold.

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(3) A person commits an offence if:

(a) the person fails to comply with subsection (2); and

(c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Penalty: 50 penalty units.

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

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

43 Vesting of gold delivered

All gold delivered in pursuance of section 42 shall thereupon vest in the Reserve Bank absolutely, free from any mortgage, charge, lien, trust or other interest in or affecting the gold, and the Reserve Bank shall pay for the gold, to the person delivering the gold, on behalf of all persons having any interest in the gold, an amount determined in accordance with section 44 and the Reserve Bank shall not be under any liability to any other person claiming any interest in the gold.

44 Payment for gold

The amount to be paid for any gold delivered in pursuance of section 42 shall be an amount determined in accordance with such price as is fixed and published by the Reserve Bank or, at the option of the person delivering the gold, such amount as is determined in an action for compensation against the Reserve Bank.

45 Limitation of sale and purchase of gold

(1) Subject to this Part:

(a) a person shall not sell or otherwise dispose of gold to a person other than the Reserve Bank or a person authorized in writing by the Reserve Bank to purchase gold; and

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(b) a person, other than the Reserve Bank or a person so authorized, shall not buy or otherwise obtain gold from any person.

(1A) A person commits an offence if:

(a) the person fails to comply with subsection (1); and

(c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

(2) A person may buy gold from the Reserve Bank or from a person authorized in writing by the Reserve Bank to sell gold, and the Reserve Bank or a person so authorized may sell gold to a person, for the purpose of its being worked or used by the purchaser in connexion with the person's profession or trade.

(3) A person authorized by the Reserve Bank under this section shall comply with such directions relating to gold as are given to the person by the Reserve Bank.

(4) A person commits an offence if:

(a) the person fails to comply with subsection (3); and

(c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Penalty: 200 penalty units.

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

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

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(5) An offence against subsection (4) is an indictable offence.

46 Limitation on working of gold

(1) A person shall not work or use in manufacture any gold, not being gold lawfully in the person's possession for the purpose of being worked or used by the person in connexion with the person's profession or trade.

(2) A person commits an offence if:

(a) the person fails to comply with subsection (1); and

(c) there is no instrument in force under section 48 exempting the person from the application of subsection (1).

Penalty: 200 penalty units.

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

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

(3) An offence against subsection (2) is an indictable offence.

47 Application of Part

(1) This Part does not apply to wrought gold, not being wrought gold worked or manufactured in contravention of this Part.

(2) In this section, ***wrought gold*** means gold and gold alloys which on view have apparently been worked or manufactured for professional or trade purposes and includes the waste products arising from the working or manufacturing of gold and gold alloys for professional or trade purposes.

48 Exemptions

The Reserve Bank may, by instrument in writing, and either wholly or to the extent specified in the instrument, exempt a person from the application of the whole or any of the provisions of this Part

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and, so long as the exemption continues, that person is exempt accordingly.

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Part V—Interest rates

50 Control of interest rates

(1) The Reserve Bank may, with the approval of the Treasurer, make regulations:

(a) making provision for or in relation to the control of rates of interest payable to or by ADIs, or to or by other persons in the course of any banking business carried on by them;

(b) making provision for or in relation to the control of rates of discount chargeable by ADIs, or by other persons in the course of any banking business carried on by them;

(c) providing that interest shall not be payable in respect of an amount deposited with an ADI, or with another person in the course of banking business carried on by the person, and repayable on demand or after the end of a period specified in the regulations; and

(d) prescribing penalties, for offences against the regulations, not exceeding:

(i) if the offender is a natural person—a fine of $5,000; or

(ii) if the offender is a body corporate—a fine of $25,000.

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Part VI—Reconsideration and Review of decisions

51A Definitions

In this Part:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

reviewable decision of APRA means a decision of APRA to which, under this Act, this Part applies.

51B Reconsideration of decisions

(1) A person affected by a reviewable decision of APRA who is dissatisfied with the decision may, by notice in writing given to APRA, within the period of 21 days after the day on which the decision first comes to the notice of the person, or within such further period as APRA allows, request APRA to reconsider the decision.

(2) The request must set out the reasons for making the request.

(3) Upon receiving the request, APRA must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as APRA thinks fit.

(4) If APRA does not confirm, revoke or vary a decision before the end of the period of 21 days after the day on which APRA received the request under subsection (1) to reconsider the decision, APRA is taken, at the end of that period, to have confirmed the decision under subsection (3).

(5) If APRA confirms, revokes or varies a decision before the end of the period referred to in subsection (4), APRA must, by notice served on the person who made the request:

(a) tell the person of the result of APRA's reconsideration of the decision; and

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(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, as the case may be.

(6) When APRA serves on a person a notice containing information of a kind mentioned in paragraph (5)(b) or (c), APRA may include in the notice conditions to be complied with in relation to the notice or any information disclosed in the notice.

(7) A person commits an offence if the person fails to comply with a condition imposed under subsection (6).

Penalty: Imprisonment for 2 years.

(8) Strict liability applies to the physical element of the offence in subsection (7) that the condition is imposed under subsection (6).

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

51C Review of decisions

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of APRA that have been confirmed or varied under subsection 51B(3).

(2) If a decision is taken, because of the operation of subsection 51B(4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period beginning on the day on which the decision is taken to be confirmed and ending on the 28th day after that day.

(3) If a person makes a request under subsection 51B(1) in respect of a reviewable decision of APRA, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

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51D Statements to accompany notification of decisions

(1) If a reviewable decision of APRA is made and notice in writing of the decision is given to a person affected by the decision, the notice is to include a statement to the effect that:

(a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by APRA in accordance with subsection 51B(1); and

(b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by APRA upon that reconsideration confirming or varying the first-mentioned decision, apply to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.

(2) A notice given to a person under subsection (1) may impose conditions relating to the disclosure of any information setting out reasons for the decision that is contained in, or in a document accompanying, the notice.

(3) A person commits an offence if the person fails to comply with a condition imposed under subsection (2).

Penalty: Imprisonment for 2 years.

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

(4) If APRA confirms or varies a decision under subsection 51B(3) and gives to a person notice in writing of the confirmation or variation of the decision, the notice is to include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision.

(5) Any failure to comply with the requirements of subsection (1) or (4) in relation to a decision does not affect the validity of the decision.

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Part VIA—Protections in relation to information

Note: For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

52F Self-incrimination

(1) A person is not excused from complying with a requirement under this Act or the *Financial Sector (Collection of Data) Act 2001* to give information, produce a book, account or document or sign a record on the ground that doing so would tend to incriminate the person or make the person liable to a penalty.

(2) However, if the person is an individual, the information given, the record signed or the book, account or document produced by the individual in compliance with the requirement is not admissible in evidence against the individual in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information, if:

(a) before complying with the requirement, the individual claims that giving the information, signing the record or producing the book, account or document might tend to incriminate the individual or make the individual liable to a penalty; and

(b) giving the information, signing the record or producing the book, account or document might in fact tend to incriminate the individual or make the individual liable to a penalty.

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Part VII—Financial records

60 Keeping of financial records

Financial records must be kept in Australia etc.

(1) If an ADI is required, under section 286 of the *Corporations Act 2001*, to keep financial records (within the meaning of that Act), the ADI must keep the records:

(a) in the English language, or in a form in which the records are readily accessible and readily convertible into writing in the English language; and

(b) either:

(i) in Australia; or

(ii) if APRA gives written approval and the ADI meets the conditions (if any) specified in the approval—in another country specified in the approval.

(2) The approval may be given subject to specified conditions.

Notification of address where financial records are kept

(3) An ADI must notify APRA, in the approved form, of the address where the ADI's financial records are kept:

(a) if, immediately before the commencement of this section, the ADI has a section 9 authority—within 28 days after that commencement; or

(b) otherwise—within 28 days after the ADI is granted a section 9 authority.

(4) If:

(a) an ADI has notified APRA of the address where the ADI's financial records are kept; and

(b) the ADI moves the financial records to a new address;

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the ADI must notify APRA, in the approved form, of the new address where the financial records are kept.

(5) The notification must be given within 28 days after the day on which the financial records are moved to the new address.

Offence

(6) An ADI commits an offence if the ADI contravenes subsection (1).

Penalty: 200 penalty units.

Merits review

(7) Part VI applies to the following decisions:
  (a) a refusal to give an approval under paragraph (1)(b);
  (b) a decision to give the approval subject to conditions.

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Part VIII—Powers of APRA

Division 1—Investigations

61 APRA may conduct investigations

(1) APRA may appoint a person to investigate and report on prudential matters in relation to:

(a) a body corporate that is:

(i) an ADI; or

(ii) an authorised NOHC; or

(iii) a subsidiary of an ADI or of an authorised NOHC; or

(b) if a body corporate that is an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):

(i) another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), being a subsidiary that is incorporated in Australia; or

(ii) the Australian operations of another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), being a subsidiary that is not incorporated in Australia and carries on business in Australia;

if it is satisfied that such a report is necessary. The appointment must be in writing and must specify the prudential matters that are to be the subject of the investigation and report.

(2) If APRA has appointed a person under this section to investigate and report on prudential matters in relation to a body corporate, the body corporate must give the person access to its books, accounts and documents and must give the person such information and facilities as the person requires to conduct the investigation and produce the report.

(3) A body corporate commits an offence if:

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(a) under subsection (1), APRA has appointed a person to investigate and report on prudential matters in relation to the body corporate; and

(b) the body corporate:

(i) does not give the person access to its books, accounts and documents; or

(ii) fails to comply with a requirement made under subsection (2) for the provision of information or facilities.

Penalty: 50 penalty units.

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

(5) If a body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (3), the body corporate commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

(6) Nothing in this section is intended to limit the operation of any other provision of this Act.

(7) To avoid doubt, this section applies to a body corporate that is, or becomes, a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other body corporate.

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61A Investigator may require production of books etc.

(1) If an investigator reasonably believes that a person has custody or control of any books, accounts or documents relevant to the investigator's investigation, the investigator may, by written notice given to the person, require the person to produce any or all of the books, accounts or documents to the investigator.

(2) A person commits an offence if he or she refuses or fails to comply with a requirement under this section.

Penalty: 30 penalty units.

61B Concealing books, accounts or documents relevant to investigation

A person commits an offence if:

(a) the person knows that an investigator is investigating, or is about to investigate, a matter; and

(b) the person:

(i) conceals, destroys, mutilates or alters a book, account or document relating to the matter; or

(ii) if a book, account or document relating to the matter is in a particular State or Territory—takes or sends the book, account or document out of that State or Territory or out of Australia; and

(c) the person intended that the investigation or proposed investigation would be delayed or obstructed as a result of that conduct.

Penalty: Imprisonment for 2 years.

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Division 2—Examinations

61C Notice requiring appearance for examination

If an investigator reasonably believes or suspects that a person (the ***examinee***) can give information relevant to the investigator's investigation, the investigator may, by written notice given to the examinee, require the examinee:

(a) to give the investigator all reasonable assistance in connection with the investigation; and

(b) to appear before the investigator for examination.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 61G).

61D Conduct of examinations

(1) The investigator may examine the examinee on oath or affirmation and may, for that purpose:

(a) require the examinee to either take an oath or make an affirmation; and

(b) administer an oath or affirmation to the examinee.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 61G).

(2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.

(3) The investigator may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that the investigator is investigating, or is to investigate.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 61G).

(4) The examiner may make an audio, or audio-visual, recording of all or any part of the examination.

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61E Who may be present at examinations

(1) The examination must take place in private.

(2) The following people may be present at the examination:
  (a) the investigator;
  (b) the examinee;
  (c) the examinee's lawyer;
  (d) an APRA staff member approved by APRA to be present;
  (e) a person directed by the investigator to be present.

(3) A person commits an offence if the person:
  (a) is present at an examination; and
  (b) is not a person mentioned in subsection (2).

  Penalty: 30 penalty units.

(4) The examinee's lawyer may, at such times during the examination as the investigator determines, address the investigator and examine the examinee about matters about which the investigator has examined the examinee.

(5) The investigator may require a person to stop addressing the investigator or examining the examinee if, in the investigator's opinion, the person is trying to obstruct the examination by exercising rights under subsection (4).

  Note: Failure to comply with a requirement made under this subsection is an offence (see section 61G).

61F Record of examination

Written record of statements

(1) The investigator must cause a written record (including a transcript of an audio, or audio-visual, recording) to be made of statements made at the examination.

