



# **Insurance Act 1973**

**No. 76, 1973**

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## About this compilation

### This compilation

This is a compilation of the *Insurance Act 1973* that shows the text of the law as amended and in force on 1 January 2024 (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 Register ([www.legislation.gov.au](http://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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 relating to Insurance**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Insurance Act 1973*.

### **2 Commencement**

- (1) Parts I and II shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on such date as is, or on such dates as respectively are, fixed by Proclamation.

### **2A Main objects of this Act**

- (1) The main objects of this Act are:
  - (a) to protect the interests of policyholders and prospective policyholders under insurance policies (issued by general insurers and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance industry; and
  - (b) to promote financial system stability in Australia.
- (2) This Act, and the prudential standards determined by APRA under this Act, achieve this mainly by:
  - (a) restricting who can carry on insurance business in Australia by requiring general insurers, and the directors and senior management of general insurers, to meet certain suitability requirements; and
  - (b) imposing primary responsibility for protecting the interests of policyholders on the directors and senior management of general insurers; and

## Section 3

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- (c) imposing on general insurers requirements to promote prudent management of their insurance business (including requirements concerning capital adequacy, the valuation of liabilities, reinsurance arrangements and the effectiveness of risk management strategies and techniques); and
  - (d) providing for the prudential supervision of general insurers by APRA; and
  - (e) providing for APRA to manage or respond to circumstances in which the ability of a general insurer to meet its obligations may be threatened; and
  - (f) providing for certain policyholders to be paid amounts where the financial claims scheme has been declared to apply in relation to a general insurer.
- (3) Generally, the provisions of this Act apply to general insurers. However, there are a number of special provisions that apply only to Lloyd's underwriters.

### 3 Interpretation

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

***accident insurance business*** means the business of undertaking liability under policies of insurance in respect of the happening of personal accidents (whether fatal or not), disease or sickness or of any class of personal accidents, disease or sickness.

***accounting records***, in relation to a body corporate, includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the body corporate are made up, and such other documents (if any) as are prescribed.

***accounts***, except in Part VII, means ordinary accounts and statutory accounts.

**ADI** (authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

**administrator**, of a body corporate's business, means an administrator appointed under subsection 62ZOA(1) to take control of the body corporate's business.

**approved form** means (except in section 62ZZKA) 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 a Territory to which this Act extends.

**Australian business assets and liabilities**, of a foreign general insurer, has the meaning given by subsection 62ZVA(3).

**Australian financial sector statutory manager** (or **AFS statutory manager**) means:

- (a) a Banking Act statutory manager (within the meaning of the *Banking Act 1959*); or
- (b) an Insurance Act statutory manager; or
- (c) a Life Insurance Act statutory manager (within the meaning of the *Life Insurance Act 1995*).

**authorised NOHC** means a body corporate:

- (a) authorised under section 18; and
- (b) that is a NOHC of a general insurer or general insurers.

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***authorised person:***

- (a) except in Part VA, means a person authorised under subsection (1A); or
- (b) in Part VA, means APRA, or a person authorised by APRA, in writing, for the purposes of that Part.

***barrister or solicitor*** means a barrister or solicitor of the High Court or of the Supreme Court of a State, or of the Australian Capital Territory or the Northern Territory.

***books*** includes any register or other record of information or any accounts or accounting records, however compiled, recorded or stored, and also includes any document.

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

***charge*** means a charge created in any way and includes a mortgage or an agreement to give or execute a charge or mortgage, whether upon demand or otherwise.

***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.

***corporate agent*** means a body corporate that is appointed under section 118 as an agent in Australia for the purpose of that section.

***data processing device*** means any article or material (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device.

***debenture*** includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate in respect of money that is or may be deposited with or

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lent to the body corporate, whether constituting a charge on property of the body corporate or not, but does not include:

- (a) for the purposes of a particular provision of this Act—a document prescribed for the purposes of that provision; or
- (b) for the purposes of this Act generally—a prescribed document.

***declared general insurer*** means a general insurer specified in a declaration under section 62ZZC as a general insurer in relation to which Division 3 of Part VC applies.

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

- (a) section 17;
- (b) section 27;
- (c) section 49R;
- (d) section 74;
- (e) section 76;
- (f) section 78;
- (g) section 103B;
- (h) section 104.

***director***, in relation to a body corporate, includes a member of the governing body of the body corporate.

***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 judicial manager or an Insurance 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*.

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

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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 same meaning as in Chapter 7 of the *Corporations Act 2001*.

***Financial System Stability Special Account*** means the Financial System Stability Special Account established by section 70E of the *Banking Act 1959*.

***financial year***, in relation to a body corporate, has the same meaning as that expression has in relation to a body for the purposes of the *Corporations Act 2001* (disregarding Schedule 2 of that Act).

***foreign general insurer*** 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 insurance business in a foreign country; and
- (c) is authorised under section 12 to carry on insurance business in Australia.

***friendly society*** means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory.



**general insurer** has the meaning given by section 11.

**government entity** has the meaning given by subsection 114(5).

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

**Insurance Act statutory manager** has the meaning given by subsection 62ZOA(8).

**insurance business** means the business of undertaking liability, by way of insurance (including reinsurance), in respect of any loss or damage, including liability to pay damages or compensation, contingent upon the happening of a specified event, and includes any business incidental to insurance business as so defined, but does not include:

- (a) life insurance business; or
- (b) accident insurance business undertaken solely in connexion with life insurance business; or
- (c) pecuniary loss insurance business carried on solely in the course of carrying on banking business and for the purposes of that business by an ADI; or
- (d) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants; or
- (e) business in relation to the benefits provided for its members or their dependants by an association of employees or of employees and other persons that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*; or
- (f) business in relation to a scheme or arrangement under which superannuation benefits, pensions or payments to employees or their dependants (and not to any other persons) on retirement, disability or death are provided by an employer or an employer's employees or by both, wholly through an organization established solely for that purpose by the employer or the employer's employees or by both; or
- (g) business in relation to a scheme or arrangement for the provision of benefits consisting of:

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- (i) the supply of funeral, burial or cremation services, with or without the supply of goods connected with any such service; or
- (ii) the payment of money, upon the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral, burial or cremation of that person;

and no other benefits, except benefits incidental to the scheme or arrangement; or

- (h) business undertaken by a person, being a carrier, carrier's agent, forwarding agent, wharfinger, warehouseman or shipping agent, relating only to the person's liability in respect of goods belonging to another person and in the possession, or under the control, of the first-mentioned person for the purpose of the carriage, storage or sale of those goods; or
- (i) business undertaken by a person, being an innkeeper or lodging-house keeper, relating only to the person's liability in respect of goods belonging to another person and in the possession or under the control of a guest at the inn or lodging-house of which the first-mentioned person is the innkeeper or lodging-house keeper or deposited with the innkeeper or lodging-house keeper for safe custody; or
- (j) the business of insuring the property of a registered religious institution (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) where the person carrying on the business does not carry on any other insurance business; or
- (ja) health-related business within the meaning of section 131-15 of the *Private Health Insurance Act 2007* carried on by a private health insurer within the meaning of that Act through a health benefits fund within the meaning of section 131-10 of that Act; or
- (k) health insurance business within the meaning of Division 121 of the *Private Health Insurance Act 2007* carried on by a private health insurer within the meaning of that Act.

Note: Some contracts of insurance may be excluded from this definition under section 3A.

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**judicial manager** means a judicial manager appointed by the Federal Court under section 62R.

**life insurance business** has the same meaning as in the *Life Insurance Act 1995*.

**liquidator** includes a provisional liquidator.

**listing rules** has the same meaning as in the *Corporations Act 2001*.

**Lloyd's** means the society of that name incorporated by the Act of the United Kingdom known as Lloyd's Act 1871.

**Lloyd's underwriter** means an underwriting member of Lloyd's.

**NOHC** or **non-operating holding company**, in relation to a body corporate, means 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.

**NOHC authorisation** has the meaning given by section 18.

**NOHC/NOHC subsidiary** has the meaning given by subsection 103A(5).

**ordinary accounts** means ledgers, journals, profit and loss accounts and balance-sheets, whether or not prepared for the purposes of any law (including this Act), and includes statements, reports and notes (other than auditors' reports or directors' reports) attached to, or intended to be read with, any of the foregoing, but does not include statutory accounts.

**pecuniary loss insurance business** means the business of undertaking liability by way of insurance against any one or more of the following risks:

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- (a) risks of loss to the persons insured arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of their debtors to pay their debts when due;
- (b) risks of loss to the persons insured arising from their having to perform contracts of guarantee;
- (c) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them;
- (d) risks of loss to the persons insured attributable to their incurring unforeseen expense.

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

**pre-authorisation liability** means a liability, contingent or otherwise, that is assumed (whether in Australia or elsewhere) by a body corporate that, after assuming the liability, becomes authorised under section 12 to carry on insurance business in Australia.

**principal auditor**, of a general insurer, means an auditor appointed by the insurer under paragraph 39(1)(a).

**profit and loss account** includes income and expenditure account, revenue account and any other account showing the results of the business of a body corporate for a period.

**protected policy** means a policy other than:

- (a) a policy prescribed by the regulations as not being a protected policy; and
- (b) a policy determined under section 62ZY not to be a protected policy.

**prudential matters** means matters relating to:

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

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- (i) to keep the general insurer, NOHC, group or member or members of the group in a sound financial position; or
- (ii) to facilitate resolution of the general insurer, NOHC, group or member or members of the group; or
- (iii) to protect the interests of policyholders of any general insurer; or
- (iv) not to cause or promote instability in the Australian financial system; or
- (b) the conduct of any part of the affairs of a general insurer, 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 standard*** means a standard determined by APRA under section 32.

***recapitalisation direction*** means a direction given by APRA under subsection 103B(1) or (1B).

***related body corporate***, in relation to a body corporate, means:

- (a) in Part V—a body corporate that is related to the first-mentioned body, as determined in accordance with section 50; and
- (b) otherwise—a body corporate that is related to the first-mentioned body, as determined in accordance with section 4B.

***relevant group of bodies corporate*** has the meaning given by section 4A.

***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;

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

**RSA** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**securities exchange** means:

- (a) Australian Stock Exchange Limited; or
- (b) a licensed market (within the meaning of the *Corporations Act 2001*) whose licence covers dealing in derivatives; or
- (c) any other body (whether in or outside Australia) approved by the Treasurer as a securities exchange for the purposes of this Act.

**senior manager** of a general insurer or a corporate agent means a person who has or exercises any of the senior management responsibilities (within the meaning of the prudential standards) for the insurer or agent.

**share** means a share in the capital of a body corporate, and includes stock.

**statutory accounts**, in relation to a body corporate, means the reporting documents that the body corporate is required under section 13 of the *Financial Sector (Collection of Data) Act 2001* to lodge with APRA.

**subsidiary** has the meaning given by section 4.

**transferred liabilities determination** means a determination under subsection 62ZZMA(1).

**wind up**, in relation to a company, means wind up the company in accordance with the *Corporations Act 2001*.

**yearly statutory accounts**, in relation to a body corporate, means the reporting documents that the body corporate is required under section 13 of the *Financial Sector (Collection of Data) Act 2001* to lodge with APRA in respect of a financial year.

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- (1A) APRA may, in writing, authorise an APRA member or an APRA staff member to perform the functions of an authorised person under this Act.
- (2) The Treasurer may, by legislative instrument, give approvals for the purposes of paragraph (c) of the definition of ***securities exchange*** in subsection (1).
- (4) A reference in this Act to a general insurer having no liabilities in respect of insurance business carried on by it in Australia includes a reference to a general insurer who has assigned, other than by an equitable assignment, all of its interests (including rights and benefits) under all contracts of insurance in respect of insurance business carried on by it in Australia to another general insurer.
- (5) Without limiting the scope of what is incidental to insurance business for the purposes of the definition of ***insurance business*** in subsection (1), a business of a person is taken, for the purposes of that definition, to be a business incidental to insurance business to the extent that it involves one or more of the following kinds of acts:
  - (a) inducing others to enter into contracts of insurance with the person as the insurer;
  - (b) publishing or distributing a statement relating to the person's willingness to enter into a contract of insurance as an insurer;
  - (c) procuring the publication or distribution of such a statement.
- (5A) Subsection (5) does not apply if the contracts of insurance referred to in that subsection are contracts of reinsurance.
- (6) Without limiting the circumstances in which a person is taken, for the purposes of this Act, to carry on insurance business in Australia, a person is taken to carry on insurance business in Australia if:
  - (a) the person carries on a business outside Australia that, under this Act, would constitute insurance business if it were carried on in Australia; and

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- (b) another person in Australia acts:
  - (i) directly or indirectly on behalf of the first-mentioned person; or
  - (ii) as a broker of insurance provided by the first-mentioned person, or directly or indirectly on behalf of such a broker;in relation to the business carried on outside Australia.
- (6A) Subsection (6) does not apply if the business referred to in paragraph (a) of that subsection is solely a business of reinsurance.
- (7) In considering for the purposes of this Act whether a person carries on insurance business in Australia, an act of a kind referred to in paragraph (5)(a), (b) or (c) done outside Australia is taken to occur in Australia to the extent that it has, or is likely to have, its effect in Australia.

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

- (1) For the purposes of this Act, insurance business does not include undertaking liability under a contract of insurance, or a kind of contract of insurance:
  - (a) specified in the regulations for the purposes of this subsection; or
  - (b) in circumstances specified in the regulations for the purposes of this subsection.
- (2) Without limiting subsection (1), the regulations may specify a contract of insurance, a kind of contract of insurance, or circumstances, by reference to:
  - (a) particular general insurance products (within the meaning of the *Corporations Act 2001*), or particular kinds of such products; or
  - (b) particular persons, or particular kinds of persons, who are insured under a contract of insurance, or a kind of contract of insurance.



**4 Meaning of *subsidiary***

For the purposes of this Act (except Part V), 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*.

**4A Meaning of *relevant group of bodies corporate***

For the purposes of this Act:

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

**4B Determining whether bodies corporate are related to one another**

For the purposes of this Act (except Part V), 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*.

**5 Application of Act**

- (1) This Act does not apply to State insurance whether or not extending beyond the limits of the State concerned.
- (2) This Act does not apply to or with respect to insurance business carried on by:
  - (a) the Commonwealth (including the Territories); or
  - (b) a body corporate prescribed by the regulations; or
  - (c) a body corporate, being insurance business of a kind prescribed by the regulations.

**6 Act extends to external Territories**

This Act extends to every external Territory.

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**7 Determination that certain provisions 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 Part III (other than a provision of Division 3A of that Part);
  - (b) section 35;
  - (c) section 39;
  - (d) section 41;
  - (e) a provision of Division 3 or 4 of Part IV;
  - (f) section 49Q;
  - (g) section 117;
  - (h) section 118;
  - (i) section 120;
  - (j) section 121.
- (2) The determination may:
  - (a) be expressed to apply to a particular person or to a class of persons; and
  - (b) specify the period during which the determination is in force; and
  - (c) 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) APRA may, in writing, vary or revoke a determination under this section.
- (4) 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.

- (5) Otherwise, an instrument made under this section is a legislative instrument.
- (6) Part VI applies to the following decisions made 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 decision to impose conditions on, or specify a period in, a determination made under this section in relation to a particular person;
  - (c) a decision to vary or revoke a determination made under this section in relation to a particular person.

### **7A Breach of condition of a determination**

- (1) A person commits an offence if:
  - (a) the person does an act or fails to do an act; and
  - (b) doing the act or failing to do the act results in a breach of a condition to which a determination in force under subsection 7(1) is subject; and
  - (c) the determination applies to the person.

Penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## **Part II—Administration**

### **8 General administration of Act**

- (1) Subject to subsections (2) and (3), APRA has the general administration of this Act.
- (2) ASIC has the general administration of section 114.
- (3) The Treasurer may give APRA or ASIC directions about the performance or exercise of its functions or powers under this Act.

## **Part III—Authorisation to carry on insurance business**

### **Division 1—Need to be authorised**

#### **9 Persons other than bodies corporate and Lloyd’s underwriters carrying on insurance business**

- (1) A person commits an offence if:
- (a) the person carries on insurance business in Australia; and
  - (b) the person is not a body corporate or a Lloyd’s underwriter; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the person (the effect of which is to allow the person to carry on insurance business without being authorised under the Act to do so).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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

#### **10 Bodies corporate and Lloyd’s underwriters carrying on insurance business**

- (1) A body corporate (other than a Lloyd’s underwriter) commits an offence if:
- (a) the body corporate carries on insurance business in Australia; and
  - (b) the body corporate is not a general insurer; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the body corporate (the

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effect of which is to exempt the body corporate from being authorised under the Act to carry on insurance business).

Penalty: 60 penalty units.

- (2) A Lloyd's underwriter commits an offence if:
- (a) the underwriter carries on any insurance business in Australia; and
  - (b) the underwriter does so at any time after section 93 has ceased to have effect; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the underwriter (the effect of which is to exempt the underwriter from being authorised under the Act to carry on insurance business).

Penalty: 60 penalty units.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## 11 Meaning of *general insurer*

A *general insurer* is a body corporate that is authorised under section 12 to carry on insurance business in Australia.

Note: General insurer includes a foreign general insurer (see the definition of *foreign general insurer* in subsection 3(1)).

## 11A Injunctions

### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:

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- (a) a contravention of section 9 or 10; or
  - (b) attempting to contravene section 9 or 10; or
  - (c) aiding, abetting, counselling or procuring a person to contravene section 9 or 10; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene section 9 or 10; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 9 or 10; or
  - (f) conspiring with others to contravene section 9 or 10;
- the Federal Court may, on the application of APRA or a person whose interests have been, are or would be affected by the conduct, 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.

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*Interim injunctions*

- (4) The Court may grant an interim injunction pending determination of an application under subsection (1) if in the Court's opinion it is desirable to do so.

*Consent injunctions*

- (5) If an application for an injunction under subsection (1) 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.

*Variation or discharge of injunctions*

- (6) The Court may discharge or vary an injunction granted under subsection (1) or (5).

*Damages undertakings*

- (7) APRA cannot be required, as a condition of granting an interim injunction, to give an undertaking as to damages.

*Damages orders*

- (8) 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.

*Federal Court's other powers unaffected*

- (9) 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.



## **Division 2—Authorisation to carry on insurance business**

### **12 Obtaining an authorisation**

- (1) A body corporate may apply in writing to APRA for an authorisation to carry on insurance business in Australia.

Note: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975*, the *Financial Sector (Shareholdings) Act 1998* and the *Insurance Acquisitions and Takeovers Act 1991*.

- (1A) APRA may require the body corporate to provide a statutory declaration in relation to information or documents provided in relation to the application.
- (1B) APRA may, by legislative instrument, set criteria for the authorisation of a body corporate to carry on insurance business in Australia.
- (2) APRA may authorise an applicant to carry on insurance business in Australia. The authorisation must be in writing.
- (3) Without limiting the circumstances in which APRA may refuse an application, APRA may refuse an application if the applicant is a subsidiary of another body corporate that is not an authorised NOHC.
- (3A) Without limiting the circumstances in which APRA may refuse an application, APRA must refuse an application if:
- (a) an arrangement under which medical indemnity cover is provided for a health care professional was entered into before 1 July 2003; and
  - (b) the arrangement was not effected by means of a contract of insurance; and
  - (c) the applicant may pay, or may have to pay, an amount under the arrangement at some time after the time when the application is made.

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Expressions used in paragraph (a) have the same meaning as they have in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

Note 1: This means that an applicant that is an MDO (medical defence organisation) that entered into discretionary medical indemnity arrangements before 1 July 2003 cannot be granted an authorisation under this section while amounts remain potentially payable by the applicant under those arrangements.

Note 2: All medical indemnity arrangements (arrangements under which medical indemnity cover is provided for health care professionals) that are entered into, come into effect or are renewed on or after 1 July 2003 must be by way of contracts of insurance (see section 10 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*).

- (4) If APRA authorises an applicant, APRA must:
  - (a) give written notice to the applicant; and
  - (b) ensure that notice of the authorisation 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 a refusal of APRA to authorise an applicant under this section.

### 13 Conditions on an authorisation

- (1) APRA may, at any time, by giving written notice to a general insurer:
  - (a) impose conditions, or additional conditions, on the insurer's authorisation under section 12; or
  - (b) vary or revoke conditions imposed on the insurer's authorisation under section 12.

The conditions must relate to prudential matters.

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

- (3) Without limiting the conditions that APRA may impose on an authorisation, APRA may make the authorisation conditional on a body corporate, of which the general insurer is a subsidiary, being an authorised NOHC.
- (4) If APRA imposes, varies or revokes the conditions on a general insurer's authorisation, APRA must:
  - (a) give written notice to the insurer; 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 an insurer's authorisation under section 12;
  - (b) a decision to vary conditions imposed on an insurer's authorisation under section 12.

## **14 Breach of authorisation conditions**

- (1) A general insurer commits an offence if:
  - (a) the insurer 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 insurer's authorisation under section 12; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the insurer.

Penalty: 300 penalty units.

- (1A) 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.

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

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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

## Division 3—Revocation of an authorisation

### 15 Revocation of authorisation etc.

- (1) APRA may revoke (in writing) a general insurer's authorisation under section 12 if APRA is satisfied that the insurer has no liabilities in respect of insurance business carried on by it in Australia and that:
- (a) the insurer has failed to comply with:
    - (i) a requirement of this Act (including the requirement to comply with the prudential standards) or of an instrument made for the purposes of this Act; or
    - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
    - (iaa) a requirement of the *Financial Accountability Regime Act 2023*; or
    - (iia) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or
    - (iii) a direction under this Act to the insurer; or
    - (iv) a condition of the insurer's authorisation; or
  - (b) it would be contrary to the national interest for the authorisation to remain in force; or
  - (c) the insurer 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
  - (d) the insurer is insolvent and is unlikely to return to solvency within a reasonable period of time; or
  - (e) the insurer has inadequate capital and is unlikely to have adequate capital within a reasonable period of time; or
  - (f) the insurer has ceased to carry on insurance business in Australia; or

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- (fa) both of the following apply:
    - (i) the insurer is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;
    - (ii) an authorisation (however described) for the insurer to carry on insurance business in a foreign country has been revoked or otherwise withdrawn in that foreign country; or
  - (g) the insurer has not, within the period of 12 months after it was granted an authorisation under this Part, carried on insurance business in Australia.
- (3) Before revoking a general insurer's authorisation, APRA must give written notice to the insurer advising it that:
- (a) APRA is considering revoking the authorisation for the reasons specified; and
  - (b) the insurer may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).
- (3A) To avoid doubt, APRA may give a notice under subsection (3) to a general insurer even if, at the time the notice is given, APRA is not satisfied that the insurer has no liabilities in respect of insurance business carried on by it in Australia.
- (3B) If APRA gives a notice under subsection (3) to a general insurer, APRA must not revoke the insurer's authorisation until after the date specified in the notice, and after consideration of any submission, as mentioned in paragraph (3)(b).
- (4) APRA may decide that subsection (3) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be contrary to the national interest.
- (5) If APRA revokes a general insurer's authorisation, APRA must:
- (a) give written notice to the insurer; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.

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- (6) A revocation is not invalid merely because of a failure to comply with subsection (5).
- (7) Part VI applies to a decision to revoke a general insurer's authorisation under section 12.

**16 When APRA must revoke a general insurer's authorisation**

- (1) APRA must revoke (in writing) a general insurer's authorisation under section 12 if:
  - (a) the insurer asks (in writing) APRA to do so; and
  - (b) APRA is satisfied that:
    - (i) the insurer has no liabilities in respect of insurance business carried on by it in Australia; and
    - (ii) revoking the authorisation would not be contrary to the national interest.
- (2) If APRA revokes a general insurer's authorisation, APRA must:
  - (a) give written notice to the insurer; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.
- (3) A revocation is not invalid merely because of a failure to comply with subsection (2).

**16A Continuation of effect of general insurer's authorisation**

If APRA gives a notice of revocation of a general insurer's authorisation under subsection 15(5) or 16(2), the notice may state that the authorisation 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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### 17 Assignment of liabilities to enable revocation

- (1) If APRA considers that it would, under section 15, revoke a general insurer's authorisation if the insurer had no liabilities in respect of insurance business carried on by it in Australia, APRA may direct the insurer to arrange, subject to APRA's approval, to assign those liabilities to one or more other general insurers. The insurer must effect the assignment of the liabilities within the period specified in the direction and comply with such conditions relating to the assignment as are specified by APRA in the direction.