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(2) The investigator may require the examinee to read the written record, or to have it read to him or her, and may require him or her to sign it.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 61G).

Copies of record

(3) The investigator must give a copy of a written record to the examinee, without charge, but subject to such conditions (if any) as the investigator imposes.

Use of copies

(4) If the investigator gives a copy of a written record to a person under subsection (3) subject to conditions, the person, or any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Penalty: Imprisonment for 6 months.

61G Offences

A person commits an offence if he or she refuses or fails to comply with a requirement under this Division.

Penalty: 30 penalty units.

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Division 3—Evidentiary use of certain material

61H Statements made at an examination—proceedings against examinee

Admissibility of statements made at examination

(1) Subject to this section, a statement that a person makes at an examination of the person is admissible in evidence against the person in a proceeding.

Self-incrimination exception

(2) The statement is not admissible if the statement is not admissible in evidence against the person under section 52F.

Irrelevant statement exception

(3) The statement is not admissible if it is not relevant to the proceeding and the person objects to the admission of evidence of the statement.

Related statement exception

(4) The statement (the ***subject statement***) is not admissible if:
  (a) it is qualified or explained by some other statement made at the examination; and
  (b) evidence of the other statement is not tendered in the proceeding; and
  (c) the person objects to the admission of evidence of the subject statement.

Legal professional privilege exception

(5) The statement is not admissible if:
  (a) it discloses matter in respect of which the person could claim legal professional privilege in the proceeding if subsection (1) did not apply in relation to the statement; and

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(b) the person objects to the admission of evidence of the statement.

Joint proceedings

(6) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.

Record is prima facie evidence

(7) If a written record of an examination of a person is signed by the person under subsection 61F(2), or is authenticated as mentioned in subsection 290(7) of the *Superannuation Industry (Supervision) Act 1993*, the record is, in a proceeding, prima facie evidence of the statements it records.

Admissibility of other evidence

(8) This Division does not limit or affect the admissibility in the proceedings of other evidence of statements made at the examination.

61J Statements made at an examination—other proceedings

Admissibility of absent witness evidence

(1) If direct evidence by a person (the ***absent witness***) of a matter would be admissible in a proceeding, a statement that the absent witness made at an examination of the absent witness and that tends to establish that matter is admissible in the proceedings as evidence of that matter in accordance with subsection (2).

Requirement for admissibility

(2) The statement is admissible:

(a) if it appears to the court or tribunal that:

(i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness;

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(ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or

(iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or

(b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

61K Weight of evidence under section 61J

(1) If evidence of a statement made by a person at an examination of the person is admitted under section 61J in a proceeding, in deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:

(a) the length of period between the statement and the matter to which the statement relates; and

(b) any reason the person may have had for concealing or misrepresenting a material matter; and

(c) any other circumstances from which it is reasonable to draw an inference about the accuracy of the statement.

(2) If the person is not called as a witness in the proceeding:

(a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and

(b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.

(3) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter

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would not have been admissible if adduced by the cross-examining party.

61L Objection to admission of statements made at examination

Notice of intention to apply to admit evidence and statements

(1) A party (the ***adducing party***) to proceedings may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
  (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination; and
  (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.

Notice to set out etc. statements

(2) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.

Notice of objection

(3) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
  (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
  (b) specifies, in relation to each of those statements, the grounds of objection.

Extension of objection period

(4) The period prescribed by subsection (3) may be extended by the court or tribunal or by agreement between the parties concerned.

Notice etc. to be given to court or tribunal

(5) On receiving a notice given under subsection (3), the adducing party must give to the court or tribunal a copy of:

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(a) the notice under subsection (1) and any writing that subsection (2) requires to accompany that notice; and
(b) the notice under subsection (3).

Action by court or tribunal

(6) If subsection (5) is complied with, the court or tribunal may either:
(a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
(b) defer determination of the objections until the hearing.

Right to object to admission of statement

(7) If a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceedings, unless:
(a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or
(b) the court or tribunal gives the other party leave to object to the statement being so admitted.

61M Copies of, or extracts from, certain books, accounts and documents

(1) A copy of, or an extract from, a book, account or document to which subsection 13(1), 13B(1), 61(2), 61A(1) or 62(1) applies, is admissible in evidence in a proceeding as if the copy was the original book, account or document or the extract were the relevant part of original book, account or document.

(2) A copy of, or an extract from, a book, account or document is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book, account or document, or of the relevant part of the book, account or document.

(3) For the purposes of subsection (2), a person who has compared:

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(a) a copy of a book, account or document with the book, account or document; or

(b) an extract from a book, account or document, with the relevant part of the book, account or document;

may give evidence, either orally or by an affidavit or statutory declaration, that the copy or extract is a true copy of the book, account or document, or relevant part of the book, account or document.

61N Report under section 61

Subject to section 61P, if a copy of a report under subsection 61(1) purports to be certified by APRA as a true copy of such a report, the copy is admissible in a proceeding (other than a criminal proceeding) as prima facie evidence of any facts or matters that the report states an investigator to have found to exist.

61P Exceptions to admissibility of report

(1) If a party to a proceeding tenders a copy of a report as evidence against another party, the copy is not admissible under section 61N in the proceeding as evidence against the other party unless the court or tribunal is satisfied that:

(a) a copy of the report has been given to the other party; and

(b) the other party, and the other party's lawyer, have had a reasonable opportunity to examine that copy and to take its contents into account in preparing the other party's case.

(2) Before or after the copy tendered in evidence is admitted in evidence, the other party may apply to cross-examine, in relation to the report, a specified person who, or 2 or more specified persons each of whom:

(a) was concerned in preparing the report or making a finding about a fact or matter that the report states the investigator to have found to exist; or

(b) whether or not pursuant to a requirement made under this Part, gave information, or produced a book, account or

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document, on the basis of which, or on the basis of matters including which, such a finding was made.

(3) The court or tribunal must grant an application made under subsection (2) unless it considers that, in all the circumstances, it is not appropriate to do so.

(4) The court or tribunal must refuse to admit the copy, or must treat the copy as not having been admitted, if:

(a) the court or tribunal grants the application or applications made under subsection (2); and

(b) one or more persons to whom the application or any of the applications relates:

(i) are unavailable; or

(ii) do not attend to be cross-examined in relation to the report; and

(c) the court or tribunal is of the opinion that to admit the copy under section 61N in the proceeding as evidence against the other party without the other party having the opportunity to cross-examine the other person or persons would unfairly prejudice the other party.

61Q Material otherwise admissible

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

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Division 4—Information

62 Supply of information

(1) APRA may require persons to provide information as follows:

(a) an ADI may be required to give APRA information in respect of the ADI or in respect of any member of a relevant group of bodies corporate of which the ADI is a member;

(b) an authorised NOHC may be required to give APRA information in respect of the NOHC or in respect of any member of a relevant group of bodies corporate of which the NOHC is a member;

(c) a subsidiary of an ADI or an authorised NOHC may be required to give APRA information in respect of the subsidiary or in respect of any member of a relevant group of bodies corporate of which the subsidiary is a member;

(ca) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):

(i) another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c) that is incorporated in Australia may be required to give APRA information in respect of the subsidiary; or

(ii) another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)) that is not incorporated in Australia and carries on business in Australia may be required to give APRA information in respect of its Australian operations;

(d) any other person who carries on any banking business in Australia may be required to give APRA information in connection with the person's banking business.

The requirement to supply information may include a requirement to supply books, accounts or documents.

(1A) A person commits an offence if:

(a) under subsection (1), APRA requires the person to provide information, books, accounts or documents; and

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(b) the person fails to comply with the requirement.

Penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

(1C) If a person fails to comply with a requirement under subsection (1) in circumstances that give rise to the person committing an offence against subsection (1A), the person commits an offence against subsection (1A) in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2) A requirement under subsection (1) must not require information, books, accounts or documents to be given with respect to the affairs of an individual customer of an ADI unless the information, books, accounts or documents are in respect of prudential matters relating to:

(a) the ADI; or

(b) any member of a relevant group of bodies corporate of which the ADI is a member.

(3) To avoid doubt, this section applies to a person that is, or becomes, a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in the same way as this section applies to any other person.

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Division 5—Miscellaneous

62AA Legal professional privilege

(1) This section applies if:

(a) under this Act, a person requires a lawyer;

(i) to give information; or

(ii) to produce a book, account or document; and

(b) either:

(i) giving the information would involve disclosing; or

(ii) the book, account or document contains;

a privileged communication made by, or on behalf of or to the lawyer in his or her capacity as a lawyer.

(2) The lawyer is entitled to refuse to comply with the requirement unless:

(a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under administration or is being wound up—the administrator or the liquidator of the body; or

(b) otherwise—the person to whom, or by or on behalf of whom, the communication was made;

consents to the lawyer complying with the requirement.

(3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:

(a) if the lawyer knows the name of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and

(b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and

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(c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the book, account or document, or the part of the book, account or document, containing the communication.

(4) A person commits an offence if he or she refuses or fails to comply with a requirement under this section.

Penalty: 30 penalty units.

62AB Powers of Court relating to non-compliance with this Act

(1) If APRA or an investigator is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Act, APRA or the investigator may by writing certify the failure to the Federal Court of Australia.

(2) If APRA or the investigator certifies the failure under subsection (2), the Federal Court of Australia may inquire into the case and may order the person to comply with the requirement as specified in the order.

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Part IX—Miscellaneous

62A Notices to APRA

Matters requiring immediate notice

(1) A member of a relevant group of bodies corporate commits an offence if:

(a) it becomes aware that it, another member of the group, or the group as a whole, may not be in a sound financial position; and

(b) it fails to notify APRA in writing of the matter immediately after it becomes aware of the matter.

Penalty: 200 penalty units.

Defence if matter already notified

(1A) Subsection (1) does not apply in relation to a matter if:

(a) the member of the group becomes aware of the matter because it is informed of it by an auditor of the member; and

(b) the auditor informs the member that the auditor has notified APRA in writing of the matter; and

(c) the member has no reason to disbelieve the auditor.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

Matters requiring notice as soon as practicable

(1B) A member of a relevant group of bodies corporate commits an offence if:

(a) it becomes aware that:

(i) it, another member of the group, or the group as a whole, has breached or will breach a prudential standard applying to it, the other member or the group as a whole; or

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(ii) another member of the group has breached or will breach a provision of this Act or the regulations, or a direction under Division 1BA of Part II or section 29, or a condition of any authority granted under this Act to the other member; and

(b) the breach is or will be significant (see subsection (1C)); and

(c) it fails to give APRA a written report about the breach as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach.

Penalty: 200 penalty units.

(1C) For the purposes of paragraph (1B)(b), a breach is ***significant*** if the breach is or will be significant having regard to any one or more of the following factors:

(a) the number or frequency of similar breaches;

(b) the impact the breach has or will have on the member's or other member's ability to conduct its business;

(c) the extent to which the breach indicates that the member's or other member's arrangements to ensure compliance with this Act, the regulations, the prudential standards or a direction or condition might be inadequate;

(d) the actual or potential financial loss arising or that will arise from the breach:

(i) to the depositors of the ADI or any ADI that is a member of the relevant group of bodies corporate; or

(ii) to the member or other member;

(e) any matters prescribed by the regulations for the purposes of this paragraph.

Defence if auditor notifies breach

(1D) Subsection (1B) does not apply in relation to a breach if:

(a) an auditor of the member of the group gives APRA a written report about the breach; and

(b) the report is given before, or within 10 business days after, the member becomes aware of the breach.

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Note: The defendant bears an evidential burden in relation to the matters in subsection (1D). See subsection 13.3(3) of the *Criminal Code*.

(2) If an individual:

(a) commits an offence against subsection (1) or (1B) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1) or (1B);

he or she is punishable, on conviction, by a fine not exceeding 40 penalty units.

(3) A notification or report given to APRA of a matter mentioned in paragraph (1)(a) or (1B)(a) must not include information, books, accounts or documents with respect to the affairs of an individual customer of an ADI unless the information, books, accounts or documents are in respect of prudential matters relating to:

(a) the ADI; or

(b) any member of a relevant group of bodies corporate of which the ADI is a member.

62B Involving APRA in proposed appointment of external administrators of ADIs and NOHCs

(1) At least one week before a person other than APRA:

(a) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(b) makes another kind of application (whether or not to a court) for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(c) appoints an external administrator of an ADI or of an authorised NOHC of an ADI (otherwise than as the result of an application made by another person);

the person must give APRA written notice that the person proposes to make the application or appointment.