- (2) Subsection (1) has effect despite subsection 17B(1).

Note: A general insurer who has asked APRA for a revocation under section 16 may, for the purpose of obtaining the revocation, make an application to the Federal Court under Division 3A for an order transferring the insurer's insurance business to another general insurer.

- (3) A general insurer must not assign its liabilities under this section, and a purported assignment under this section is of no effect, unless the assignment is approved by APRA under subsection (4).

- (4) APRA may only approve a proposed assignment of a general insurer's liabilities under this section if APRA is satisfied that the assignment is appropriate, having regard to:

- (a) the interests of the insurer's policyholders; and
- (b) the interests of the policyholders of the general insurer or insurers to whom the liabilities are to be assigned; and
- (c) the national interest; and
- (d) any other matter APRA considers relevant.

The approval must be in writing and may be made subject to specified conditions.

- (4A) Where a general insurer (the **first general insurer**) accepts an assignment of liabilities from another general insurer (the **second general insurer**) approved by APRA under subsection 17(4), the following are taken to have occurred:



- (a) policies in respect of which liability is accepted by the first general insurer (the *transferring policies*) are to be treated for all purposes as if each policy had been transferred by novation from the second general insurer to the first general insurer;
  - (b) a policyholder of a transferring policy is taken to have the same rights against the first general insurer as the person would have against that insurer had the person's policy been transferred by novation to the first general insurer;
  - (c) the rights of the first general insurer against policyholders of transferring policies are the same as they would be had the transferring policies been transferred by novation to the first general insurer from the second general insurer.
- (5) If APRA approves an assignment, the general insurer must:
- (a) comply with the conditions on the approval; and
  - (b) give reasonable notice (in writing) of the assignment to the insurer's policyholders; and
  - (c) give APRA such written evidence of the assignment as APRA reasonably requires.
- (6) An assignment of liabilities under this section may include the assignment of any rights or benefits in connection with contracts of insurance in respect of the insurance business carried on in Australia by the general insurer concerned.
- (7) A direction under subsection (1) has effect despite anything in the *Insurance Acquisitions and Takeovers Act 1991*.
- (8) A general insurer commits an offence if:
- (a) the insurer does, or fails to do, an act; and
  - (b) by doing or failing to do the act, the insurer fails to comply with a direction under this section.
- Penalty: 300 penalty units.
- (8A) If an individual:

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- (a) commits an offence against subsection (8) 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 (8);he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.
- (9) An offence against this section is an offence of strict liability.
  - Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.
  - Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- (10) Part VI applies to the following decisions made under this section:
  - (a) a decision to give a direction under subsection (1);
  - (b) a refusal to approve a proposed assignment under subsection (4);
  - (c) a decision to impose conditions on an approval.

## **Division 3A—Transfer and amalgamation of insurance business**

### **17A Interpretation**

A reference in this Division to a body corporate affected by a scheme is a reference to a body corporate that is a party or proposed party to an agreement or deed by which the transfer or amalgamation provided for by the scheme is, or is to be, carried out.

### **17B Transfer or amalgamation of insurance business**

- (1) No part of the insurance business of a general insurer may be:
  - (a) transferred to another general insurer; or
  - (b) amalgamated with the business of another general insurer;except under a scheme confirmed by the Federal Court.

Note: A transfer or amalgamation of an insurance business may also require approval under the *Insurance Acquisitions and Takeovers Act 1991*.
- (2) The reference in paragraph (1)(a) to a general insurer includes a reference to a body corporate that is authorised under this Act but has not begun to carry on insurance business in Australia.
- (3) A scheme must set out:
  - (a) the terms of the agreement or deed under which the proposed transfer or amalgamation is carried out; and
  - (b) particulars of any other arrangements necessary to give effect to the scheme.
- (4) Subsection (1) does not require that a transfer or amalgamation of insurance business be made under a scheme approved by the Federal Court if:
  - (a) immediately before the transfer or amalgamation, the insurance business is carried on outside Australia; and

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- (b) the transfer or amalgamation will result in the insurance business being carried on outside Australia.

**17C Steps to be taken before application for confirmation**

- (1) In this section:

*affected policyholder* means the holder of a policy affected by a scheme.

*approved summary* means a summary approved by APRA.

- (2) An application for confirmation of a scheme may not be made unless:
  - (a) a copy of the scheme and any actuarial report on which the scheme is based have been given to APRA in accordance with the prudential standards; and
  - (b) notice of intention to make the application has been published by the applicant in accordance with the prudential standards; and
  - (c) an approved summary of the scheme has been given to every affected policyholder.
- (3) Without limiting the provision that may be made by the prudential standards for the purposes of paragraph (2)(b), the notice referred to in that paragraph must include, in relation to each body corporate affected by the scheme, details of the place and time at which an affected policyholder may obtain a copy of the scheme.
- (4) An affected policyholder is entitled, on the person's request, to be provided by the company with one copy of the scheme free of charge.
- (5) The Federal Court may dispense with the need for compliance with paragraph (2)(c) in relation to a particular scheme if it is satisfied that, because of the nature of the scheme or the circumstances attending its preparation, it is not necessary that the paragraph be complied with.

### **17D Actuarial report on scheme**

- (1) When a copy of a scheme has been given to APRA for the purpose of paragraph 17C(2)(a), APRA may arrange for an independent actuary to make a written report on the scheme.
- (2) APRA may give a copy of the report to each body corporate affected by the scheme.

### **17E Application to Court**

- (1) Any of the bodies corporate affected by a scheme may apply to the Federal Court for confirmation of the scheme.
- (2) An application for confirmation must be made in accordance with the prudential standards.
- (3) APRA is entitled to be heard on an application.

### **17F Confirmation of scheme**

- (1) The Federal Court may:
  - (a) confirm a scheme without modification; or
  - (b) confirm the scheme subject to such modifications as it thinks appropriate; or
  - (c) refuse to confirm the scheme.
- (1A) In deciding whether to confirm a scheme (with or without modifications), the Federal Court must have regard to:
  - (a) the interests of the policyholders of a body corporate affected by the scheme; and
  - (b) if a report relevant to all or part of the scheme has been filed with the Court under section 62ZI—that report; and
  - (c) any other matter the Court considers relevant.
- (2) The Federal Court may make such orders as it thinks fit in relation to reinsurance.

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**17G Effect of confirmation etc.**

When a scheme is confirmed:

- (a) it becomes binding on all persons; and
- (b) it has effect in spite of anything in the constitution of any body corporate affected by the scheme; and
- (c) the body corporate on whose application the scheme was confirmed must cause a copy of the scheme to be lodged at an office of ASIC in every State and Territory in which a company affected by the scheme carried on business.

**17H Costs of actuary's report**

- (1) When a scheme is confirmed, the body corporate that applied for the confirmation becomes liable to pay to the Commonwealth an amount equal to the expenses reasonably incurred by APRA in obtaining a report under section 17D in relation to the scheme.
- (2) An amount due under subsection (1) may be recovered by the Commonwealth as a debt in any court of competent jurisdiction.

**17I Documents to be lodged in case of transfer or amalgamation**

- (1) If any part of the insurance business carried on by a general insurer is transferred to, or amalgamated with, the insurance business of another body corporate, the latter body corporate must give APRA such documents as are required by the prudential standards.
- (2) The documents must be lodged within the time fixed by the prudential standards or within such further time as APRA, in accordance with the prudential standards, allows.

## **Division 4—Authorisation to be a NOHC of a general insurer**

### **18 Authorisation to be a NOHC**

- (1) A body corporate may apply in writing to APRA for an authorisation (a ***NOHC authorisation***) under this section. The authorisation operates as an authorisation in relation to the body corporate and any general insurers that are subsidiaries of the body corporate from time to time.

Note 1: The body corporate may want the authority because APRA may refuse to grant a subsidiary of the body corporate a section 12 authorisation unless the body corporate holds a NOHC authorisation (see subsection 12(3)).

Note 2: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975*, the *Financial Sector (Shareholdings) Act 1998* and the *Insurance Acquisitions and Takeovers Act 1991*.

- (2) APRA may require the body corporate to provide a statutory declaration in relation to information or documents provided in relation to the application.
- (2A) APRA may, by legislative instrument, set criteria for the granting of an authorisation under this section.
- (3) APRA may authorise an applicant if it considers it is appropriate to do so. The authorisation must be in writing.
- (4) If APRA authorises an applicant, APRA must:
- (a) give written notice to the applicant; and
  - (b) ensure that notice of the authorisation 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 a refusal of APRA to authorise an applicant under this section.

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**19 Conditions on a NOHC authorisation**

- (1) APRA may, at any time, by giving written notice to an authorised NOHC:
  - (a) impose conditions, or additional conditions, on the NOHC authorisation; and
  - (b) vary or revoke conditions imposed on the NOHC authorisation.The conditions must relate to prudential matters.
- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) If APRA imposes, varies or revokes the conditions on a NOHC authorisation, APRA must:
  - (a) give written notice to the authorised NOHC; and
  - (b) ensure that notice of the imposition, variation or revocation of the conditions 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 NOHC authorisation;
  - (b) a decision to vary conditions imposed on a NOHC authorisation.

**20 Breach of conditions on a NOHC authorisation**

- (1) An authorised NOHC commits an offence if:
  - (a) the NOHC 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 NOHC authorisation; and
  - (c) there is no determination in force under subsection 7(1) that this subsection does not apply to the NOHC.

Penalty: 300 penalty units.



- (1A) 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.

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

Note 1: For **strict liability**, see section 6.1 of the *Criminal Code*.

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

## 21 When APRA may revoke a NOHC authorisation

- (1) APRA may revoke, in writing, a NOHC authorisation if APRA is satisfied that:
- (a) the authorised NOHC has failed to comply with:
    - (i) a requirement of this Act (including the requirement to comply with the prudential standards) or of an instrument made for the purposes of this Act; or
    - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
    - (iaa) a requirement of the *Financial Accountability Regime Act 2023*; or
    - (iia) a requirement of a provision of another law of the Commonwealth, if the provision is specified in the regulations; or
    - (iii) a direction under this Act to the authorised NOHC; or
    - (iv) a condition of the authorisation; or
  - (b) it would be contrary to the national interest for the authorisation to remain in force; or
  - (c) the authorised NOHC has failed to pay:
    - (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or

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- (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
  - (d) it would be contrary to the interests of the policyholders of any general insurer who is a subsidiary of the authorised NOHC for the authorisation to remain in force; or
  - (e) the authorised NOHC has ceased to be a NOHC of any general insurer.
- (3) Before revoking a NOHC authorisation, APRA must give written notice to the authorised NOHC advising it that:
  - (a) APRA is considering revoking the authorisation for the reasons specified; and
  - (b) the authorised NOHC may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).APRA must consider any submissions made by the authorised NOHC by that date.
- (4) APRA may decide that subsection (3) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be:
  - (a) contrary to the national interest; or
  - (b) contrary to the interests of the policyholders of any general insurer who is a subsidiary of the authorised NOHC concerned.
- (5) If APRA revokes a body corporate's NOHC authorisation, APRA must:
  - (a) give written notice to the body corporate; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.
- (6) A revocation is not invalid merely because of a failure to comply with subsection (5).
- (7) Part VI applies to a decision to revoke a NOHC authorisation.

## **22 When APRA must revoke a NOHC authorisation**

- (1) APRA must revoke (in writing) a body corporate's NOHC authorisation if:
  - (a) the body corporate asks (in writing) APRA to do so; and
  - (b) APRA is satisfied that revoking the authorisation would not be contrary to either:
    - (i) the national interest; or
    - (ii) the interests of the policyholders of any general insurer who is a subsidiary of the body corporate.
- (2) If APRA revokes a body corporate's NOHC authorisation, APRA must:
  - (a) give written notice to the body corporate; and
  - (b) ensure that notice of the revocation is published in the *Gazette*.
- (3) A revocation is not invalid merely because of a failure to comply with subsection (2).

### **22A Continuation of effect of body corporate's NOHC authorisation**

If APRA gives a notice of revocation of a body corporate's NOHC authorisation under subsection 21(5) or 22(2), the notice may state that the authorisation 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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**23 Publication of list of authorised NOHCs**

APRA may, from time to time, cause a list of authorised NOHCs to be published in the *Gazette* or in any other way that APRA considers appropriate.