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(1A) If there is an approved form for the notice, the person must give the notice in the approved form.

(1B) Subsection (1) does not apply if APRA gives the person written notice, before the person makes the application or appointment, that APRA consents to the person making the application or appointment.

(2) APRA is entitled to be heard on the application.

(3) After receiving the notice, APRA may request the person to provide details of the proposed application.

Offence

(4) A person (other than APRA) commits an offence if:

(a) the person:

(i) makes an application to a court under Chapter 5 of the *Corporations Act 2001* for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(ii) makes another kind of application (whether or not to a court) for the appointment of an external administrator of an ADI or of an authorised NOHC of an ADI; or

(iii) appoints an external administrator of an ADI or of an authorised NOHC of an ADI (otherwise than as the result of an application made by another person); and

(b) APRA did not give the person written notice, before the person made the application or appointment, of APRA's consent to the person making the application or appointment, in accordance with subsection (1B); and

(c) at least one week before making the application or appointment:

(i) if there is an approved form for the purposes of this paragraph—the person did not give APRA notice in the approved form indicating that the person proposed to make the application or appointment; or

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(ii) otherwise—the person did not give APRA written notice indicating that the person proposed to make the application or appointment.

Penalty: 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

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

62C Involving APRA in applications by liquidator

(1) Before making an application to a court in relation to a matter arising under the winding-up of an entity covered by subsection (4), or the proposed winding-up of an entity covered by subsection (4), a liquidator must give APRA written notice that the liquidator proposes to make the application.

(2) The notice must include details of the proposed application.

(3) APRA is entitled to be heard on the application.

(4) This subsection covers the following entities:

(a) an ADI;

(b) an authorised NOHC;

(c) a subsidiary of an ADI or authorised NOHC.

62D Application by APRA for directions

(1) APRA may apply to the Federal Court of Australia for directions regarding any matter arising under:

(a) the winding-up of an entity covered by subsection 62C(4) (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA); or

(b) the proposed winding-up of an entity covered by subsection 62C(4) (whether the winding-up will occur as a result of an application made, or proposed to be made, under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA).

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(2) APRA must give the liquidator written notice that APRA proposes to make the application.

(3) The notice must include details of the proposed application.

(4) The liquidator is entitled to be heard on the application.

62E APRA may request information from liquidator

(1) APRA may request a liquidator of an entity covered by subsection 62C(4) in writing to give APRA, within a reasonable time specified in the request, specified information in writing about:

(a) the winding-up of the entity (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA) and the other affairs of the entity; or

(b) the proposed winding-up of the entity (whether the winding-up will occur as a result of an application made, or proposed to be made, under the *Corporations Act 2001* or by APRA under section 11EA or 16AAA) and the other affairs of the entity.

(2) The liquidator must comply with the request.

Note: Action may be taken under the *Corporations Act 2001* against a liquidator who does not comply with such a request.

63 Restructuring of ADIs

(1AA) If consent has been given under this section to an arrangement, agreement or reconstruction, the Treasurer must arrange for notice of the consent to be published in the *Gazette* as soon as practicable.

(1) An ADI, other than a foreign ADI, commits an offence if:

(a) the ADI:

(i) enters into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or

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(ii) effects a reconstruction of the ADI; and

(b) the Treasurer did not give prior consent in writing to the ADI entering into the arrangement or agreement or effecting the reconstruction.

Penalty: 200 penalty units.

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

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

(1A) An offence against subsection (1) is an indictable offence.

(2) Any such arrangement, agreement or reconstruction, and any such sale or disposal in pursuance of any such arrangement or agreement, entered into without the prior consent of the Treasurer is void and of no effect.

(3) The consent of the Treasurer under subsection (1) shall not be unreasonably withheld.

(3A) In making a decision whether to consent to an arrangement, agreement or reconstruction, the Treasurer must take the national interest into account.

(4) A foreign ADI commits an offence if:

(a) there is a proposal that involves the ADI:

(i) entering into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or

(ii) effecting a reconstruction of the ADI; and

(b) the ADI does not give the Treasurer reasonable notice, in writing, of the proposal.

Penalty: 200 penalty units.

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

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

(4A) An offence against subsection (4) is an indictable offence.

(5) The Treasurer may, in writing, delegate all or any of his or her powers under this section and section 64 to:

(a) APRA, an APRA member or an APRA staff member; or

(aa) ASIC, a member of ASIC or a staff member (as defined in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*) only in the case of a demutualisation of an ADI; or

(b) an officer of the Department.

(6) A reference in this section to a reconstruction of an ADI includes a reference to a demutualisation of an ADI.

(7) The regulations may define the meaning of ***demutualisation*** for the purposes of this section. If the regulations do so, ***demutualisation*** has, in this section, the meaning given by the regulations.

(8) The Treasurer may, by legislative instrument, determine guidelines as to acceptable standards of disclosure of information by an ADI (other than a foreign ADI) to its members in respect of a proposed demutualisation of the ADI.

(9) The Treasurer must consider whether an ADI has complied with the guidelines (if any) in deciding whether to give a consent, for the purposes of paragraph (1)(b), to the ADI effecting a demutualisation.

(10) In making a determination under subsection (8), the Treasurer must consult with APRA and ASIC.

(12) Subsections (6) to (11) do not limit the generality of the rest of this section. In particular, those subsections do not limit the matters that the Treasurer may take into account in deciding whether to give a consent, for the purposes of paragraph (1)(b), to an ADI effecting a demutualisation.

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64 Conditions on consent to restructure an ADI

(1) The Treasurer's consent under subsection 63(1) is subject to the conditions (if any) imposed by the Treasurer on the consent.

(2) The Treasurer may, by written notice given to the person who has been given the consent:

(a) impose conditions, or further conditions, on the consent; or

(b) revoke or vary any condition imposed on the consent; or

(c) revoke the consent if the Treasurer is satisfied that there has been a contravention of a condition to which the consent is subject.

(2A) The Treasurer must arrange for a copy of a notice that has been given under subsection (2) to be published in the *Gazette* as soon as practicable.

(3) The Treasurer's powers under subsection (2) may be exercised on the Treasurer's own initiative. The Treasurer's powers under paragraph (2)(a) or (b) may be exercised on application made to the Treasurer by the person who has been given the consent.

65 ADIs etc. may be directed to comply with Act

(1) Where an ADI, an authorised NOHC or a subsidiary of an ADI or of an authorised NOHC is convicted of an offence against this Act or the regulations, a Full Court of the Federal Court of Australia may, upon the application of the Attorney-General by motion, direct compliance by the ADI, NOHC or subsidiary, within a period specified by the Court, with the provisions of this Act or the regulations with which the ADI, NOHC or subsidiary has failed to comply.

(2) In default of compliance by the ADI, NOHC or subsidiary within the specified period with a direction given in pursuance of subsection (1), the Federal Court of Australia may authorize APRA to assume control of, and to carry on, the business of the ADI, NOHC or subsidiary.

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(3) The provisions of Subdivision B of Division 2 of Part II have effect, so far as they are applicable, as if they also extended to APRA being in control of the business of the ADI, NOHC or subsidiary under subsection (2) of this section, and as if they covered authorised NOHCs and such subsidiaries in the same way as they cover ADIs.

(4) Where APRA has assumed control of the business of the ADI, NOHC or subsidiary under subsection (2), APRA shall remain in control of, and shall continue to carry on, the business of the ADI, NOHC or subsidiary until such time as the Federal Court of Australia is satisfied that it is no longer necessary for APRA to remain in control of the business of the ADI, NOHC or subsidiary and authorizes APRA to cease to control the business of the ADI, NOHC or subsidiary.

65A Injunctions

Restraining injunctions

(1) If a person has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:

(a) a contravention of:

(i) a provision of this Act, the regulations, the prudential standards or the non-ADI lender rules; or

(ii) a condition imposed or specified under this Act; or

(iii) a direction by APRA under this Act; or

(b) attempting to contravene the provision, condition or direction; or

(c) aiding, abetting, counselling or procuring a person to contravene the provision, condition or direction; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the provision, condition or direction; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the provision, condition or direction; or

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(f) conspiring with others to contravene the provision, condition or direction;

the Federal Court of Australia may grant an injunction in accordance with subsection (2).

(2) The injunction:

(a) may restrain the person from engaging in the conduct; and

(b) may also require that person to do a particular act or thing, if the Court thinks it desirable to do so.

The Court may grant the injunction on such terms as it thinks appropriate.

(3) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Performance injunctions

(4) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required:

(a) by a provision of this Act, the regulations, the prudential standards or the non-ADI lender rules to do; or

(b) by a condition imposed or specified under this Act to do; or

(c) by a direction by APRA under this Act to do;

the Court may grant an injunction requiring the person to do that act or thing. It may grant the injunction on such terms as the Court thinks appropriate.

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(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

Who may apply for an injunction

(6) The Court may only grant an injunction on the application of:

(a) APRA—in all cases; or

(b) the Treasurer—in the case of a contravention of a condition imposed under section 64; or

(c) ASIC or a member of the ADI—in the case of a contravention of a condition imposed under section 64 that has been imposed in relation to a demutualisation of an ADI.

In this subsection, ***demutualisation*** has the same meaning as in section 63.

Consent injunctions

(7) If an application for an injunction under subsection (1) or (4) has been made, the Court may, if the Court thinks it appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that the subsection applies.

Interim injunctions

(8) The Court may grant an interim injunction pending determination of an application under subsection (1).

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Variation or discharge of injunctions

(9) The Court may discharge or vary an injunction granted under this section.

Damages undertakings

(10) APRA, ASIC and the Treasurer cannot be required, as a condition of granting an interim injunction, to give an undertaking as to damages.

Damages orders

(11) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

(12) The powers conferred on the Court by this section are in addition to any other of its powers, and do not derogate from its other powers.

65B Civil penalties

Schedule 2 (Civil penalties) has effect.

66 Restriction on use of certain words and expressions

(1) A person commits an offence if:

(a) the person carries on a financial business, whether or not in Australia; and

(b) the person assumes or uses, in Australia, a restricted word or expression in relation to that financial business; and

(c) neither subsection (1AB) nor subsection (1AC) allows that assumption or use of that word or expression; and

(d) APRA did not consent to that assumption or use of that word or expression; and

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(e) there is no determination in force under section 11 that this subsection does not apply to the person.

Penalty: 50 penalty units.

Note 1: For the meanings of ***restricted word or expression***, ***assume or use*** and ***financial business***, see subsection (4).

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

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

(1AA) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence against subsection (1), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(1AB) It is not an offence against subsection (1) for the Reserve Bank to assume or use the words ***bank***, ***banker*** or ***banking*** in relation to its financial business.

(1AC) It is not an offence against subsection (1) for an ADI to assume or use the words ***bank***, ***banker*** or ***banking*** in relation to the ADI's financial business.

Note: See also section 66AA, which deals with the use of the word ***bank*** by ADIs.

(1B) A consent may be expressed to apply to a particular person or to persons included in a class of persons.

(2) APRA may, at any time:

(a) impose conditions, or additional conditions, on a consent; or

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(b) vary or revoke conditions imposed on a consent; or

(c) revoke a consent.

(2A) The form of the granting of a consent, or the taking of action under subsection (2) in relation to a consent, is to be as follows:

(a) if the consent applies to a particular person—notice in writing served on the person;

(b) if the consent applies to a class of persons—notice in writing published in the *Gazette*.

(2B) If APRA:

(a) grants a consent; or

(b) takes action under subsection (2) in relation to a consent;

APRA must give ASIC notice of the granting of the consent or the taking of the action.

(3) A person commits an offence if:

(a) the person has been given a consent under this section; and

(b) the person contravenes a condition to which the consent is subject; and

(c) there is no determination in force under section 11 that this subsection does not apply to the person.

Penalty: 50 penalty units.

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

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

(3A) If a person does or fails to do an act in circumstances that give rise to the person committing an offence against subsection (3), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(4) In this section:

(a) a reference to a restricted word or expression is a reference to:

(i) the word ***bank***, ***banker*** or ***banking***; or

(ii) the expression ***building society***, ***credit union*** or ***credit society***; or

(iii) any other word or expression specified in a determination in force under subsection (5); or

(iv) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and

(b) a reference to a word or expression being assumed or used includes a reference to the word or expression being assumed or used:

(i) as part of another word or expression; or

(ii) in combination with other words, letters or other symbols; and

(c) a reference to a financial business is a reference to a business that:

(i) consists of, or includes, the provision of financial services; or

(ii) relates, in whole or in part, to the provision of financial services.