**23A APRA may give notice to ensure that general insurer has an authorised NOHC**

- (1) This section applies if:
    - (a) a body corporate is a holding company of a general insurer; and
    - (b) the general insurer 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 general insurer;
    - (b) a subsidiary of the body corporate becomes an authorised NOHC of the general insurer.
- 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

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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 108 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 a general insurer under section 104.
- (9) However, section 108 does not apply to a contravention by a body corporate of a requirement in a notice under subsection (2) if:
  - (a) the contravention happens merely because APRA refuses to authorise the body corporate (or its subsidiary) under section 18; 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 5—Directors, senior managers and other  
representatives of general insurers and  
authorised NOHCs**

**24 Disqualified persons must not act for general insurers 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 a general insurer (other than a foreign general insurer);
    - (ii) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer;
    - (iii) a director or senior manager of an authorised NOHC;
    - (iv) a director or senior manager of a corporate agent; and
  - (c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (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 a general insurer (other than a foreign general insurer);
    - (ii) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer;
    - (iii) a director or senior manager of an authorised NOHC;
    - (iv) a director or senior manager of a corporate agent; and
  - (c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is

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disqualified from being or acting as that director, senior manager or agent in Australia (as the case requires).

Penalty: 60 penalty units.

- (3) 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 a general insurer (other than a foreign general insurer)—a director or senior manager of the insurer;
    - (ii) if the body corporate is a foreign general insurer—a senior manager, or agent in Australia for the purpose of section 118, of the insurer;
    - (iii) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC;
    - (iv) if the body corporate is a corporate agent—a director or senior manager of the corporate agent; and
  - (c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (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 agent in Australia (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 a general insurer (other than a foreign general insurer)—a director or senior manager of the insurer;

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- (ii) if the body corporate is a foreign general insurer—a senior manager, or agent in Australia for the purpose of section 118, of the insurer;
- (iii) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC;
- (iv) if the body corporate is a corporate agent—a director or senior manager of the corporate agent; and
- (c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (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 agent in Australia (as the case requires).

Penalty: 60 penalty units.

- (6) 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.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## 25 Who is a *disqualified person*?

- (1) A person is a *disqualified person* if, at any time:
- (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
    - (ia) the *Financial Accountability Regime Act 2023*; or



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- (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, if the offence concerns dishonest conduct or conduct relating to a financial sector company (within the meaning of the *Financial Sector (Shareholdings) Act 1998*); or
- (c) in a case where the person is an individual:
  - (i) the individual has been or becomes bankrupt; or
  - (ii) the individual has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (iii) the individual has compounded with his or her creditors; or
- (d) in a case where the person is a corporate agent:
  - (i) the corporate agent knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a director or senior manager of the corporate agent is a disqualified person; or
  - (ii) a receiver, or a receiver and manager, has been appointed in respect of property owned by the corporate agent; or
  - (iii) an administrator has been appointed in respect of the corporate agent; or
  - (iv) a provisional liquidator has been appointed in respect of the corporate agent; or
  - (v) the corporate agent has begun to be wound up; or
- (f) the Federal Court of Australia has disqualified the person under section 25A.

Note: The Federal Court of Australia may determine that a person is not a disqualified person (see section 26).

- (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:

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- (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).

**25A 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 general insurer; or
    - (ii) a class of general insurers; or
    - (iii) any general insurer;(other than a particular foreign general insurer, a class of foreign general insurers or any foreign general insurer);
  - (b) a senior manager, or agent in Australia for the purpose of section 118, of:
    - (i) a particular foreign general insurer; or
    - (ii) a class of foreign general insurers; or
    - (iii) any foreign general insurer;
  - (c) a director or senior manager of:
    - (i) a particular authorised NOHC; or
    - (ii) a class of authorised NOHCs; or

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- (iii) any authorised NOHC;
  - (d) a director or senior manager of:
    - (i) a particular corporate agent; or
    - (ii) a class of corporate agents; or
    - (iii) any corporate agent.
- (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
  - (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) the person's conduct in relation to the management, business or property of any corporation; and
  - (b) 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 general insurer concerned; or
    - (ii) if the person is, or is acting as, a person referred to in subparagraph (2)(b)(i)—to the foreign general insurer concerned; or
    - (iii) if the person is, or is acting as, a person referred to in paragraph (2)(c)(i)—to the authorised NOHC concerned; or
    - (iv) if the person is, or is acting as, a person referred to in paragraph (2)(d)(i)—to the corporate agent concerned, and to any foreign general insurer for which the agent is the corporate agent; and

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(b) to be published in the *Gazette*.

### **26 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 25A—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 25, 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.

### **26A Privilege against exposure to penalty—disqualification under section 25A or 44**

#### *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;

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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 25A or 44.

- (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 25A or 44.

*Admissibility*

- (4) Subsection 38F(2) does not apply to a proceeding for the imposition of a penalty by way of a disqualification under section 25A or 44.

*Other provisions*

- (5) Subsections (1) and (3) of this section have effect despite anything in:
- (a) clause 5 of Schedule 1; 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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**27 APRA may remove a director or senior manager of a general insurer, authorised NOHC or corporate agent**

- (1) This section applies to a person who is:
  - (a) a director or senior manager of a general insurer (not including a foreign general insurer); or
  - (b) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer; or
  - (c) a director or senior manager of an authorised NOHC; or
  - (d) a director or senior manager of a corporate agent.
- (2) APRA may direct (in writing) that the general insurer, authorised NOHC or corporate agent 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 25A—is disqualified from being or acting as a director or senior manager of the insurer, NOHC or corporate agent; or
    - (ii) otherwise—is a disqualified person; or
  - (b) if the person is an individual—does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.
- (3) Before directing a general insurer, authorised NOHC or corporate agent to remove a person, APRA must give written notice to:
  - (a) the person; and
  - (b) the insurer, NOHC or agent;giving each of them a reasonable opportunity to make submissions on the matter.
- (3A) 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.

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- (3B) A notice given under subsection (3) to a person, a general insurer, authorised NOHC or corporate agent must state that any submissions made in response to the notice may be discussed by APRA with other persons as mentioned in subsection (3A).
- (4) A direction takes effect on the day specified in it, which must be at least 7 days after it is made.
- (5) If APRA directs a general insurer, authorised NOHC or corporate agent to remove a person, APRA must give a copy of the direction to the person and insurer, NOHC or agent.
- (5A) The power of a general insurer to comply with a direction under this section may be exercised on behalf of the general insurer 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 general insurer	by signing a written notice.
2	A majority of the directors of the general insurer (excluding any director who is the subject of the direction)	by jointly signing a written notice.

- (5B) 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.

**Part III** Authorisation to carry on insurance business

**Division 5** Directors, senior managers and other representatives of general insurers and authorised NOHCs

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<b>Power to comply with a direction</b>		
<b>Item</b>	<b>Who may exercise the power</b>	<b>How the power may be exercised</b>
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.

- (5BA) The power of a corporate agent to comply with a direction under this section may be exercised on behalf of the agent as set out in the table:

<b>Power to comply with a direction</b>		
<b>Item</b>	<b>Who may exercise the power</b>	<b>How the power may be exercised</b>
1	The chair of the board of directors of the agent	by signing a written notice.
2	A majority of the directors of the agent (excluding any director who is the subject of the direction)	by jointly signing a written notice.

- (5C) Subsections (5A), (5B) and (5BA) do not, by implication, limit any other powers of a general insurer, authorised NOHC or corporate agent to remove a person.
- (6) Part VI applies to a direction made by APRA under this section.
- (7) A general insurer, authorised NOHC or corporate agent commits an offence if:
- (a) the insurer, NOHC or agent does, or fails to do, an act; and
  - (b) by doing or failing to do the act, the insurer, NOHC or agent fails to comply with a direction under this section.

Penalty: 300 penalty units.



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- (7A) If an individual:
- (a) commits an offence against subsection (7) 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 (7);
- he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

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

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

## Division 6—Other matters

### 28 General insurer must hold sufficient assets

A general insurer commits an offence if:

- (a) it does not hold assets in Australia (excluding goodwill and any assets or other amount excluded by the prudential standards for the purposes of this section) of a value that is equal to or greater than the total amount of its liabilities in Australia other than pre-authorisation liabilities; and
- (b) APRA has not authorised the insurer to hold assets of a lesser value; and
- (c) there is no determination in force under subsection 7(1) determining that this subsection does not apply to the insurer.

Penalty: 200 penalty units.

Note 1: Certain amounts are taken to be assets in Australia, and certain liabilities are taken to be liabilities in Australia, under section 116A.

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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

### 29 Change of name of a general insurer or authorised NOHC

- (1) A general insurer who changes its name must publish a notice of that fact:
  - (a) unless paragraph (b) applies—in a manner that results in the notice being accessible to the public and reasonably prominent; or
  - (b) if a determination under subsection (2A) is in force—in a manner specified in the determination.
- (2) The notice must state the old and new names of the insurer and when the change took effect.

- (2A) For the purposes of paragraph (1)(b), APRA may, by legislative instrument, make a determination specifying one or more manners in which a notice mentioned in subsection (1) may be published.
- (2B) A manner of publication may be specified in the determination only if APRA considers that the manner of publication would result in such a notice being accessible to the public and reasonably prominent.
- (3) If APRA is satisfied that a general insurer or authorised NOHC has changed its name, APRA must ensure that notice of that fact is published in the *Gazette* (whether or not the insurer has also published a notice under subsection (1)).
- (4) The authorisation of the insurer under section 12, or NOHC under section 18, (as the case may be) has effect after the *Gazette* publication as if it had been given under the changed name.

### **30 General insurer or authorised NOHC ceasing to exist**

- (1) If APRA is satisfied that a general insurer or authorised NOHC has ceased to exist, APRA must ensure that notice of that fact is published in the *Gazette*.
- (2) The authorisation under section 12 or 18 (as the case may be) of the insurer or NOHC is taken to be revoked when the *Gazette* notice is published.

### **31 Effect of authorisation as a general insurer**

Nothing in this Part authorises the carrying on by a body corporate of any business that it would not otherwise have been authorised to carry on.

## **Part IIIA—Prudential supervision and monitoring of general insurers, authorised NOHCs and their subsidiaries**

### **Division 1—The prudential standards**

#### **32 APRA may determine *prudential standards***

- (1) APRA may determine (in writing) standards (*prudential standards*) relating to prudential matters that must be complied with by:
  - (a) all general insurers; or
  - (b) all authorised NOHCs; or
  - (c) the subsidiaries of general insurers or authorised NOHCs; or
  - (d) a specified class of general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs; or
  - (e) one or more specified general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs.
- (2) A prudential standard may impose different requirements to be complied with:
  - (a) by different classes of general insurers, authorised NOHCs, or subsidiaries of general insurers or authorised NOHCs; or
  - (b) in different situations; or
  - (c) in respect of different activities.
- (3) Without limiting the prudential matters in relation to which APRA may determine a prudential standard, a prudential standard may:
  - (a) require the following companies to ensure that the company's subsidiaries (or particular subsidiaries), or the company and the company's subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to prudential matters:
    - (i) each general insurer or authorised NOHC;

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- (ii) each general insurer or authorised NOHC included in a specified class of general insurers or authorised NOHCs;
    - (iii) a specified general insurer or authorised NOHC;
    - (iv) each of 2 or more specified general insurers or authorised NOHCs;
    - (v) each subsidiary of a general insurer or of an authorised NOHC;
    - (vi) each subsidiary of a general insurer or of an authorised NOHC, included in a specified class of subsidiaries; or
  - (b) provide for matters relating to:
    - (i) the appointment of auditors; or
    - (ii) the conduct of audits.
- (3A) APRA may modify a prudential standard to replace particular requirements in the standard with an in-house capital adequacy model proposed by, or agreed to with, a general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC for the purpose of setting its capital requirements. The in-house capital adequacy model proposed by the general insurer, authorised NOHC or subsidiary must comply with criteria set out in the prudential standards.
- (3B) In modifying a prudential standard, APRA must have regard to the particular business and circumstances of the general insurer, authorised NOHC or subsidiary concerned.
- (3C) If APRA modifies a prudential standard in respect of a particular general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC under subsection (3A), APRA must give written notice of the modification to the general insurer, authorised NOHC or subsidiary concerned.
- (3CA) APRA may vary or revoke a modification of a prudential standard and, if it revokes a modification, it may make under subsection (3A) a further modification of the standard in substitution for the previous modification. APRA must give written

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notice of a variation or revocation to the general insurer, authorised NOHC or subsidiary concerned.