(5) APRA may, by legislative instrument, determine that a specified word or expression is to be a restricted word or expression for the purposes of this section.

66AA Use of the word *bank* by ADIs

(1) A person commits an offence if:

(a) the person is an ADI; and

(b) the ADI carries on a financial business, whether or not in Australia; and

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(c) the person assumes or uses, in Australia, the word ***bank*** in relation to that financial business; and

(d) a determination under subsection (3) is in force that specifies that this section applies to the ADI.

Penalty: 50 penalty units.

Note 1: For the meanings of ***assume or use*** and ***financial business***, see subsection (10).

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

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

(2) If a person assumes or uses the word ***bank*** in circumstances that give rise to the person committing an offence against subsection (1), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(3) APRA may, in writing, determine that this section applies to an ADI while the determination is in force.

(4) A determination under subsection (3):

(a) may be expressed to apply:

(i) to a particular ADI; or

(ii) to a class, or classes, of ADIs; and

(b) may specify the period during which the determination is in force.

A period specified under paragraph (b) must not begin before the day on which the determination is made.

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(5) If APRA makes a determination under subsection (3) that applies to a particular ADI, APRA must also give the ADI written notice of the determination.

(6) APRA may, in writing, vary or revoke a determination made under subsection (3).

(7) The following instruments are not legislative instruments:
  (a) a determination under subsection (3) that applies to a particular ADI;
  (b) an instrument made under subsection (6) varying or revoking a determination that applies to a particular ADI.

(8) Otherwise, a determination under subsection (3) or an instrument under subsection (6) is a legislative instrument.

(9) Part VI applies to the following decisions under this section:
  (a) a decision to determine that this section applies to a particular ADI;
  (b) a decision to vary a determination that applies to a particular ADI.

(10) In this section:
  (a) a reference to the word ***bank*** being assumed or used includes a reference to the word being assumed or used:
    (i) as part of another word or expression; or
    (ii) in combination with other words, letters or other symbols; and
  (b) a reference to a financial business is a reference to a business that:
    (i) consists of, or includes, the provision of financial services; or
    (ii) relates, in whole or in part, to the provision of financial services.

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66A Restriction on use of expressions *authorised deposit-taking institution* and *ADI*

(1) A person, other than an ADI, commits an offence if:

(a) the person carries on a financial business, whether or not in Australia; and

(b) the person assumes or uses, in Australia, the expression ***authorised deposit-taking institution***, or ***ADI***, in relation to that financial business; and

(c) there is no determination in force under section 11 that this subsection does not apply to the person.

Penalty: 50 penalty units.

Note 1: For the meanings of ***assume or use*** and ***financial business***, see subsection (2).

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

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

(1A) If a person assumes or uses an expression in circumstances that give rise to the person committing an offence against subsection (1), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2) In this section:

(a) a reference to an expression being assumed or used includes a reference to the expression being assumed or used:

(i) as part of another expression; or

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(ii) in combination with other words, letters or other symbols; and

(b) a reference to a financial business is a reference to a business that:

(i) consists of, or includes, the provision of financial services; or

(ii) relates, in whole or in part, to the provision of financial services.

(3) However, this section does not prohibit the use of the letters ADI as part of another word.

Note: For example, the letters ***adi*** appear in the word ***traditional***. Use of the word ***traditional*** is not prohibited by this section.

67 Restriction on establishment or maintenance of representative offices of overseas banks

(1) A person, other than an ADI, commits an offence if:

(a) the person carries on banking business in a foreign country but does not carry on banking business in Australia; and

(b) the person establishes or maintains an office in Australia wholly or partly in connection with the carrying on of that banking business in that foreign country; and

(c) APRA did not consent, in writing, to the establishment or maintenance of that office; and

(d) there is no determination in force under section 11 that this subsection does not apply to the person.

Penalty: 50 penalty units.

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

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

(1A) If a person establishes or maintains an office in circumstances that give rise to the person committing an offence against

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subsection (1), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

(2) APRA may, at any time, by notice in writing served on the person concerned:

(a) impose conditions, or additional conditions, on a consent;

(b) vary or revoke conditions imposed on a consent; or

(c) revoke a consent.

(3) A person commits an offence if:

(a) the person has been given a consent under this section; and

(b) the person contravenes a condition to which the consent is subject; and

(c) there is no determination in force under section 11 that this subsection does not apply to the person.

Penalty: 50 penalty units.

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

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

(4) If a person does or fails to do an Act in circumstances that give rise to the person committing an offence against subsection (3), the person commits an offence against that subsection in respect of:

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

(b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue

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(including the day of conviction for any such offence or any later day).

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

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

(a) a decision to refuse consent;

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

(c) a decision to vary conditions imposed on a consent;

(d) a decision to revoke a consent.

68 Bank holidays

(1) The Treasurer may, by notice published in the *Gazette*, declare a day specified in the notice to be a bank holiday.

(2) An ADI is not, on a day so declared to be a bank holiday, compellable to make a payment or to do any other act that the ADI would not be compellable to make or do on a Sunday and the obligation to make the payment or to do the act shall be deemed to be an obligation to make the payment or to do the act on the next day which is not a Sunday, a bank holiday or a public holiday.

(3) This section does not affect the operation of any law of a State or Territory relating to bank holidays or public holidays.

(4) In this section:

ADI includes the Reserve Bank.

69 Unclaimed moneys

(1) For the purposes of this section, unclaimed moneys means all principal, interest, dividends, bonuses, profits and sums of money legally payable by an ADI but in respect of which the time within which proceedings may be taken for the recovery thereof has expired, and includes moneys to the credit of an account that has

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not been operated on either by deposit or withdrawal for a period of not less than:

(a) 7 years; or

(b) if a greater number of years is specified in the regulations—that greater number of years;

beginning:

(c) at the most recent time when the account was operated on either by deposit or withdrawal; or

(d) if another time is ascertained in accordance with the regulations—at that other time.

(1AA) Subsection (1) has effect subject to subsections (1A), (1B), (1C), (1D) and (1E).

(1A) However, the following are not unclaimed moneys:

(a) money in an account that is denominated in a currency other than Australian currency;

(b) money in a children's account;

(c) farm management deposits (within the meaning of the *Income Tax Assessment Act 1997*).

(1B) However, moneys to the credit of an account specified in the regulations are ***unclaimed moneys*** if, and only if, the conditions specified in the regulations are satisfied.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(1C) However, deposits specified in the regulations are ***unclaimed moneys*** if, and only if, the conditions specified in the regulations are satisfied.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(1D) Subsection (1) does not apply to an account specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

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(1E) Subsection (1) does not apply to a deposit specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) For the purposes of this section, the debiting of a fee to an account shall be deemed not to be a withdrawal and the crediting to an account of interest payable by an ADI on that account shall be deemed not to be a deposit.

(3) An ADI must, within 3 months after the 31 December in each year, deliver to the Treasurer a statement, complying with subsection (4) and any regulations under subsection (3A), of all sums of unclaimed moneys of not less than $100 (or such other amount as is prescribed) as at the end of the year, other than unclaimed moneys:

(a) held in RSAs (within the meaning of the *Retirement Savings Accounts Act 1997*); or

(c) held in accounts with the ADI that are operated on either by deposit or withdrawal between the end of the year and the day the statement is delivered to the Treasurer; or

(d) held in an account with the ADI in respect of which the holder of the account, or an agent of the holder, has notified the ADI, between the end of the year and the day the statement is delivered to the Treasurer, that the holder wishes to treat the account as active.

(3AA) The ADI commits an offence if:

(a) it does not give the Treasurer a statement as required by subsection (3); and

(b) there is no determination in force under section 11 that this subsection does not apply to the ADI.

Penalty: 50 penalty units.

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

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

(3A) The regulations may require the statement to be delivered in a specified form in a specified kind of disk, tape, film or other medium.

(4) The statement shall set out:

(a) the name, and the last-known address, of each shareholder, depositor or creditor; and

(b) the amount required to be paid under subsection (5); and

(c) in the case of moneys to the credit of an account—the office or branch of the ADI at which the account was kept.

(5) The ADI must, at the time of the delivery of the statement, pay the Commonwealth an amount equal to the total of all sums of unclaimed moneys covered by subsection (3) in relation to the ADI, as at the end of the year.

(5A) The ADI commits an offence if:

(a) it does not pay, at the time of the delivery of the statement, the amount required by subsection (5); and

(b) there is no determination in force under section 11 that this subsection does not apply to the ADI.

Penalty: 50 penalty units.

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

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

(6) Subject to subsection (7), an ADI is, upon payment to the Commonwealth of an amount as required by this section, discharged from further liability in respect of that amount.

(7) Where unclaimed moneys have been paid to the Commonwealth under this section and the Treasurer or an authorized officer is satisfied that, but for subsection (6), a person would be paid those

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unclaimed moneys by the ADI by which they were paid to the Commonwealth (or, if that ADI is no longer carrying on banking business, by an ADI to which the business of the first-mentioned ADI has been sold or disposed of), those unclaimed moneys shall be paid to that ADI and the ADI shall thereupon pay those moneys to that person.

(7AA) If unclaimed moneys are paid to an ADI under subsection (7) on or after 1 July 2013:

(a) the Commonwealth must also pay to the ADI the amount of interest (if any) worked out in accordance with the regulations; and

(b) the ADI must pay that amount to the person.

(7AB) Regulations made for the purposes of paragraph (7AA)(a) may involve different rates of interest for different periods over which the interest accrues. For this purpose, ***rate*** includes a nil rate.

(7AC) Interest under paragraph (7AA)(a) does not accrue in relation to a period before 1 July 2013.

(7A) The ADI commits an offence if:

(a) it does not pay moneys to a person as required by subsection (7) or (7AA); and

(b) there is no determination in force under section 11 that this subsection does not apply to the ADI.

Penalty: 50 penalty units.

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

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

(7B) If an ADI satisfies the Treasurer that an amount paid by the ADI under subsection (5) exceeds the amount that should have been paid under that subsection, the Treasurer must refund the amount of the excess.

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(8) The Consolidated Revenue Fund is appropriated for the purposes of, and to the extent necessary to give effect to, subsections (7), (7AA) and (7B).

(9) The Treasurer shall cause particulars of every sum shown in a statement delivered under this section to be made available to the public (whether or not on the payment of a fee) in such manner as the Treasurer determines.

(11) The Treasurer or an ADI may apply to the Federal Court of Australia for a declaration whether any moneys are or are not unclaimed moneys within the meaning of this section and the Federal Court of Australia may make a declaration accordingly.

(11A) It is the intention of the Parliament that a law of a State or Territory has no effect insofar as it requires an ADI to:

(a) pay unclaimed moneys to, or to an authority of, a State or Territory; or

(b) lodge a return relating to unclaimed moneys with, or with an authority of, a State or Territory.

(11B) The Treasurer may, by instrument in writing, delegate any of his or her functions or powers under this section to:

(a) a corporate Commonwealth entity for which the Treasurer is the responsible Minister; or

(b) a member, or staff member, of such an entity.

(11C) The reference to the Treasurer in paragraph (3AA)(a) is to be read as including a reference to the authority or person to whom the Treasurer has delegated his or her function under subsection (3).

(12) In this section:

authorized officer, means the Secretary of the Department of the Treasury or an officer of that Department authorized by the Secretary to act under this section.

children's account means an account:

(a) whose terms and conditions require it to be held by, or for the benefit of, a person under 18; and

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(b) that is opened:

(i) in the name of a person who is under 18 at the time; or

(ii) by the trustee of a trust for the benefit of a person who is under 18 at the time.

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

responsible Minister has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

69A Disclosure of information relating to unclaimed moneys

(1) This section applies if an amount of unclaimed moneys is specified in a statement delivered to the Treasurer under subsection 69(3).

(2) A person must not disclose:

(a) particulars of the amount of unclaimed moneys; or

(b) particulars of the person to whom the money is payable (the ***payee***);

to a person other than the payee or an agent of the payee.

Note: This subsection is specified in Schedule 3 to the *Freedom of Information Act 1982* with the effect that a document containing particulars protected from disclosure by this subsection is an exempt document under that Act.

(3) Subsection (2) does not apply if the disclosure is authorised by section 69.