- (3D) The prudential standards may provide for APRA to exercise powers and discretions under the standards, including but not limited to discretions to approve, impose, adjust or exclude specific prudential requirements in relation to the following:
- (a) a particular general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC;
  - (b) specified general insurers, authorised NOHCs or subsidiaries of general insurers or authorised NOHCs.
- (4) APRA may, in writing, vary or revoke a standard. However, APRA must not, under this subsection, vary or revoke a standard in a way described in subsection (3A).
- (4A) A standard referred to in paragraph (1)(e), 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.
- (5) 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);
  - (c) a modification of a standard under subsection (3A);
  - (d) an instrument varying or revoking a modification under subsection (3A).
- (5A) Otherwise, an instrument made under this section is a legislative instrument.
- (6) Despite section 14 of the *Legislation Act 2003* and section 46AA of the *Acts Interpretation Act 1901*, the standards may make provision for or in relation to a matter by applying, adopting or

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incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

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

### 34 Notification of prudential standards

- (1) APRA must ensure that a notice is published in the *Gazette* as soon as practicable after APRA makes, varies or revokes a prudential standard.
- (2) The notice must:
- (a) specify whether APRA made, varied or revoked a prudential standard; and
  - (b) in the case of the making or varying of a prudential standard—summarise the purpose and effect of the prudential standard or variation.
- (3) APRA must take reasonable steps to ensure that copies of the current text of the prudential standards are available for inspection and purchase.
- (4) An action is not invalid merely because of a failure to comply with this section.

### 35 Obligation to comply with the prudential standards

A general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC to whom a prudential standard applies must comply with the standard.

## **Division 2—Conversion and write-off provisions**

### **36A Definitions**

In this Division:

***clearing and settlement facility*** has the same meaning as in 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 of the first entity.

***converts***: an instrument ***converts*** into one or more ordinary shares of an entity including by redeeming or cancelling the instrument or rights under the instrument, and replacing the instrument or rights with ordinary shares.

***operating rules*** has the same meaning as in the *Corporations Act 2001*.

***related subsidiary*** of a general insurer means a subsidiary of a holding company of the general insurer.

***specified law*** means any of the following:

- (a) the *Financial Sector (Shareholdings) Act 1998*;
- (b) the *Foreign Acquisitions and Takeovers Act 1975*;
- (c) Chapter 6 of the *Corporations Act 2001* (takeovers);



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- (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.

### 36B 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) a general insurer;
  - (b) a holding company of a general insurer;
  - (c) a subsidiary or related subsidiary of a general insurer;
  - (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.

### **36C 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:

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- (a) a relevant instrument being converted in accordance with the terms of the instrument;
  - (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 36B 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 36B 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.

## **Division 3—Monitoring of prudential matters**

### **38 APRA to monitor prudential matters**

The functions of APRA include:

- (a) collecting and analysing information on prudential matters concerning general insurers, authorised NOHCs and the subsidiaries of general insurers and authorised NOHCs; and
- (b) encouraging and promoting the carrying out of sound practices in relation to prudential matters by general insurers, authorised NOHCs and the subsidiaries of general insurers and authorised NOHCs; and
- (c) evaluating the effectiveness and carrying out of those practices.

### **38AA Requirement to notify APRA of certain matters**

*Matters requiring immediate notice*

- (1) If:
  - (a) a general insurer has breached or will breach a provision of this Act or the prudential standards; and
  - (b) the provision relates to financial obligations the general insurer has to its policy holders or to the general insurer's minimum capital requirements;the general insurer must immediately notify APRA in writing of the breach.

*Offence in relation to matters requiring immediate notice*

- (2) A general insurer commits an offence if the general insurer contravenes subsection (1).

Penalty: 200 penalty units.

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*Defence if matter already notified*

- (3) Subsection (2) does not apply to a general insurer in relation to a breach referred to in subsection (1) if:
- (a) the general insurer becomes aware of the breach because it is informed of it by an auditor or the actuary of the insurer; and
  - (b) the auditor or actuary informs the insurer that the auditor or actuary has notified APRA in writing of the matter; and
  - (c) the insurer has no reason to disbelieve the auditor or actuary.

Note 1: Auditors and actuaries must give APRA certain information under section 49A and may give APRA information under section 49B.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

*Matters requiring notice as soon as practicable*

- (4) If a body corporate that is a general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC becomes aware:

- (a) both:
  - (i) that the body corporate has breached or will breach a provision of this Act or the prudential standards (other than a provision to which subsection (1) applies); and
  - (ii) that the breach is or will be significant (see subsection (5)); or
- (b) of a matter that materially and adversely affects the body corporate's financial position;

the body corporate must give APRA a written report about the breach or matter as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach or matter.

- (5) For the purposes of subparagraph (4)(a)(ii), a breach of a provision is or will be **significant** if the breach is or will be significant having regard to one or more of the following:
- (a) the number or frequency of similar breaches;

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- (b) the impact the breach has or will have on the body corporate's ability to conduct its business;
- (c) the extent to which the breach indicates that the body corporate's arrangements to ensure compliance with this Act or with the prudential standards might be inadequate;
- (d) the actual or potential financial loss arising or that will arise from the breach:
  - (i) to policy holders of the body corporate; or
  - (ii) to the body corporate;
- (e) any matters prescribed by the regulations for the purposes of this paragraph.

*Offence in relation to matters requiring notice as soon as practicable*

- (6) A body corporate commits an offence if the body corporate contravenes subsection (4).

Penalty: 200 penalty units.

*Defence if auditor or actuary notifies breach*

- (7) Subsection (6) does not apply to a body corporate in relation to a breach referred to in subsection (4) if:
- (a) an auditor or the actuary of the body corporate gives APRA a written report about the breach or matter; and
  - (b) the report is given before, or within 10 business days after, the body corporate becomes aware of the breach or matter.

Note 1: Auditors and actuaries must give APRA certain information under section 49A and may give APRA information under section 49B.

Note 2: The defendant bears an evidential burden in relation to the matters in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

*Ancillary offences*

- (8) If an individual:

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- (a) commits an offence under subsection (2) or (6) 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 under subsection (2) or (6);
- the individual is punishable on conviction by a fine not exceeding 40 penalty units.

*Limits on information to be provided*

- (9) A notice or report given under subsection (1) or (4) must not include information, books, accounts or documents with respect to the affairs of an individual insured person, unless the information, books, accounts or documents are in respect of prudential matters relating to the body corporate.

## **Division 4—Protections in relation to information**

**Note:** For protections for whistleblowers, see Part 9.4AAA of the *Corporations Act 2001*.

### **38F Self-incrimination**

- (1) A person is not excused from complying with a requirement under this Act, the prudential standards or the *Financial Sector (Collection of Data) Act 2001* to give information to APRA 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 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 giving the information, the 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 liable to a penalty.



## **Part IV—Auditors, actuaries and accounts**

### **Division 1—The auditors and actuary of a general insurer**

#### **39 Requirement for general insurers to have an auditor and actuary**

- (1) A general insurer must have:
  - (a) an auditor appointed by the insurer; and
  - (b) an actuary appointed by the insurer.
- (2) Within 6 weeks after a person stops being the principal auditor or the actuary of a general insurer, the general insurer must appoint another person to be the principal auditor or the actuary.
- (3) A general insurer must not appoint a person as an auditor or actuary of the insurer unless:
  - (a) the insurer is reasonably satisfied that the person meets the eligibility criteria for such an appointment set out in the prudential standards; and
  - (b) no order is in force under section 44 disqualifying the person from holding such an appointment.
- (4) An appointment of a person as the principal auditor or the actuary of a general insurer cannot take effect while an appointment of another person in that position is current.

#### **40 Additional auditors**

- (1) APRA may, by written notice, require a general insurer to appoint a person who is specified in the notice to be an auditor for a purpose that is specified in the notice.

Example: APRA may require a general insurer to appoint an auditor who has specialist qualifications or experience to perform a special purpose audit.

- (2) The specified person may be:
  - (a) the principal auditor; or

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- (b) another auditor.

**41 Compliance with prudential standards**

An auditor or actuary appointed by a general insurer must comply with the prudential standards in performing his or her duties or exercising his or her powers.

**43 When a person stops holding an appointment**

- (1) A person stops holding an appointment as a general insurer's auditor or actuary if:
  - (c) the person is disqualified under section 44 from holding the appointment; or
  - (d) the person resigns the appointment by giving written notice to the insurer; or
  - (e) the insurer ends the appointment by giving written notice to the person.
- (2) A general insurer must end a person's appointment as an auditor or actuary of the general insurer, by giving the person written notice under paragraph (1)(e), if the general insurer is satisfied that the person:
  - (a) has, in relation to the insurer, failed to perform adequately and properly the functions and duties of the appointment under this Act or the prudential standards; or
  - (aa) has failed to comply with a requirement of the *Financial Accountability Regime Act 2023*; or
  - (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards; or
  - (c) does not meet the eligibility criteria for the appointment set out in the prudential standards.

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

- (1) A person commits an offence if:
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- (a) the person is disqualified under section 44; and
- (b) the person is or acts as an auditor or actuary of a general insurer; and
- (c) the person is disqualified from being or acting as that auditor or actuary (as the case requires).

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person is disqualified under section 44; and
  - (b) the person is or acts as an auditor or actuary of a general insurer; and
  - (c) the person is disqualified from being or acting as that auditor or actuary (as the case requires).

Penalty: 60 penalty units.

- (3) 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 disqualified under section 44; and
  - (b) the person is or acts as an actuary or auditor of the body corporate; and
  - (c) the person is disqualified from being or acting as that actuary or auditor (as the case requires); and
  - (d) the body corporate allows the person to be or act as an actuary or auditor (as the case requires).

Penalty: 250 penalty units.

- (5) A body corporate commits an offence if:
- (a) a person is disqualified under section 44; and
  - (b) the person is or acts as an actuary or auditor of the body corporate; and
  - (c) the person is disqualified from being or acting as that actuary or auditor (as the case requires); and

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

Penalty: 60 penalty units.

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

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

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

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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

## 44 Court power of disqualification

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

- (a) any of the following applies:

- (i) the person has failed to perform adequately and properly the functions and duties of such an appointment under this Act or the prudential standards;
    - (ia) the person has failed to comply with a requirement of the *Financial Accountability Regime Act 2023*;
    - (ii) the person otherwise does not meet one or more of the criteria for fitness and propriety set out in the prudential standards;
    - (iii) the person does not meet the eligibility criteria for such an appointment as set out in the prudential standards;
  - and

- (b) the disqualification is justified.

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

- (a) a particular general insurer; or
  - (b) a class of general insurers; or
  - (c) any general insurer.
- (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
  - (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) the person's conduct in relation to the functions or duties that the person is required to perform under this Act, the prudential standards and the *Financial Accountability Regime Act 2023*; and
  - (b) 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) if the person is, or is acting as, an auditor or actuary of a general insurer—to be given to the general insurer concerned; and
  - (b) to be published in the *Gazette*.

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

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

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- (b) if APRA makes the application—by APRA with the person who is disqualified.

**46 Notification of appointment as an auditor or actuary**

- (1) Within 14 days after a general insurer appoints a person as an auditor or actuary, the insurer must give APRA written notice of these matters:
  - (a) the person's name;
  - (b) details of the person's qualifications and experience;
  - (c) the date of the appointment;
  - (d) any other matter specified for the purposes of this section by the prudential standards.
- (2) Within 14 days after a person stops being the principal auditor or the actuary of a general insurer, the insurer must give APRA written notice of that event (including the date on which it happened and the reasons for and circumstances of the event).

**48 Referring matters to professional associations for auditors and actuaries**

- (1) If APRA is of the opinion that an auditor of a general insurer:
  - (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
    - (ia) the *Financial Accountability Regime Act 2023*; or
    - (ii) any other law of the Commonwealth, a State or a Territory; or
  - (aa) is disqualified under section 44 from being or acting as an auditor of the general insurer; or
  - (b) is otherwise not a fit and proper person to be the auditor of a general insurer;

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 taking any disciplinary or other action concerning the matter against the auditor.
- (2) If APRA is of the opinion that an actuary of a general insurer:
- (a) has failed, whether within or outside Australia, to perform adequately and properly his or her duties as an actuary under:
    - (i) this Act, the regulations or the prudential standards; or
    - (ia) the *Financial Accountability Regime Act 2023*; or
    - (ii) any other law of the Commonwealth, a State or a Territory; or
  - (aa) is disqualified under section 44 from being or acting as an actuary of the general insurer; or
  - (b) is otherwise not a fit and proper person to be the actuary of a general insurer;
- APRA may refer the details of the matter to those members of the professional association of the actuary whom APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the actuary.
- (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 or actuary.