69B Powers about money of depositors who have died

(1) If a depositor of an ADI dies, the ADI may apply an amount not exceeding $15,000 held by the ADI that was deposited or paid up on a withdrawable share by the deceased person:

(a) in payment of the deceased person's funeral expenses or debts; or

(b) in payment to the executor of the deceased person's will; or

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(c) in payment to anyone else who is, in the ADI's opinion, entitled to the amount, having regard to the laws of probate and accepted practice for the administration of deceased estates.

The amount may be applied without production of probate, of the will or letters of administration of the estate.

(2) No action lies against an ADI for acting, or failing to act, under subsection (1).

69BA Institution of offence proceedings no bar to winding up

The institution of proceedings against a body corporate for an offence against this Act or the *Financial Sector (Collection of Data) Act 2001* does not prevent the institution of proceedings for the winding-up of the body corporate on a ground that relates to the matter that constitutes the offence.

69C Conduct of directors, employees and agents

(3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

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(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Note: For provisions relating to proof of offences by bodies corporate, see Part 2.5 of the *Criminal Code*.

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

Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

69E Compensation for acquisition of property

(1) If:

(a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

(b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay to the person compensation of a reasonable amount as agreed on between the Commonwealth and the person. If the Commonwealth and the person do not agree on

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the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

(2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

(3) In this section:

acquisition of property and ***just terms*** have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

69F Severability

Act also has effect as provided in this section

(1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

References to a NOHC of an ADI

(2) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(b) the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

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References to a subsidiary of an ADI

(3) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(c) this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

References to a subsidiary of a foreign corporation

(3A) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a subsidiary of a foreign corporation were expressly limited to a reference to a subsidiary of a foreign corporation, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) the Act has effect as if a reference to a subsidiary of a foreign corporation were expressly limited to a reference to a subsidiary of a foreign corporation, being a subsidiary that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(c) the Act has effect as if a reference to a subsidiary of a foreign corporation were expressly limited to a reference to a subsidiary of a foreign corporation, being a subsidiary that

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carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

References to a body corporate that is a member of a relevant group of bodies corporate

(3B) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a body corporate that is a member of a relevant group of bodies corporate were expressly limited to a reference to a body corporate, being a body corporate that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) the Act has effect as if a reference to a body corporate that is a member of a relevant group of bodies corporate were expressly limited to a reference to a body corporate, being a body corporate that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(c) the Act has effect as if a reference to a body corporate that is a member of a relevant group of bodies corporate were expressly limited to a reference to a body corporate, being a body corporate that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***;

References to a subsidiary of an authorised NOHC

(4) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI

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that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(c) this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

References to a holding company of an ADI

(4A) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:

(a) the Act has effect as if a reference to a holding company of an ADI were expressly limited to a reference to a holding company of an ADI, being a holding company that is a corporation to which paragraph 51(xx) of the Constitution applies;

(b) the Act has effect as if a reference to a holding company of an ADI were expressly limited to a reference to a holding company of an ADI, being a holding company that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;

(c) the Act has effect as if a reference to a holding company of an ADI were expressly limited to a reference to a holding company of an ADI, being a holding company that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

Interpretation

(5) In this section:

banking business definition means the definition of banking business in subsection 5(1).

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70A Protection from liability—general

(1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.

(2) To avoid doubt, any information provided by a person to APRA under section 16C is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.

(3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

70AA Protection from liability—directions and secrecy

(1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:

(a) the person does the thing, or omits to do the thing, for the purpose of any of the following:

(i) complying with a direction under this Act given by APRA to a body corporate;

(ii) complying with section 11CI (secrecy) in relation to a direction under this Act given by APRA to a body corporate; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is any of the following:

(i) an officer or senior manager of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

(ii) an employee or agent of the body corporate, or of a member of a relevant group of bodies corporate of which the body corporate is also a member;

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(iii) the body corporate or a member of a relevant group of bodies corporate of which the body corporate is also a member.

(2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

(3) In this section:

employee of a body corporate includes a person engaged to provide advice or services to the body corporate.

officer has the meaning given by section 9 of the *Corporations Act 2001*.

70AB Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

(a) section 14C;
(b) section 52A;
(c) section 52B;
(d) section 70A;
(e) section 70AA;
(f) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

70B Act has effect despite the Corporations Act

This Act has effect despite any provision of the *Corporations Act 2001*.

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70C Authorising contracts etc. for protecting depositors' interests and financial system stability

Authorising the making of contracts and arrangements

(1) With the Finance Minister's written approval, the Minister may authorise the making of contracts and arrangements by the Commonwealth for the purposes of:

(a) protecting the interests of depositors of ADIs in ways that are consistent with the continued development of a viable, competitive and innovative banking industry; or

(b) protecting financial system stability in Australia.

Specifying amounts to be credited to special account

(2) The authorisation must specify the amount (if any) to be credited to the Financial System Stability Special Account, so that the total described in subsection (3) does not exceed by more than $20,000,000,000 the total described in subsection (4).

Note: This ensures that the balance of the special account directly attributable to authorisations under this section cannot exceed $20,000,000,000 at any time.

(3) The total described in this subsection is the total of all the amounts specified under subsection (2) in authorisations made under this section (taking account of any amendments of those authorisations).

(4) The total described in this subsection is the total of all the amounts taken under subsection 80(3) of the *Public Governance, Performance and Accountability Act 2013* to be debited from the Financial System Stability Special Account for expenditure for the purpose described in paragraph 70G(a) of this Act.

Note: That purpose is making a payment under a contract or arrangement whose making was authorised under this section.

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Amending specification of amount to be credited

(5) The Minister may amend an authorisation made under this section, but only to change the specification of an amount under subsection (2), within the limit set out in that subsection.

Authorisation cannot be revoked

(6) The Minister cannot revoke an authorisation made under this section.

Authorisation or amendment not disallowable

(7) An authorisation or amendment made under this section is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the authorisation or amendment.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the authorisation or amendment: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

When authorisation or amendment commences

(8) Despite subsection 12(1) of the *Legislation Act 2003*, the authorisation or amendment commences from the time it is made.

(9) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the authorisation or amendment.

70D Borrowing funds for payments under authorised contracts etc.

(1) Subsection (2) applies if the Minister has determined under section 70C an amount to be credited to the Financial System Stability Special Account.

(2) On behalf of the Commonwealth, the Minister may, with the Finance Minister's written approval, borrow money for not more than 24 months on terms and conditions specified in, or consistent

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with, the approval, so that the total unrepaid borrowing under this section is not more than $20,000,000,000 at any time.

(3) The Finance Minister may delegate, in writing, to an SES employee or acting SES employee in the Department that is administered by the Finance Minister, the Finance Minister's power of approval for the purposes of subsection (2).

(4) In this section:

borrow includes raise money or obtain credit, whether by dealing in securities or otherwise, but does not include obtain credit in a transaction forming part of the day-to-day operations of the Commonwealth.

70E Financial System Stability Special Account

(1) The Financial System Stability Special Account is established by this section.

(2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

70F Credits to the Account

(1) There must be credited to the Account amounts equal to the following:

(a) the amount specified in an authorisation under any of the following sections as an amount to be credited to the Account:

(i) section 70C;

(ii) section 131A of the *Insurance Act 1973*;

(iii) section 251A of the *Life Insurance Act 1995*;

(b) an amount borrowed under any of the following sections:

(i) section 70D;

(ii) section 131B of the *Insurance Act 1973*;

(iii) section 251B of the *Life Insurance Act 1995*.

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

(2) To avoid doubt, if:

(a) the amount specified in an authorisation described in paragraph (1)(a) is credited to the Account; and

(b) the authorisation is later amended so as to increase the amount;

only the increase, and not the whole of the increased amount, is to be credited to the Account as a result of the amendment.

Note: Crediting the whole of the increased amount to the Account would lead to double-counting of the amount specified in the authorisation before the amendment.

70G Purposes of the Account

The purposes of the Account are as follows:

(a) making a payment under a contract or arrangement whose making was authorised under section 70C;

(b) making a payment under a contract or arrangement whose making was authorised under section 131A of the *Insurance Act 1973*;

(c) making a payment under a contract or arrangement whose making was authorised under section 251A of the *Life Insurance Act 1995*;

(d) repaying a borrowing, and paying interest on a borrowing, made under any of the following sections:

(i) section 70D;

(ii) section 131B of the *Insurance Act 1973*;

(iii) section 251B of the *Life Insurance Act 1995*;

(e) meeting the expenses of administering the Account.

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

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70H Debits to reflect reduced amounts specified in authorisations

If an authorisation under any of the following sections specifying an amount to be credited to the Account is amended so as to reduce the amount, an amount equal to the reduction must be debited from the Account:

(a) section 70C;

(b) section 131A of the *Insurance Act 1973*;

(c) section 251A of the *Life Insurance Act 1995*.

71 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing penalties for offences against the regulations which, except as otherwise provided by this Act, shall not exceed:

(a) if the offender is a natural person—a fine of 50 penalty units; or

(b) if the offender is a body corporate—a fine of 250 penalty units.

(2) Without limiting the generality of subsection (1), the regulations may confer on APRA functions relating to the supervision of ADIs and NOHCs in relation to prudential matters.

(3) The Governor-General shall not make regulations for or in relation to requiring ADIs or NOHCs to observe requirements in relation to prudential matters except in accordance with the recommendation of the Treasurer.

(4) Before making a recommendation for the purposes of subsection (3), the Treasurer shall consult APRA.

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The Schedules

Schedule 1—State and Territory laws relating to ADI mergers

Note: See section 38A.

The Commercial Bank of Australia Limited (Merger) Act, 1982 of New South Wales

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of New South Wales

The Commercial Bank of Australia Limited (Merger) Act 1982 of Victoria

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Victoria

Commercial Bank of Australia Limited Merger Act 1982 of Queensland

Commercial Banking Company of Sydney Limited Merger Act 1982 of Queensland

The Commercial Bank of Australia Limited (Merger) Act, 1982 of South Australia

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of South Australia

The Commercial Bank of Australia Limited (Merger) Act 1982 of Western Australia

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Western Australia

Commercial Bank of Australia Limited (Merger) Act 1982 of Tasmania

Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Tasmania

The Commercial Bank of Australia Limited (Merger) Act 1982 of the Northern Territory

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of the Northern Territory

The Commercial Bank of Australia Limited (Merger) Ordinance 1982 of the Australian Capital Territory

The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982 of the Australian Capital Territory

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Schedule 2—Civil penalties

Note: See section 65B.

Part 1—Contravention of a civil penalty provision

1 Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

(1) Within 6 years of a person contravening a civil penalty provision, APRA may apply, on behalf of the Commonwealth, to the Federal Court of Australia for an order that the person pay the Commonwealth a pecuniary penalty.

Court may order person to pay pecuniary penalty

(2) If the Court is satisfied that the person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

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Conduct contravening more than one civil penalty provision

(4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this clause in respect of the same conduct.

2 Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

3 Persons involved in contravening civil penalty provision

(1) A person must not:
  (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  (d) conspire to contravene a civil penalty provision.

(2) This Schedule applies to a person who contravenes subclause (1) in relation to a civil penalty provision as if the person had contravened the provision.

(3) However, if an individual contravenes subclause (1) in relation to a civil penalty provision that can be contravened only by a body corporate, subclause 1(2) applies as if the reference in that subclause to the relevant amount specified for the provision were a reference to $^{1}/_{5}$ of the relevant amount specified for the provision.

4 Recovery of a pecuniary penalty

If the Federal Court of Australia orders a person to pay a pecuniary penalty:
  (a) the penalty is payable to the Commonwealth; and

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(b) the Commonwealth may enforce the order as if it were a judgment of the Court.

5 Civil evidence and procedure rules for pecuniary penalty orders

The Federal Court of Australia must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty order.