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## Division 2—Provision of information to APRA

### 49 Duty of auditors and actuaries to give information when required

- (1) APRA may give written notice to a person who is or was an auditor or actuary of:
  - (a) a general insurer; or
  - (b) an authorised NOHC; or
  - (c) a subsidiary of a general insurer or authorised NOHC;to give APRA information, or to produce books, accounts or documents, about the insurer, NOHC or 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 or the *Financial Accountability Regime Act 2023*.
- (2) The person must comply with the notice and, in doing so, must not give APRA information that is false or misleading.
- (3) A person commits an offence if the person contravenes subsection (2).

Penalty: Imprisonment for 6 months, or 100 penalty units, or both.
- (4) A person commits an offence if the person contravenes subsection (2). This is an offence of strict liability.

Penalty: 60 penalty units.

Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.

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



## **49A Additional duty of auditors and actuaries to give information**

### *Persons to whom requirements apply*

- (1) This section applies to a person who is or was an auditor or actuary of:
- (a) a general insurer; or
  - (b) an authorised NOHC; or
  - (c) a subsidiary of a general insurer or authorised NOHC.

### *Matters requiring immediate notice*

- (2) If the person has reasonable grounds for believing that:
- (a) the insurer, NOHC or subsidiary is insolvent, or there is a significant risk that it will become insolvent; or
  - (d) an existing or proposed state of affairs may materially prejudice the interests of:
    - (i) in the case of an auditor or actuary of a general insurer or of a subsidiary of a general insurer—the insurer’s policyholders; or
    - (ii) in the case of an auditor or actuary of an authorised NOHC or of a subsidiary of an authorised NOHC—the policyholders of any general insurer who is a subsidiary of the NOHC; or
  - (e) the general insurer, NOHC or subsidiary:
    - (i) has contravened this Act or any other law; and
    - (ii) the contravention is of such a nature that it may affect significantly the interest of policyholders of the general insurer or of a general insurer that is a subsidiary of the NOHC;

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, or 100 penalty units, or both.

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

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

### *Defence in relation to matters requiring immediate notice*

- (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 insurer, NOHC or subsidiary; and
  - (b) the director or senior manager informs the person that the insurer, NOHC or subsidiary 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:
- (a) any of the following:
    - (i) the insurer, NOHC or subsidiary has failed or will fail to comply with the prudential standards;
    - (ii) in the case of an insurer—the insurer has failed or will fail to comply with a condition of its authorisation under section 12;
    - (iii) in the case of an authorised NOHC—the NOHC has failed or will fail to comply with a condition of its authorisation under section 18;
    - (iv) the insurer, NOHC or subsidiary has failed or will fail to comply with a requirement or direction under this Act, a

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requirement under the *Financial Sector (Collection of Data) Act 2001* or a requirement of the *Financial Accountability Regime Act 2023*; and

(b) that the failure 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 case 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 to comply 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 insurer's, NOHC's or subsidiary's ability to conduct its business;
  - (c) the extent to which the failure indicates that the insurer's, NOHC's or subsidiary's arrangements to ensure compliance with this Act or with the prudential standards might be inadequate;
  - (d) the actual or potential financial loss arising or that will arise from the failure:
    - (i) in the case of an insurer—to the policy holders of the insurer; or
    - (ii) to the insurer, NOHC or subsidiary;
  - (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, or 100 penalty units, or both.

- (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 insurer, NOHC or subsidiary informs the person that the insurer, NOHC or subsidiary 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 general insurer, an authorised NOHC or a subsidiary of a general insurer or authorised NOHC; 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 or the actuary of the insurer, NOHC or subsidiary that the insurer, NOHC or subsidiary has informed APRA in writing of the thing; and
  - (d) the insurer, NOHC or subsidiary has not done so.

Penalty: Imprisonment for 12 months.

**49B Auditor or actuary may give information to APRA**

A person who is or was an auditor or actuary of:

- (a) a general insurer; or
- (b) an authorised NOHC; or
- (c) a subsidiary of a general insurer or authorised NOHC;

may give information, or produce books, accounts or documents, to APRA about the insurer, NOHC or subsidiary if the person considers that giving the information, or the production of the books, accounts or documents, will assist APRA in performing its

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functions under this Act, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2023*.

**49D Auditor must notify APRA of attempts to unduly influence etc. the auditor**

- (1) If an auditor of a general insurer or authorised NOHC is aware of circumstances that amount to:
  - (a) an attempt by any person to unduly influence, coerce, manipulate or mislead the auditor in connection with the performance of the auditor's functions or duties; or
  - (b) an attempt by any person to otherwise interfere with the performance of the auditor's functions or duties;the auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.
- (2) An auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

**49DA 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 general insurer or authorised NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the general insurer or authorised NOHC; and
  - (c) the information relates to the affairs of the general insurer or authorised NOHC; and
  - (d) the person knows that the information:
    - (i) is false or misleading in a material particular; or

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- (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 general insurer or authorised NOHC; and
  - (b) the person gives information, or allows information to be given, to an auditor of the general insurer or authorised NOHC; and
  - (c) the information relates to the affairs of the general insurer or authorised NOHC; 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.

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 auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

## **Division 3—Actuarial investigation required by APRA**

### **49E Actuarial investigation of liabilities**

- (1) APRA may give written notice to a general insurer requiring it to appoint, at the insurer's expense, an actuary (other than the actuary appointed in accordance with section 39) to:

- (a) investigate all or a specified part of the insurer's liabilities as at a particular time; and
- (b) produce a written report.

Note: Only certain persons can be appointed as an actuary for the purposes of this section (see section 49G).

- (2) The actuary must not be an officer (within the meaning of the Corporations Law) of the general insurer.
- (3) Within 7 days after the general insurer is given the notice, it must appoint the actuary and advise APRA (in writing) of the actuary's name.
- (4) Within 7 days after being notified of an actuary's name, APRA may give written notice to the general insurer that the actuary is not acceptable to APRA. The insurer must then, within 7 days:
- (a) appoint a different actuary; and
  - (b) advise APRA (in writing) of the name of that actuary.
- (5) Subsection (4) applies whether the notification of the actuary's name is under subsection (3) or paragraph (4)(b).
- (6) The general insurer must ensure that the actuary's report is given to APRA:
- (a) within 30 days after APRA gave the notice under subsection (1) requiring an actuary to be appointed; or
  - (b) within such further time as APRA allows in writing.
- (7) The actuary's report must be signed by the actuary and contain a statement of the actuary's opinion about each of the following:

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- (a) the adequacy of all or part of the amount specified in the general insurer's accounts in respect of its liabilities, and the amount that the actuary considers would be adequate in the circumstances;
- (b) the accuracy of any relevant valuations made by the actuary;
- (c) the assumptions used by the actuary in making those valuations;
- (d) the relevance, appropriateness and accuracy of the information on which those valuations were based;
- (e) any other matter in respect of which the prudential standards require a statement of the actuary's opinion to be included in the report.

**49F Offence for contravening section 49E**

- (1) A general insurer commits an offence if:
  - (a) APRA requires the insurer to appoint an actuary under section 49E; and
  - (b) the insurer:
    - (i) fails to do so within the time required by that section; or
    - (ii) if the insurer is required under subsection 49E(4) to appoint a different actuary—fails to appoint that actuary within the time required by that subsection.

Penalty: 100 penalty units.

- (2) A general insurer commits an offence if:
  - (a) APRA requires the insurer to appoint an actuary under section 49E; and
  - (b) the insurer:
    - (i) fails to do so within the time required by that section; or
    - (ii) if the insurer is required under subsection 49E(4) to appoint a different actuary—fails to appoint that actuary within the time required by that subsection.

This is an offence of strict liability.

Penalty: 60 penalty units.



- Note 1: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

#### **49G Who can be appointed as a section 49E actuary**

- (1) A person can only be appointed as an actuary for the purposes of section 49E if the person is ordinarily resident in Australia and:
  - (a) the person is a Fellow of The Institute of Actuaries of Australia; or
  - (b) APRA has approved (in writing) the person as an actuary for the purposes of section 49E.
- (2) APRA may only approve a person if APRA is satisfied that the person has actuarial qualifications and experience that make the person fit to perform the functions of an actuary for the purposes of section 49E.

#### **49H Delegate's decision to extend time for providing actuary's report**

- (1) If a delegate of APRA decides to allow, or refuse to allow, further time under paragraph 49E(6)(b), the general insurer concerned may request that APRA reconsider the delegate's decision.
- (2) The request must:
  - (a) be in writing and include the reasons for making the request; and
  - (b) be made within 7 days after the day on which the insurer is notified of the decision.
- (3) Within 7 days of receiving the request, APRA must reconsider the decision and may confirm, revoke or vary the decision. APRA must give written notice to the insurer of the result of the reconsideration.

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- (4) If APRA does not confirm, revoke or vary the decision before the end of the 7 day period, APRA is taken to have confirmed the decision.
- (5) Part VI applies to a decision by APRA under subsection (3) or (4) to confirm or vary a delegate's decision.

## **Division 4—Role of auditor and actuary of a general insurer**

### **49J Auditor's role**

- (1) For each general insurer:
  - (a) the principal auditor of the insurer must audit the insurer's yearly statutory accounts; and
  - (b) an auditor of the insurer must perform for the insurer the functions of an auditor set out in the prudential standards; and
  - (c) an auditor of the insurer must prepare, and give to the insurer, the reports (if any) required by the prudential standards to be prepared by the auditor.
- (2) The general insurer must make the arrangements that are necessary to enable an auditor to do those things.
- (3) The principal auditor of a general insurer must give the insurer a certificate relating to the yearly statutory accounts. The certificate must contain statements of the auditor's opinion on the matters required by the prudential standards to be dealt with in the certificate.
- (4) The reports that the prudential standards require an auditor to prepare must deal with all of the matters required by the prudential standards to be dealt with in the reports.

### **49K Actuary's role**

- (1) The actuary of a general insurer appointed in accordance with section 39 must:
  - (a) perform for the insurer the functions of an actuary set out in the prudential standards; and
  - (b) prepare, and give to the insurer, the reports (if any) required by the prudential standards to be prepared by the actuary.

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- (2) The general insurer must make the arrangements that are necessary to enable the actuary to do those things.
- (3) The reports that the prudential standards require the actuary to prepare must deal with all of the matters required by the prudential standards to be dealt with in the reports.

**49L Lodgment of auditor's certificate and actuary's reports**

- (1) A general insurer must, in accordance with the prudential standards, lodge with APRA:
  - (a) a section 49J certificate relating to the yearly statutory accounts for each financial year of the insurer; and
  - (aa) the reports referred to in section 49J; and
  - (b) the reports referred to in section 49K.

Penalty: 300 penalty units.

- (1A) 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.
- (2) An offence against this section is an offence of strict liability.

Note 1: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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

## Division 5—Accounts

### 49Q Keeping of accounting records

*Accounting records must be kept in Australia etc.*

- (1) The accounting records that a general insurer keeps for the purposes of this Act (including the prudential standards) must be kept:
  - (a) in writing:
    - (i) in the English language; or
    - (ii) 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 insurer meets the conditions (if any) specified in the approval—in another country specified in the approval.

- (1A) The approval may be given subject to specified conditions.

*Notification of address where accounting records are kept*

- (1B) A general insurer must notify APRA, in the approved form, of the address where the insurer's accounting records are kept:
  - (a) if, immediately before the commencement of this subsection, the insurer has an authorisation under section 12—within 28 days after that commencement; or
  - (b) otherwise—within 28 days after the insurer is granted an authorisation under that section.
- (1C) If:
  - (a) a general insurer has notified APRA of the address where the insurer's accounting records are kept; and
  - (b) the insurer moves the accounting records to a new address;

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the insurer must notify APRA, in the approved form, of the new address where the accounting records are kept.

- (1D) The notification must be given within 28 days after the day on which the accounting records are moved to the new address.

*Offence*

- (2) A general insurer commits an offence if the insurer contravenes 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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

*Merits review*

- (3) 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.

## **Division 6—Removal of auditors and actuaries**

### **49R APRA may direct removal of auditor or actuary**

- (1) APRA may, if satisfied there is a ground under subsection (3), give a written direction to a body corporate that is a general insurer to end the appointment of a person as:
  - (a) an auditor of the general insurer; or
  - (b) the actuary of the general insurer.
- (2) APRA may, if satisfied there is a ground under subsection (3), give a written direction to a body corporate that is an authorised NOHC to end the appointment of a person as:
  - (a) the auditor of the authorised NOHC; or
  - (b) the actuary of the authorised NOHC.
- (3) The grounds for giving a direction to end a person's appointment are:
  - (a) if the person is an auditor or the actuary of a general insurer—the person is disqualified from holding such an appointment under section 44; or
  - (b) the person does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.
- (4) Before directing a body corporate to end a person's appointment, APRA must:
  - (a) give written notice to:
    - (i) the body corporate; and
    - (ii) the person; and
  - (b) give the body corporate and the person a reasonable opportunity to make submissions on the matter.
- (5) The notice must include a statement that any submissions in response to the notice may be discussed by APRA with other persons as mentioned in paragraph (6)(b).
- (6) If a submission is made in response to the notice, APRA:

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- (a) must have regard to the submission; and
  - (b) may discuss any matter contained in the submission with any persons APRA considers appropriate for the purpose of assessing the truth of the matter.
- (7) A direction to end a person's appointment takes effect on the day specified in the direction, which must be at least 7 days after the direction is made.
- (8) If APRA directs a body corporate to end a person's appointment, APRA must give the body corporate and the person a copy of the direction.
- (9) The power of a body corporate to comply with a direction to end a person's appointment may be exercised on behalf of the body corporate:
  - (a) by the Chair of the board of directors of the body corporate signing a written notice; or
  - (b) by a majority of the directors of the body corporate (excluding any director who is the subject of the direction) jointly signing a written notice.
- (10) Subsection (9) does not by implication limit any other powers of a body corporate to end a person's appointment.
- (11) Part VI applies to a decision by APRA to give a direction under this section on the ground referred to in paragraph (3)(b).
- (12) A direction to end a person's appointment is not a legislative instrument.
- (13) A body corporate commits an offence if:
  - (a) the body corporate does or fails to do an act; and
  - (b) by doing or failing to do the act, the body corporate fails to comply with a direction under this section.

Penalty: 60 penalty units.

- (14) Strict liability applies to subsection (13).

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

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## Part V—Investigations of general insurers etc.

### 50 Interpretation

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

**affairs**, in relation to a body corporate that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC or to a body corporate associated with another body corporate, includes:

- (a) the promotion, formation, membership, control, trading, dealings, business and property of the body corporate;
- (b) the ownership of shares in, debentures of and prescribed interests made available by the body corporate;
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the body corporate or are or have been able to control or to influence materially the policy of the body corporate; and
- (d) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of or prescribed interests made available by the body corporate.

**prescribed interest** means an interest in a managed investment scheme within the meaning of the *Corporations Act 2001*.

**prescribed person**, in relation to a body corporate that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC, or a body corporate associated with another body corporate, means:

- (a) a person who is, or has at any time been, a director, secretary, officer or employee of the body corporate;
- (b) a person who acts or has at any time acted as solicitor, auditor or in any other capacity for the body corporate;
- (c) a person who:

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- (i) has, or has at any time had, in the person's possession any property of the body corporate;
    - (ii) is indebted to the body corporate; or
    - (iii) is capable of giving information concerning the affairs of the body corporate; and
  - (d) where APRA has given notice in writing to a person that APRA has reasonable grounds for believing that that person is a person referred to in paragraph (c), that person;
- but does not include:
- (e) a receiver, or a receiver and manager, of property of the body; or
  - (f) an administrator, within the meaning of the *Corporations Act 2001*, of the body; or
  - (g) an administrator of a deed of company arrangement executed by the body under Part 5.3A of that Act; or
  - (i) a liquidator or provisional liquidator of the body.
- (2) For the purposes of this Part, a body corporate is associated with another body corporate if the two bodies corporate are related to each other and:
- (a) the first-mentioned body corporate is a general insurer or authorised NOHC; or
  - (b) either of those bodies corporate is, or has directors who are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the other body corporate or of its directors;
- and references in this Part to a body corporate having been associated with another body corporate shall be construed accordingly.
- (3) The question whether bodies corporate are related to each other for the purposes of this Part is to be determined in the same way as the question whether bodies corporate are related to each other would be determined under the *Corporations Act 2001* if, in section 46 of that Act:

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

## **52 Investigation of general insurer, authorised NOHC or subsidiary by APRA or inspector**

(1) Where:

- (aa) it appears to APRA that a body corporate that is a general insurer or authorised NOHC:
  - (i) is, or is likely to become, unable to meet its liabilities; or
  - (ii) has contravened or failed to comply with a provision of this Act or the *Financial Sector (Collection of Data) Act 2001* or a condition or direction applicable to it under this Act or that Act; or
- (ab) it appears to APRA that there is, or there may be, a risk to the security of a general insurer's or authorised NOHC's assets; or
  - (a) it appears to APRA that there is, or there may be, a sudden deterioration in a general insurer's or authorised NOHC's financial condition; or
  - (b) it appears to APRA that information in its possession calls for the investigation of the whole or any part of the business of a general insurer or authorised NOHC;

APRA may, by notice in writing served on the body corporate, require it to show cause within such period after service of the notice, being not less than 14 days, as APRA specifies in the notice, why APRA should not:

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- (c) investigate the whole or any part of the business of the body corporate; or
  - (d) appoint a person to make such an investigation and report to APRA the results of his or her investigation.
- (1AA) A notice under subsection (1) must specify which of paragraphs 1(aa), (ab), (a) or (b) is being relied on to give the notice.
- (1AB) Despite subsection (1), APRA may specify a period of less than 14 days in a notice under that subsection if:
  - (a) APRA considers that specifying the shorter period is necessary; and
  - (b) the period specified is reasonable in the circumstances.
- (1A) If APRA has served, or is proposing to serve, a notice under subsection (1) on a body corporate, APRA may:
  - (a) if the notice has been served—at any time; or
  - (b) otherwise—at or about the time when the notice is served;cause a written notice to be served under subsection (1C) on a body corporate that is a subsidiary of the first-mentioned body corporate.
- (1B) If it appears to APRA that a body corporate that is a subsidiary of a body corporate that is a general insurer or authorised NOHC has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001* or a condition or direction applicable to it under this Act or the *Financial Sector (Collection of Data) Act 2001*, APRA may cause a written notice to be served under subsection (1C) on the subsidiary.
- (1C) A notice referred to in subsection (1A) or (1B) may require the body corporate on which it is served to show cause, within such period after service of the notice (being not less than 14 days) as is stated in the notice, why APRA should not, on stated grounds:
  - (a) investigate the whole or any part of the business of the body corporate; or
  - (b) appoint a person to make such an investigation and report to APRA the results of the investigation.

- (2) If:
- (a) a body corporate on which a notice is served under subsection (1), (1A) or (1B) fails, within the period stated in the notice, to show cause to APRA's satisfaction why an investigation should not be made; and
  - (b) APRA is satisfied that:
    - (i) if the notice was served under subsection (1)—in relation to the insurance business carried on by the body corporate; or
    - (ii) otherwise—in relation to any business carried on by the body corporate;it is in the public interest that an investigation should be made;
- APRA may:
- (c) make the investigation itself; or
  - (d) in writing, appoint a person (in this Part called the *inspector*) to make the investigation.
- (3) If:
- (a) APRA has decided that an investigation of a body corporate (in this section called the *first body corporate*) should be made; and
  - (b) another body corporate (in this section called the *associated body corporate*) is, or has at some relevant time been, associated with the first body corporate; and
  - (c) APRA believes on reasonable grounds that it is necessary for the purposes of the investigation to investigate the whole or a part of the affairs of the associated body corporate;
- APRA may:
- (d) make an investigation into the whole or that part of the affairs of the associated body corporate; or
  - (e) authorise the inspector to make such an investigation.
- (4) Before commencing an investigation of a body corporate, APRA or the inspector, as the case may be, must serve on the body corporate:
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- (a) in all cases—a written notice by APRA specifying the matters into which the investigation is to be made, being the whole or some part of affairs of the body corporate; and
  - (b) in the case of the inspector—a copy of the instrument appointing the inspector.
- (5) The inspector is to be a person resident in Australia.
- (6) 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.

### 54 Entry on premises

- (1) If APRA or the inspector, while investigating the whole or a part of the affairs of a body corporate believes on reasonable grounds that it is necessary for the purposes of the investigation to enter land or premises occupied by the body corporate or by another body corporate that is a subsidiary of the body corporate, an authorised person (if the investigation is by APRA), or the inspector, may at all reasonable times enter the land or premises and may:
  - (a) examine books on the land or premises that relate to the affairs of the body corporate or of the subsidiary or that he or she believes on reasonable grounds relate to those affairs;
  - (b) take possession of any of those books for such period as he or she thinks necessary for the purposes of the investigation; and
  - (c) make copies of or take extracts from any of those books.
- (2) The authorised person or the inspector shall permit a person who would be entitled to inspect any books referred to in subsection (1) if they were not in the possession of the authorised person or the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

**55 Powers of APRA or inspector**

- (1) APRA or the inspector may, by notice in writing given to a person who is a prescribed person in relation to a body corporate that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC or in relation to a body corporate that is associated with that body corporate, require that person:
- (a) to produce to APRA or the inspector all or any of the books relating to the affairs of the body corporate that are in the custody or under the control of that person;
  - (b) to give to APRA or the inspector all reasonable assistance in connexion with the investigation; or
  - (c) to appear before a specified authorised person or the inspector for examination concerning matters relevant to the investigation.
- (1A) APRA or the inspector may give a notice to a prescribed person in relation to a body corporate only if:
- (a) APRA or the inspector is investigating the whole or part of the affairs of the body corporate or a body corporate that is associated with that body corporate; or
  - (b) the notice is given for the purposes of APRA's monitoring functions under section 38.
- (2) Where books are produced to APRA or the inspector under this section, APRA or the inspector may take possession of them for such period as APRA or the inspector thinks necessary for the purposes of the investigation and may make copies of and take extracts from them but shall permit a person who would be entitled to inspect any of them if they were not in the possession of APRA or the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.
- (2A) APRA's powers under subsection (2) to make copies of, or take extracts from, books may be exercised on APRA's behalf by an authorised person.

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- (3) A person who complies with a requirement of APRA or the inspector under this section does not incur any liability to any other person by reason only of that compliance.

### **56 Persons to comply with requirements of APRA or the inspector**

- (1) A person commits an offence if:
- (a) a requirement of APRA or the inspector under section 55 is applicable to the person; and
  - (b) the person refuses or fails to comply with the requirement to the extent to which the person is able to comply with it.

Penalty: Imprisonment for 3 months.

- (2) A person being examined by an authorised person or the inspector is not excused from answering a question put to him or her by the authorised person or the inspector on the ground that the answer might tend to incriminate him or her but, where the person informs the authorised person or the inspector before answering the question that the answer might tend to incriminate him or her, neither the question nor the answer is admissible in evidence against him or her in criminal proceedings other than a prosecution for:
- (a) an offence against subsection (1); or
  - (b) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

### **57 Person may be represented by a legal practitioner**

A barrister or solicitor acting for a person being examined by an authorised person or the inspector:

- (a) may attend the examination; and
- (b) may, to the extent that the authorised person or the inspector allows:
  - (i) address the authorised person or the inspector; and
  - (ii) examine the person;



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in relation to matters in respect of which the authorised person or the inspector has questioned the person.

**58 Notes of examination of person**

- (1) An authorised person or the inspector may cause notes of an examination of a person under this Part to be recorded in writing and read to or by that person and may require that person to sign the notes and, subject to subsection 56(2), notes signed by that person may be used in evidence in proceedings under this Act against that person.
- (2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him or her in writing to APRA or the inspector.
- (3) If the inspector causes notes to be recorded under this section, the notes must be given to APRA with the report of the investigation concerned.

**59 Delegation**

- (1) Powers under this Part may be delegated as follows:
  - (a) APRA's powers may be delegated under section 15 of the *Australian Prudential Regulation Authority Act 1998*;
  - (b) an inspector may by signed instrument delegate his or her powers to:
    - (i) an APRA member or an APRA staff member; or
    - (ii) a person included in a class of persons approved in writing by APRA for the purposes of this subparagraph.
- (3) A delegate shall, on the request of an officer of a body corporate in relation to which the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy of the instrument, for inspection.