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Part 2—Civil penalty proceedings and criminal proceedings

6 Civil proceedings after criminal proceedings

The Federal Court of Australia must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

7 Criminal proceedings during civil proceedings

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

8 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

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9 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Banking Act 1959	6, 1959	23 Apr 1959	14 Jan 1960 (gaz 1960, p. 47)	
Banking Act 1965	127, 1965	18 Dec 1965	14 Feb 1966	—
Statute Law Revision (Decimal Currency) Act 1966	93, 1966	29 Oct 1966	1 Dec 1966	—
Banking Act 1967	84, 1967	8 Nov 1967	8 Nov 1967	—
Banking Act 1973	116, 1973	26 Oct 1973	s 1–3, 5, 6 and 11: 26 Oct 1973 Remainder: 1 Nov 1973	—
Banking Act (No. 2) 1973	193, 1973	17 Dec 1973	17 Dec 1973	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	s 9(1) and 10
as amended by				
Statute Law Revision Act 1974	20, 1974	25 July 1974	31 Dec 1973	—
Banking Act 1974	132, 1974	9 Dec 1974	23 Dec 1974 (gaz 1974, No. 103D)	s 4–6
Australian Rural Bank Act 1977	156, 1977	10 Nov 1977	Pt III (s 12–19): 22 Sept 1978 (gaz 1978, No. S185) Remainder: 10 Nov 1977	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Primary Industry Bank Amendment Act 1978	78, 1978	22 June 1978	22 June 1978	—
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Pt II–XVII (s 3–123): 15 May 1979 (gaz 1979, No. S86) Remainder: 28 Mar 1979	s 124
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	Pt XII (s 31–33): 1 Oct 1982 (gaz 1982, No. S202) (s 2(4))	—
Commonwealth Banks Amendment Act 1984	76, 1984	25 June 1984	29 June 1984 (gaz 1984, No. S241)	—
Banking Legislation Amendment Act 1986	166, 1986	18 Dec 1986	s 9–11 and Part III (s 13–17): 30 Nov 1988 (gaz 1988, No. S362) Remainder: 15 Jan 1987	—
Primary Industry Bank Repeal Act 1987	105, 1987	10 Nov 1987	10 Nov 1987	—
Banking Legislation Amendment Act 1989	129, 1989	7 Nov 1989	s 1–3, 26, 29–33, 35, 38 and 40: 7 Nov 1989 s 23(1): 4 May 1989 s 39: 23 Jan 1988 Remainder: 28 Dec 1989 (gaz 1989, No. S383)	s 5(2), 20(2)–(4), 27 and 28

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Commonwealth Banks Restructuring Act 1990	118, 1990	28 Dec 1990	s 62: 31 Dec 1990 (gaz 1990, No. S346 and VIC gaz No. S73, 31.12.90) (s 2(3))	s 5
Bank Integration Act 1991	210, 1991	24 Dec 1991	s 32: 1 Jan 1993 (gaz 1992, No. GN36, p. 2415) (s 32) Remainder: 24 Dec 1991	—
Banking Legislation Amendment Act 1992	193, 1992	21 Dec 1992	s 4(2), 5(1), 16, 17, 19–21 and 35: 5 Feb 1993 (s 2(2), (6) and gaz 1993, No. GN4, p. 359) s 4(3) and 5(2): 1 July 1994 (gaz 1994, No. GN25) Remainder: 21 Dec 1992	s 15–18
Banking (State Bank of South Australia and Other Matters) Act 1994	69, 1994	9 June 1994	s 3, 4, 5(1) and 6(1): 1 July 1994 (gaz 1994, No. GN25) s 5(2) and 6(2): 22 June 1995 (gaz 1995, No. GN24) Remainder: 9 June 1994	s 3, 58 and 61
Banking (Queensland Industry Development Corporation) Amendment Act 1995	99, 1995	15 Sept 1995	15 Sept 1995	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Commonwealth Bank Sale Act 1995	161, 1995	16 Dec 1995	Sch (items 3–6): 19 July 1996 (s 2(2))	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1992	Sch 2 (items 20, 21): 7 Nov 1989 (s 2(2))	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	2 June 1997 (s 2 and gaz 1997, No. S202)	—
Financial Laws Amendment Act 1997	107, 1997	30 June 1997	Sch 1: 30 June 1997 (s 2(1))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Sch 2 (items 1–85, 87–159): 1 July 1998 (gaz 1998, No. S316) (s 2(2)(b)) Sch 2 (item 86): 1 July 1999 (gaz 1999, No. S289) (s 2(3), (4)) Sch 19 (items 1–19): 29 June 1998	Sch 19 (items 1–19)
as amended by				
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (item 18): 1 July 1998 (s 2(1) item 33)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 2 and 8: 17 June 1999 (s 3(1))	Sch 8 (items 7–9, 22, 23)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr2000	Sch 2: 3 Apr 2000 (s 2(1)) Sch 12 (items 1–3): 3 Apr 2000 (s 2(12, (13))	Sch 12 (items 1–3)
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 1 (item 21): 21 Dec 2000 Remainder: 18 Jan 2001	Sch 1 (item 19)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 69–78): 15 July 2001 (gaz 2001, No. S285) (s 2(3))	s 4–14
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	s 1–3: 24 Sept 2001 Remainder: 1 July 2002 (s 2(2) and gaz 2002, No. GN24)	Sch 2 (item 18) and Sch 3 (items 1–4)
Australian Prudential Regulation Authority Amendment Act 2003	42, 2003	24 June 2003	Sch 1–3: 1 July 2003 (gaz 2003, No. S230) Remainder: 24 June 2003	Sch 3
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Sch 2: 28 Nov 2003	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 1 (item 7): 1 July 1998 (s 2(1) item 5)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Act 2006	147, 2006	6 Dec 2006	6 Dec 2006	—
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Sch 1 (items 10–51, 291, 296) and Sch 4 (items 6–9): 24 Sept 2007 Sch 1 (items 158–166): 1 Jan 2008	Sch 1 (items 291, 296) and Sch 4 (item 9)
Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Sch 1 (items 1–9), Sch 2 (items 1–6) and Sch 4 (items 1–14, 43): 26 May 2008	Sch. 1 (item 9), Sch. 2 (item 6) and Sch. 4 (item 4
First Home Saver Accounts (Consequential Amendments) Act 2008	45, 2008	25 June 2008	Sch 3 (items 10–15): 26 June 2008	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (item 89): 4 July 2008	—
First Home Saver Accounts (Further Provisions) Amendment Act 2008	92, 2008	30 Sept 2008	Sch 2 (items 2, 3): 1 Oct 2008	—
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008	105, 2008	17 Oct 2008	Sch 1 (items 1–17, 61, 62): 18 Oct 2008 (s 2(1) items 2, 3) Sch 2 (items 1–23): 18 Oct 2008	Sch 1 (items 61, 62) and Sch 2 (items 6, 10, 13, 15, 19, 21)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (2009 Measures No. 2) Act 2009	42, 2009	23 June 2009	Sch 1 (items 1–3): 23 June 2009	Sch 1 (item 2)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 2 (items 1–6, 14): 28 Aug 2009	Sch 2 (item 14)
Tax Laws Amendment (2009 Measures No. 4) Act 2009	88, 2009	18 Sept 2009	Sch 5 (item 245): 18 Sept 2009	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (item 5): 1 Mar 2010	—
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 1 (items 1–25, 27–46) and Sch 6 (items 1–29): 27 July 2010 Sch 1 (item 26): 1 Jan 2011 (s 2(1) item 3)	Sch 1 (item 46)
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 15): 27 July 2010 (s 2(1) item 15)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 38, 39, 159): 1 Jan 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 29): 19 Apr 2011	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 285–288) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Banking Amendment (Covered Bonds) Act 2011	125, 2011	17 Oct 2011	17 Oct 2011	—
Tax Laws Amendment (2011 Measures No. 7) Act 2011	147, 2011	29 Nov 2011	Sch 5 (items 21–23): 29 Nov 2011	Sch 5 (item 23)
Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012	176, 2012	4 Dec 2012	Sch 1 (items 1–7): 1 July 2013 Sch 1 (item 8): 5 Dec 2012	Sch 1 (item 8)
Banking Amendment (Unclaimed Money) Act 2013	90, 2013	28 June 2013	Sch 1: 1 July 2013 (s 2(1) item 2) Remainder: 28 June 2013	Sch 1 (items 8–10)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 8): 24 June 2014	—
Tax Laws Amendment (2014 Measures No. 1) Act 2014	34, 2014	30 May 2014	Sch 1 (items 1, 2): 30 May 2014	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 1–9) and Sch 14: 1 July 2014 (s 2(1) item 6, 14)	Sch 14

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (item 7) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 43–46): 25 Mar 2015 (s 2(1) item 10)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 75): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015	70, 2015	25 June 2015	Sch 1 (items 18–26, 195–205): 1 July 2015 (s 2(1) items 3, 6)	Sch 1 (items 195–205)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 69–79): 5 Mar 2016 (s 2(1) item 2)	—
Banking Laws Amendment (Unclaimed Money) Act 2015	129, 2015	16 Sept 2015	Sch 1 (items 1–7): 31 Dec 2015 (s 2(1) item 1)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 28): 10 Mar 2016 (s 2(1) item 6)	—
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 2 (items 33–35): 1 Mar 2017 (s 2(1) item 3)	—
Financial System Legislation Amendment (Resilience and Collateral Protection) Act 2016	43, 2016	4 May 2016	Sch 1 (items 36–39, 48): 1 June 2016 (s 2(1) item 2)	Sch 1 (item 48)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018	5, 2018	20 Feb 2018	Sch 1 (items 1, 7–13, 15–17) and Sch 2: 1 July 2018 (s 2(1) items 2–6, 8, 9) Sch 1 (item 14): 1 July 2023 (s 2(1) item 7) Sch 1 (item 18): 20 Feb 2018 (s 2(1) item 1)	Sch 1 (items 15–18) and Sch 2 (item 12)
Treasury Laws Amendment (Banking Measures No. 1) Act 2018	9, 2018	5 Mar 2018	Sch 1 and Sch 4 (item 1): 5 Mar 2018 (s 2(1) items 2, 4) Sch 3 (items 1–5): 5 May 2018 (s 2(1) item 3)	—
Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018	10, 2018	5 Mar 2018	Sch 1: 5 Mar 2018 (s 2(1) item 2)	Sch 1 (items 253–263)
Treasury Laws Amendment (Financial Sector Regulation) Act 2018	142, 2018	29 Nov 2018	Sch 2: 30 Nov 2018 (s 2(1) item 3)	—
Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019	10, 2019	12 Mar 2019	Sch 1 (items 17–20): 1 July 2019 (s 2(1) item 2)	Sch 1 (item 20)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2019 Measures No. 1) Act 2019	49, 2019	5 Apr 2019	Sch 4 (items 3–5, 65): 6 Apr 2019 (s 2(1) item 11)	Sch 4 (item 65)
Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020	6, 2020	17 Feb 2020	Sch 1 (items 79, 80): 18 Feb 2019 (s 2(1) item 2)	—
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (items 157–159, 325, 326): 1 Oct 2020 (s 2(1) item 6)	Sch 3 (items 325, 326)

Name	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
Banking (Statistics) Regulations (SR 1989 No. 357)	7 Dec 1989	21 Dec 1989	—

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Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 2A	ad No 9, 2018
	am No 5, 2018
s 3	rep No 116, 1973
s 5	am No 84, 1967; No 116, 1973; No 156, 1977 (as am by No 78, 1978); No 76, 1984; No 105, 1987; No 129, 1989; No 118, 1990; No 210, 1991; No 193, 1992; No 69, 1994; No 99, 1995; No 161, 1995; No 54, 1998; No 44, 1999; No 24, 2000; No 55, 2001; No 42, 2003; No 116, 2003; No 147, 2006; No 154, 2007; No 105, 2008; No 82, 2010; No 125, 2011; No 31, 2014; No 62, 2014; No 126, 2015; No 5, 2018; No 9, 2018; No 10, 2018
	ed C55
s 6	am No 116, 1973; No 193, 1992; No 69, 1994; No 99, 1995; No 54, 1998
s 6A	ad No 116, 1973
	am No 129, 1989; No 46, 2011; No 64, 2020
s 6B	ad No 44, 1999
Part II	
Division 1	
s. 7	am. No. 93, 1966; No. 129, 1989
	rs. No. 44, 1999
	am. No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 8	am. No. 93, 1966; No. 129, 1989
	rs. No. 44, 1999
	am. No 54, 1998; No 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s 9	am No 93, 1966; No 116, 1973; No 129, 1989; No 193, 1992; No 69, 1994; No 54, 1998; No 44, 1999; No 154, 2007; No 25, 2008; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 9, 2018; No 10, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 9AA	ad No 10, 2018
s 9AB	ad No 10, 2018
s 9A	ad No 84, 1967
	am No 116, 1973
	rep No 193, 1992
	ad No 54, 1998
	am No 121, 2001; No 116, 2003; No 147, 2006; No 25, 2008; No 82, 2010; No 125, 2011; No 10, 2018; No 142, 2018
s 9B	ad No 54, 1998
s 9C	ad No 54, 1998
s 9D	ad No 142, 2018
s 9E	ad No 142, 2018
s 9F	ad No 142, 2018
s. 10	am. No. 93, 1966; No. 84, 1967; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987; No. 129, 1989; No. 193, 1992; No. 54, 1998; No. 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 11	am. No. 93, 1966; No. 129, 1989; No. 54, 1998; No. 44, 1999; No. 154, 2007; No. 25, 2008; No. 8, 2010; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
Division 1AA	
Division 1AA	ad No 54, 1998
s 11AA	ad No 54, 1998
	am No 44, 1999; No 154, 2007; No 25, 2008; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 10, 2018
s 11AAA	ad No 10, 2018
s 11AAB	ad No 10, 2018
s 11AB	ad No 54, 1998
	am No 121, 2001; No 116, 2003; No 147, 2006; No 25, 2008; No 82, 2010; No 10, 2018
s 11AC	ad No 54, 1998
s 11AD	ad No 54, 1998

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Provision affected	How affected
s 11AE	ad No 10, 2018
Division 1A	
Division 1A heading	rs No 54, 1998
Division 1A	ad No 129, 1989
Subdivision A	
Subdivision A heading	ad No 10, 2018
s 11AF	ad No 54, 1998
	am No 44, 1999; No 116, 2003; No 154, 2007; No 25, 2008; No 82, 2010; No 126, 2015; No 5, 2018; No 10, 2018; No 142, 2018
s 11AG	ad No 10, 2018
s 11A	ad No 129, 1989
	am No 54, 1998; No 10, 2018
s 11B	ad No 129, 1989
	am No 54, 1998
s 11C	ad No 129, 1989
Subdivision B	
Subdivision B	ad No 10, 2018
s 11CAA	ad No 10, 2018
s 11CAB	ad No 10, 2018
s 11CAC	ad No 10, 2018
Division 1BA	
Division 1BA	ad. No. 54, 1998
Subdivision A	
Subdivision A heading	rs. No. 44, 1999
s 11CA	ad No 54, 1998
	am No 44, 1999; No 160, 2000; No 55, 2001; No 121, 2001; No 116, 2003; No 147, 2006; No 25, 2008; No 45, 2008; No 82, 2010; No 125, 2011; No 70, 2015; No 10, 2018
Subdivision B	
Subdivision B heading	rs No 44, 1999
s. 11CB	ad. No. 54, 1998

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 44, 1999; No. 25, 2008
s. 11CC	ad. No. 54, 1998
	am. No. 44, 1999; No. 25, 2008
Subdivision C	
s 11CD	ad No 54, 1998
	am No 116, 2003; No 105, 2008; No 125, 2011; No 43, 2016; No 10, 2018
s 11CE	ad No 54, 1998
	am No 125, 2011; No 10, 2018
s 11CF	ad No 54, 1998
	rep No 10, 2018
s 11CG	ad No 54, 1998
	am No 44, 1999; No 55, 2001; No 116, 2003; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 125, 2011; No 4, 2016; No 5, 2018; No 10, 2018
Subdivision D	
Subdivision D	ad No 10, 2018
s 11CH	ad No 10, 2018
s 11CI	ad No 10, 2018
s 11CJ	ad No 10, 2018
s 11CK	ad No 10, 2018
s 11CL	ad No 10, 2018
s 11CM	ad No 10, 2018
	am No 49, 2019
s 11CN	ad No 10, 2018
s 11CO	ad No 10, 2018
s 11CP	ad No 10, 2018
Division 1B	
Division 1B heading	rs. No. 54, 1998
Division 1B	ad. No. 193, 1992
s. 11D	ad. No. 193, 1992

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Provision affected	How affected
	am. No. 54, 1998
	rep. No. 82, 2010
s 11E	ad No 193, 1992
	am No 54, 1998; No 44, 1999; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 10, 2018; No 49, 2019
s 11EA	ad No 10, 2018
s 11F	ad No 193, 1992
	am No 54, 1998; No 10, 2018
Division 2	
Subdivision A	
Subdivision A heading	ad No 54, 1998
s. 12	am. No. 54, 1998; No. 147, 2006
s. 13	am. No. 116, 1973; No. 129, 1989
	rs. No. 54, 1998
	am. No. 44, 1999; No. 160, 2000; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016; No 11, 2016
s 13A	ad No 54, 1998
	am No 44, 1999; No 160, 2000; No 154, 2007; No 105, 2008; No 82, 2010 (as am by No 136, 2012); No 125, 2011; No 4, 2016; No 11, 2016; No 10, 2018
s. 13B	ad. No. 54, 1998
	am. No. 44, 1999; No. 160, 2000; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s 13BA	ad No 105, 2008
	am No 10, 2018
s 13C	ad No 54, 1998
	am No 55, 2001; No 10, 2018
Subdivision AA	
Subdivision AA	ad No 82, 2010
s 13D	ad No 82, 2010
	rs No 10, 2018
s 13E	ad No 82, 2010

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Endnote 4—Amendment history

Provision affected	How affected
	am No 10, 2018
s 13F	ad No 82, 2010
	am No 10, 2018
s 13G	ad No 82, 2010
	am No 10, 2018
s 13H	ad No 82, 2010
	am No 10, 2018
s 13J	ad No 82, 2010
s 13K	ad No 82, 2010
s 13L	ad No 82, 2010
s 13M	ad No 82, 2010
s 13N	ad No 82, 2010
	am No 43, 2016
	rs No 10, 2018
s 13P	ad No 82, 2010
	am No 10, 2018
s 13Q	ad No 82, 2010
s 13R	ad No 82, 2010
	am No 82, 2010
s 14	am No 93, 1966; No 116, 1973; No 19, 1979; No 129, 1989
	rep No 54, 1998
Subdivision B	
Subdivision B heading	rs No 10, 2018
Subdivision B	ad No 54, 1998
s 14A	ad No 54, 1998
	am No 44, 1999; No 116, 2003; No 154, 2007; No 105, 2008; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 10, 2018; No 49, 2019
s 14AAA	ad No 10, 2018
s 14AA	ad No 105, 2008
	am No 10, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 14AB	ad No 105, 2008
	am No 10, 2018
s 14AC	ad No 105, 2008
	am No 43, 2016
	rs No 10, 2018
s 14AD	ad No 82, 2010
	am No 10, 2018
s 14B	ad No 54, 1998
	am No 125, 2011; No 10, 2018
s 14C	ad No 54, 1998
	am No 55, 2001; No 10, 2018; No 6, 2020
s 14CA	ad No 10, 2018
	am No 6, 2020
s 14D	ad No 54, 1998
	am No 10, 2018
s 14DAA	ad No 105, 2008
	am No 10, 2018
s 14DA	ad No 147, 2006
	am No 10, 2018
s 14E	ad No 54, 1998
	am No 10, 2018
s 14F	ad No 54, 1998
	am No 55, 2001; No 105, 2008; No 82, 2010
	rep No 10, 2018
s 15	am No 129, 1989
	rs No 54, 1998
	am No 55, 2001; No 10, 2018
s 15A	ad No 54, 1998
	am No 55, 2001; No 105, 2008; No 10, 2018
s 15B	ad No 54, 1998
	am No 105, 2008

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 10, 2018
s 15BA	ad No 10, 2018
s 15BB	ad No 10, 2018
s 15BC	ad No 10, 2018
s 15BD	ad No 10, 2018
s 15BE	ad No 10, 2018
s 15C	ad No 54, 1998
	rs No 105, 2008
	am No 43, 2016
	rs No 10, 2018
s 15D	ad No 105, 2008
	rs No 10, 2018
s 16	am No 93, 1966; No 129, 1989
	rs No 54, 1998
	am No 10, 2018
s 16A	ad No 54, 1998
	am No 10, 2018
s 16AA	ad No 105, 2008
	am No 103, 2010; No 10, 2018
Subdivision C	
Subdivision C	ad No 10, 2018
s 16AAA	ad No 10, 2018
Division 2AA	
Division 2AA	ad No 105, 2008
Subdivision A	
s 16AB	ad No 105, 2008
	am No 10, 2018
s 16AC	ad No 105, 2008
Subdivision B	
s 16AD	ad No 105, 2008
	am No 126, 2015; No 10, 2018

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Provision affected	How affected
s 16AE	ad. No. 105, 2008
Subdivision C	
s 16AF	ad No 105, 2008
	am No 82, 2010
s 16AG	ad No 105, 2008
	am No 46, 2011
s 16AH	ad No 105, 2008
s 16AHA	ad No 42, 2009
	am No 10, 2018
s 16AI	ad No 105, 2008
s 16AIA	ad No 10, 2018
s 16AIB	ad No 10, 2018
s 16AIC	ad No 10, 2018
Subdivision D	
s 16AJ	ad No 105, 2008
	am No 82, 2010; No 10, 2018
s 16AK	ad No 105, 2008
	am No 42, 2009; No 82, 2010; No 10, 2018
s 16AL	ad No 105, 2008
	am No 10, 2018
s 16AM	ad No 105, 2008
s 16AN	ad No 105, 2008
s 16AO	ad No 105, 2008
	am No 82, 2010
Subdivision E	
ss. 16AP–16AS	ad. No. 105, 2008
Subdivision F	
s 16AT	ad No 105, 2008
Subdivision G	
Subdivision G heading	rs No 103, 2010
s 16AU	ad No 105, 2008

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Endnote 4—Amendment history

Provision affected	How affected
	am No 103, 2010
Division 2A	
Division 2A	ad No 54, 1998
s 16AV	ad No 82, 2010
	am No 10, 2018
s 16B	ad No 54, 1998
	am No 44, 1999; No 121, 2001; No 116, 2003; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 16BA	ad No 154, 2007
	am No 82, 2010; No 125, 2011; No 10, 2018
	ed C50
s 16C	ad No 54, 1998
	am No 121, 2001
	rs No 116, 2003
s 16D	ad No 82, 2010
s 16E	ad No 82, 2010
Division 2B	
Division 2B	ad No 116, 2003
s 17	am No 84, 1967; No 116, 1973; No 156, 1977 (as am by No 78, 1978); No 105, 1987
	rs No 129, 1989
	rep No 54, 1998
	ad No 116, 2003
	am No 25, 2008; No 82, 2010
s 18	rs No 129, 1989
	rep No 54, 1998
	ad No 116, 2003
	rs No 154, 2007
	am No 11, 2016
Division 2C	
Division 2C	ad No 154, 2007

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Provision affected	How affected
s 18A	ad No 154, 2007
	am No 45, 2008; No 70, 2015
Division 3	
Division 3	rs No 129, 1989
	rep No 54, 1998
	ad No 116, 2003
s 19	rs No 129, 1989
	am No 54, 1998
	rep No 54, 1998
	ad No 116, 2003
	am No 25, 2008
s. 20	rs. No. 129, 1989
	am. No. 54, 1998
	rep. No. 54, 1998
	ad. No. 116, 2003
	am. No. 25, 2008
s. 21	rs. No. 129, 1989
	am. No. 54, 1998
	rep. No. 54, 1998
	ad. No. 116, 2003
	rs. No. 25, 2008
s. 22	am. No. 116, 1973
	rs. No. 129, 1989
	am. No. 54, 1998
	rep. No. 54, 1998
	ad. No. 116, 2003
	rs. No. 25, 2008
s. 22A	ad. No. 82, 2010
s. 23	rs. No. 129, 1989
	am. No. 54, 1998; No. 44, 1999
	rep. No. 54, 1998

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Endnote 4—Amendment history

Provision affected	How affected
	ad. No. 116, 2003
	am. No. 25, 2008
Division 3A	
Division 3A	ad No 125, 2011
s. 24	rs. No. 129, 1989
	am. No. 54, 1998
	rep. No. 54, 1998
	ad. No. 125, 2011
s. 25	am. No. 116, 1973; No. 216, 1973 (as am. by No. 20, 1974)
	rs. No. 129, 1989
	am. No. 54, 1998
	rep. No. 54, 1998
	ad. No. 125, 2011
s. 26	am. No. 93, 1966; No. 116, 1973
	rep. No. 129, 1989
	ad. No. 125, 2011
s. 27	am. No. 127, 1965
	rep. No. 129, 1989
	ad. No. 125, 2011
s 28	rep No 129, 1989
	ad No 125, 2011
s 29	rep No 129, 1989
	ad No 125, 2011
	am No 10, 2018
ss. 30, 31	am. No. 116, 1973
	rep. No. 129, 1989
	ad. No. 125, 2011
s 31A	ad No 125, 2011
s 31B	ad No 125, 2011
	am No 10, 2018
s 31C	ad No 125, 2011

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Provision affected	How affected
	am No 10, 2018
s 31D	ad No 125, 2011
s 31E	ad No 125, 2011
s 31F	ad No 125, 2011
	am No 10, 2018
Division 4	
s. 32	am. No. 54, 1998
s. 33	am. No. 93, 1966; No. 116, 1973; No. 129, 1989; No. 54, 1998 (as am. by No. 9, 2006); No. 44, 1999; No. 9, 2006; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 34	am. No. 129, 1989; No. 54, 1998
s. 35	am. No. 54, 1998
Division 5	
s. 36	am. No. 93, 1966; No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987; No. 129, 1989; No. 54, 1998; No. 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
Division 6	rep No 129, 1989
s. 37	am. No. 93, 1966; No. 116, 1973
	rep. No. 129, 1989
s. 38	rep. No. 129, 1989
Part IIAA	
Part IIAA	ad No 5, 2018
Division 1	
Subdivision A	
s 37	ad No 5, 2018
s 37A	ad No 5, 2018
s 37AA	ad No 5, 2018
Subdivision B	
s 37B	ad No 5, 2018
s 37BA	ad No 5, 2018
s 37BB	ad No 5, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 37BC	ad No 5, 2018
Division 2	
s 37C	ad No 5, 2018
s 37CA	ad No 5, 2018
s 37CB	ad No 5, 2018
Division 3	
s 37D	ad No 5, 2018
s 37DA	ad No 5, 2018
s 37DB	ad No 5, 2018
Division 4	
s 37E	ad No 5, 2018
s 37EA	ad No 5, 2018
s 37EB	ad No 5, 2018
s 37EC	ad No 5, 2018
s 37ED	ad No 5, 2018
Division 5	
s 37F	ad No 5, 2018
s 37FA	ad No 5, 2018
s 37FB	ad No 5, 2018
s 37FC	ad No 5, 2018
Division 6	
Subdivision A	
s 37G	ad No 5, 2018
Subdivision B	
s 37H	ad No 5, 2018
s 37HA	ad No 5, 2018
Subdivision C	
s 37J	ad No 5, 2018
s 37JA	ad No 5, 2018
s 37JB	ad No 5, 2018
s 37JC	ad No 5, 2018

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Provision affected	How affected
Division 7	
s 37K	ad No 5, 2018
s 37KA	ad No 5, 2018
s 37KB	ad No 5, 2018
s 37KC	ad No 5, 2018
	rep No 5, 2018
Part IIA	
Part IIA heading	rs. No. 54, 1998
Part IIA	ad. No. 80, 1982
s. 38A	ad. No. 80, 1982
	am. No. 107, 1997; No. 54, 1998; No 44, 1999; No 59, 2015
Part IIB	
Part IIB	ad No 9, 2018
Division 1	
s 38B	ad No 9, 2018
Division 2	
s 38C	ad No 9, 2018
s 38D	ad No 9, 2018
s 38E	ad No 9, 2018
s 38F	ad No 9, 2018
s 38G	ad No 9, 2018
s 38H	ad No 9, 2018
s 38J	ad No 9, 2018
Division 3	
s 38K	ad No 9, 2018
s 38L	ad No 9, 2018
Part III	
Part III	rs. No. 132, 1974
s. 39	am. No. 93, 1966; No. 193, 1973
	rs. No. 132, 1974
	am. No. 129, 1989; No. 107, 1997

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Endnote 4—Amendment history

Provision affected	How affected
s. 39A	ad. No. 132, 1974
	am. No. 129, 1989
s. 39B	ad. No. 132, 1974
	am. No. 129, 1989
	rep. No. 88, 2009
Part IV	
s. 40	(3) exp. 30 January 1976 (*see* s. 40(3) and gaz 1976, No. S17)
	am. No. 129, 1989
s. 41	am. No. 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 42	am. No. 129, 1989; No. 43, 1996; No. 107, 1997; No. 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 43	am. No. 129, 1989
s. 44	am. No. 116, 1973
s. 45	am. No. 129, 1989; No. 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 46	am. No. 129, 1989; No. 44, 1999; No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 4, 2016
s. 49	am. No. 93, 1966; No. 116, 1973
	rep. No. 129, 1989
Part V	
s. 50	am. No. 93, 1966; No. 129, 1989; No. 54, 1998
Part VI	
Part VI heading	rs No 44, 1999
	rep No 121, 2001
	ad No 116, 2003
Part VI	rs. No. 129, 1989
	rep. No. 121, 2001
	ad. No. 116, 2003
s. 51A	ad. No. 116, 2003
	am. No. 45, 2008; No 70, 2015
s. 51B	ad. No. 116, 2003

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Provision affected	How affected
	am. No. 82, 2010 (as am. by No. 136, 2012)
s. 51C	ad. No. 116, 2003
	am. No. 25, 2008
s. 51D	ad. No. 116, 2003
	am. No. 82, 2010 (as am. by No. 136, 2012)
s. 51	am. No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987
	rs. No. 129, 1989
	am. No. 54, 1998
	rep. No. 121, 2001
s. 52	am. Statutory Rules 1962 No. 92; No. 93, 1966; No. 166, 1986
	rs. No. 129, 1989
	rep. No. 54, 1998
Part VIA	
Part VIA	ad No 154, 2007
	am No 10, 2019
Division 1	rep No 10, 2019
s 52A	ad No 154, 2007
	am No 82, 2010; No 10, 2018
	rep No 10, 2019
s 52B	ad No 154, 2007
	rep No 10, 2019
s 52C	rep No 10, 2019
s 52D	rep No 10, 2019
s 52E	ad No 154, 2007
	am No 82, 2010; No 10, 2018
	rep No 10, 2019
Division 2 heading	rep No 10, 2019
s 52F	ad No 154, 2007
	am No 5, 2018
s. 53	am. Statutory Rules 1962 No. 92; No. 93, 1966; No. 116, 1973

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Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 129, 1989
s. 54	am. No. 93, 1966; No. 166, 1986
	rep. No. 129, 1989
s. 55	am. No. 166, 1986
	rep. No. 129, 1989
ss. 56, 57	rep. No. 129, 1989
s. 58	am. No. 166, 1986
	rep. No. 129, 1989
s. 59	rep. No. 129, 1989
Part VII	
Part VII heading	rs No 5, 2018
s. 60	rep. No. 129, 1989
	ad. No. 82, 2010
Part VIII	
Part VIII heading	ad No 5, 2018
Division 1	
Division 1 heading	ad No 5, 2018
s. 61	am. No. 93, 1966
	rs. No. 129, 1989; No. 54, 1998
	am. No. 44, 1999
	rs. No. 116, 2003
	am. No. 154, 2007; No. 82, 2010 (as am. by No. 136, 2012); No 11, 2016
s 61A	ad No 5, 2018
s 61B	ad No 5, 2018
Division 2	
Division 2	ad No 5, 2018
s 61C	ad No 5, 2018
s 61D	ad No 5, 2018
s 61E	ad No 5, 2018
s 61F	ad No 5, 2018

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Provision affected	How affected
s 61G	ad No 5, 2018
Division 3	
Division 3	ad No 5, 2018
s 61H	ad No 5, 2018
s 61J	ad No 5, 2018
s 61K	ad No 5, 2018
s 61L	ad No 5, 2018
s 61M	ad No 5, 2018
s 61N	ad No 5, 2018
s 61P	ad No 5, 2018
s 61Q	ad No 5, 2018
Division 4	
Division 4 heading	ad No 5, 2018
s 62	am No 93, 1966; No 129, 1989
	rs No 54, 1998
	am No 44, 1999; No 160, 2000; No 121, 2001; No 116, 2003; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 11, 2016
Division 5	
Division 5	ad No 5, 2018
s 62AA	ad No 5, 2018
	ed C52
s 62AB	ad No 5, 2018
Part IX	
Part IX heading	ad No 5, 2018
s 62A	ad No 116, 2003
	am No 154, 2007; No 45, 2008; No 82, 2010; No 125, 2011; No 70, 2015
s 62B	ad No 105, 2008
	am No 10, 2018
s 62C	ad No 105, 2008

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Endnote 4—Amendment history

Provision affected	How affected
	am No 10, 2018
s 62D	ad No 10, 2018
s 62E	ad No 10, 2018
s 63	am No 93, 1966; No 116, 1973; No 129, 1989; No 69, 1994; No 54, 1998; No 44, 1999; No 24, 2000; No 160, 2000; No 55, 2001; No 42, 2003; No 154, 2007; No 73, 2008; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 63A	ad No 84, 1967
	am No 129, 1989
	rep No 193, 1992
s 63B	ad No 156, 1977 (as am by No 78, 1978)
	rep No 105, 1987
s 64	am No 93, 1966; No 129, 1989
	rep No 54, 1998
	ad No 160, 2000
s 65	am No 116, 1973; No 19, 1979; No 129, 1989; No 54, 1998; No 10, 2018
s 65A	ad No 160, 2000
	am No 75, 2009; No 9, 2018
s 65B	ad No 105, 2008
s 66	am No 93, 1966
	rs No 129, 1989
	am No 54, 1998; No 44, 1999; No 154, 2007; No 25, 2008; No 82, 2010 (as am by No 136, 2012); No 4, 2016; No 9, 2018
s 66AA	ad No 9, 2018
s 66A	ad No 54, 1998
	am No 44, 1999; No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 4, 2016
s 67	am No 93, 1966
	rs No 129, 1989
	am No 54, 1998; No 44, 1999; No 154, 2007; No 25, 2008; No 82, 2010 (as am by No 136, 2012); No 4, 2016

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Provision affected	How affected
s 68	am No 116, 1973; No 44, 1999
s 69	am No 93, 1966; No 84, 1967; No 116, 1973; No 156, 1977 (as am by No 78, 1978); No 19, 1979; No 105, 1987; No 129, 1989; No 193, 1992; No 62, 1997; No 44, 1999; No 160, 2000; No 154, 2007; No 92, 2008; No 82, 2010 (as am by No 136, 2012); No 5, 2011; No 147, 2011; No 176, 2012; No 90, 2013; No 34, 2014; No 62, 2014; No 70, 2015; No 126, 2015; No 129, 2015; No 4, 2016
s 69AA	ad No 54, 1998
s 69A	ad No 129, 1989
	am No 193, 1992; No 107, 1997; No 54, 1998
	rep No 44, 1999
	ad No 129, 2015
s 69B	ad No 129, 1989
	rep No 107, 1997
s 69B (prev s 69AA)	renum No 129, 2015
s 69BA	ad No 10, 2018
	ed C50
s 69C	ad No 129, 1989
	am No 44, 1999, No 5, 2015
s 69D	ad No 193, 1992
	rs No 107, 1997
	am No 54, 1998
s 69E	ad No 54, 1998
s 69F	ad No 54, 1998
	am No 116, 2003; No 10, 2018
s 70	am No 116, 1973; No 129, 1989
	rep No 69, 1994
s 70A	ad No 129, 1989
	rs No 54, 1998; No 116, 2003
	am No 10, 2018
s 70AA	ad No 10, 2018
s 70AB	ad No 10, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 70B	ad No 54, 1998
	am No 55, 2001
s 70C	ad No 105, 2008
	am No 62, 2014; No 126, 2015
s 70D	ad No 105, 2008
s 70E	ad No 105, 2008
	am No 62, 2014
s 70F	ad No 105, 2008
	am No 62, 2014
s 70G	ad No 105, 2008
	rs No 62, 2014
s 70H	ad No 105, 2008
s 71	am No 93, 1966; No 129, 1989; No 107, 1997; No 54, 1998; No 44, 1999
The Schedules	
First Schedule	am. No. 216, 1973 (as am. by No. 20, 1974)
	rs. No. 129, 1989; No. 193, 1992
	rep. No. 54, 1998
Second Schedule	am. Statutory Rules 1962 No. 92; No. 127, 1965; No. 93, 1966; No. 84, 1967; No. 116, 1973; No. 76, 1984
	rep. No. 129, 1989
Schedule 1	
Heading to Third Schedule	rep. No. 54, 1998
Heading to Schedule 1	ad. No. 54, 1998
	rs. No. 44, 1999
Third Schedule	ad. No. 80, 1982
Schedule 2	
Schedule 2	ad. No. 105, 2008
Part 1	
cc. 1–5	ad. No. 105, 2008

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Provision affected	How affected
Part 2	
cc. 6–9	ad. No. 105, 2008

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