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### 60 Report of APRA or the inspector

- (1) The inspector:
  - (a) may make one or more reports in writing to APRA during the investigation of the whole or a part of the affairs of a body corporate and shall, if so directed in writing by APRA, make such reports as are specified in the direction; and
  - (b) shall, on a completion or termination of the investigation, report in writing to APRA on the result of the investigation.
- (1A) APRA must, on a completion or termination of an investigation made by APRA, make a report in writing on the result of the investigation.
- (2) A report made on the completion of the investigation shall include:
  - (a) a statement of the opinion of APRA or the inspector in relation to the ability of the body corporate to meet its liabilities and the facts on which that opinion is based; and
  - (b) if the investigation relates to the affairs of a body corporate that is associated with a body corporate (the ***authorised body corporate***) that is a general insurer or authorised NOHC—a statement of the opinion of APRA or inspector in relation to the effect of the association on the ability of the authorised body corporate to meet its liabilities and the facts on which that opinion is based; and
  - (c) the recommendations of APRA or the inspector with respect to:
    - (i) if the body corporate is a general insurer or authorised NOHC—whether it should continue to be a general insurer or authorised NOHC; and
    - (ia) any recapitalisation directions that should be given to the body corporate; and
    - (ii) any directions that should be given to the body corporate under section 104; and
    - (iii) the question whether the affairs of the body corporate should be reorganized to enable it to meet its liabilities

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- and continue to carry on business and, if so, the way in which they should be reorganized; and
- (iv) such other matters affecting the body corporate or otherwise in the public interest in relation to the insurance or other business carried on by the body corporate as APRA or the inspector thinks fit.
- (3) A report made on the completion of the investigation may include statements of the opinion of APRA or the inspector in relation to the matters referred to in paragraphs (2)(a) and (b) and APRA's or the inspector's recommendations with respect to the matters referred to in paragraph (2)(c).
- (4) APRA or the inspector shall not include in a report a recommendation relating to the institution of criminal proceedings or a statement to the effect that, in APRA or the inspector's opinion, a specified person has committed a criminal offence.
- (4A) If the inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, the inspector must advise APRA, in writing, of that opinion.
- (5) Subject to subsection (6), APRA shall give a copy of a report made by or to APRA under this section to the body corporate.
- (6) APRA shall seek the advice of the Attorney-General before giving a copy of a report to the body corporate and shall not give a copy to the body corporate if the Attorney-General advises APRA that, having regard to proceedings that have been or might be instituted, a copy of the report should not be so given.
- (7) Where a copy of a report has been given to the body corporate, APRA may, if APRA considers it is in the public interest to do so and after taking into consideration any advice APRA has received from the Attorney-General, cause the whole or some part of the report to be published.
- (8) A court before which proceedings whether under this Act or otherwise are brought against a body corporate or other person in respect of matters dealt with in a report under this Part may order
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that a copy of the report be given to the body corporate or that person.

### 61 Offences

(1) A person shall not:

- (a) conceal, destroy, mutilate or alter a book relating to the affairs of a body corporate affairs of which are being investigated under this Part; or
- (b) send, cause to be sent, or conspire with another person to send, out of Australia a book or any money or property belonging to or under the control of such a body corporate.

Penalty: Imprisonment for 3 months.

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

(2) In a prosecution for an offence under subsection (1), it is a defence for the person charged to prove that the person did not act with intent to defeat the purposes of this Part and did not act with intent to delay or obstruct the carrying out of the investigation under this Part.

## **Part VA—Investigations of unauthorised insurance**

### **62A Investigations relating to contraventions of section 9 or 10 etc.**

- (1) If APRA believes on reasonable grounds that a body corporate or other person has engaged, is engaging or will engage in conduct:
  - (a) in contravention of section 9 or 10; or
  - (b) constituting the aiding, abetting, counselling or procuring of a contravention of section 9 or 10;

APRA may investigate the whole or part of the conduct or proposed conduct, or appoint a person (the *inspector*), in writing, to investigate the whole or part of the conduct or proposed conduct.

- (2) The inspector is to be a person resident in Australia.

### **62B Access to premises**

- (1) For the purpose of an investigation under this Part:
  - (a) if the investigation is by APRA—an authorised person; or
  - (b) if APRA has appointed an inspector for the investigation—the inspector;may, with the consent of the occupier of any premises, enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books containing information relevant to the investigation.
- (2) If APRA believes on reasonable grounds that there are, on any premises, books containing information relevant to an investigation under this Part by APRA, an authorised person may apply to a Magistrate for a warrant under subsection (4).
- (3) If an inspector believes on reasonable grounds that there are, on any premises, books containing information relevant to an investigation under this Part by the inspector, the inspector may apply to a Magistrate for a warrant under subsection (4).

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- (4) If, on an application under subsection (2) or (3), the Magistrate is satisfied by information on oath or affirmation:
- (a) that there are, on the premises, books containing information relevant to the investigation; and
  - (b) that the issue of the warrant is reasonably required for the purposes of the investigation;
- the Magistrate may grant a warrant authorising the authorised person or inspector, with such assistance as the authorised person or inspector thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, and if necessary by force, for the purpose of searching for, inspecting, taking extracts from and making copies of any such books.
- (5) If the authorised person or inspector has entered premises in accordance with subsection (1) or a warrant under subsection (4), he or she may search for, inspect, take extracts from and make copies of any books containing information relevant to the investigation.

### 62C Powers of APRA or inspector

- (1) If APRA believes on reasonable grounds that a person has or may have custody or control of information relevant to an investigation under this Part by APRA, APRA may, by written notice given to the person, require the person:
- (a) to produce to APRA, within the time specified in the notice, all or any of the books containing information relevant to the investigation that are in the custody or under the control of the person; or
  - (b) to give to APRA all reasonable assistance in connection with the investigation; or
  - (c) to appear before a specified authorised person for examination concerning matters relevant to the investigation.
- (2) If an inspector believes on reasonable grounds that a person has or may have custody or control of information relevant to an

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Section 62D

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investigation under this Part by the inspector, the inspector may, by written notice given to the person, require the person:

- (a) to produce to the inspector, within the time specified in the notice, all or any of the books containing information relevant to the investigation that are in the custody or under the control of the person; or
  - (b) to give to the inspector all reasonable assistance in connection with the investigation; or
  - (c) to appear before the inspector for examination concerning matters relevant to the investigation.
- (3) The time specified in a notice for the purposes of paragraph (1)(a) or (2)(a) must be a time that is reasonable in the circumstances.
- (4) If books are produced to APRA or the inspector under this section, APRA, the inspector or an authorised person may make copies of them.
- (5) A person who complies with a requirement of APRA or the inspector under this section does not incur any liability to any other person merely because of that compliance.

**62D Persons to comply with requirements of APRA or the inspector**

- (1) A person commits an offence if:
- (a) a requirement of APRA or the inspector under section 62C is applicable to the person; and
  - (b) the person refuses or fails to comply with the requirement to the extent to which the person is able to comply with it.

Penalty: 50 penalty units or imprisonment for 3 months, or both.

- (2) A person is not excused from complying with a requirement under section 62C on the ground that doing so might tend to incriminate the person.
- (3) However, if the person is:
- (a) an individual; and
  - (b) is required to answer questions under section 62C; and

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- (c) before answering the questions, the person informs APRA or the inspector that doing so might tend to incriminate him or her;
- the questions or answers are not admissible in evidence against him or her in criminal proceedings other than a prosecution for:
- (d) an offence against subsection (1); or
  - (e) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

### 62E Person may be represented by a legal practitioner

- (1) A barrister or solicitor acting for a person being examined by an authorised person or the inspector:
  - (a) may attend the examination; and
  - (b) may, to the extent that the authorised person or the inspector allows:
    - (i) address the authorised person or the inspector; and
    - (ii) examine the person;in relation to matters in respect of which the authorised person or the inspector has questioned the person.
- (2) If, in the opinion of the authorised person or inspector, a person is trying to obstruct the examination by exercising rights under subsection (1), the authorised person or inspector may require the person to stop addressing the authorised person or inspector, or examining the examinee, as the case requires.

### 62F Notes of examination of person

- (1) An authorised person or the inspector may:
  - (a) cause notes of an examination of a person under this Part to be recorded in writing and read to or by that person; and
  - (b) require that person to sign the notes.
- (2) Subject to subsection 62D(3), notes signed by that person may be used in evidence in proceedings under this Act against that person.



- (3) A copy of the notes signed by a person must be given without charge to that person if he or she makes a written request to APRA or the inspector.
- (4) If the inspector causes notes to be recorded under this section, he or she must give the notes to APRA.

**62G Delegation**

- (1) Powers under this Part may be delegated as follows:
  - (a) APRA's powers may be delegated under section 15 of the *Australian Prudential Regulation Authority Act 1998*;
  - (b) an inspector may, by signed instrument, delegate his or her powers to:
    - (i) an APRA member or an APRA staff member; or
    - (ii) a person included in a class of persons approved under subsection (2).
- (2) APRA may, by legislative instrument, approve a class of persons for the purposes of subparagraph (1)(b)(ii).
- (3) A delegate must, on the request of a person in relation to whom the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy of the instrument, for inspection.

**62H Investigations to be completed within a reasonable time**

- (1) An investigation under this Part must be completed within a reasonable time after the investigation commenced.
- (2) Within a reasonable time after the investigation has been completed, APRA must give to each person whose conduct or proposed conduct was the subject of the investigation a written notice stating:
  - (a) that the investigation has been completed; and
  - (b) whether APRA proposes that further action be taken relating to the conduct or proposed conduct.

**Section 62J**

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**62J Report of the inspector**

An inspector must, on a completion or termination of the investigation, report in writing to APRA on the result of the investigation.

## **Part VB—Judicial management, statutory management, other external administration and winding up**

### **Division 1—Judicial management of general insurers**

#### **62K Application for order for judicial management**

- (1) APRA may apply to the Federal Court for an order that a general insurer be placed under judicial management.
- (2) Subject to subsection (3), a general insurer may apply to the Federal Court for an order that the general insurer be placed under judicial management.
- (3) A general insurer may only apply if it has given APRA at least one month's notice in writing of its intention to apply.
- (4) On an application by APRA, the general insurer is entitled to be heard.
- (5) On an application by the general insurer, APRA is entitled to be heard.

#### **62L Order for judicial management after investigation**

On an application under section 62K, the Federal Court may make an order that a general insurer be placed under judicial management if the Court is satisfied:

- (a) that the insurance business of the general insurer has been investigated under Part V; and
- (b) that, having regard to the results of the investigation, it is in the interests of policyholders of the general insurer that the order be made.

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Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

### 62M Order for judicial management on other grounds

- (1) On an application under section 62K, the Federal Court may make an order that a general insurer be placed under judicial management if the Federal Court is satisfied:
- (a) that:
- (i) in the absence of external support, the general insurer is, or is likely to become, unable to meet its policy or other liabilities as they become due; or
  - (ii) the general insurer is a foreign general insurer and, in the absence of external support, is, or is likely to become, unable to meet, from its assets in Australia (other than any assets or amount excluded by the prudential standards for the purposes of paragraph 28(b)), its liabilities in Australia other than pre-authorisation liabilities as they become due; or
  - (iii) the general insurer has failed to comply with a prudential standard; or
  - (iiia) the general insurer has failed to comply with a recapitalisation direction; or
  - (iv) the general insurer has failed to comply with a direction under section 104; or
  - (ivaa) the general insurer has failed to comply with a requirement of the *Financial Accountability Regime Act 2023*; or
  - (iva) an external administrator has been appointed to a holding company of the general insurer (or a similar appointment has been made in a foreign country in respect of such a holding company), and the requirement in subsection (2) is satisfied; or
  - (ivb) if the general insurer is a foreign general insurer—an application for the appointment of an external administrator of the foreign general insurer, or for a

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- similar procedure in respect of the foreign general insurer, has been made in a foreign country; or
- (ivc) if the general insurer is a foreign general insurer—an external administrator has been appointed to the foreign general insurer, or a similar appointment has been made in respect of the foreign general insurer, in a foreign country; or
- (v) there are reasonable grounds for believing that the financial position or management of the general insurer may be unsatisfactory; and
- (b) that the time needed to make or complete an investigation of the insurance business of the general insurer under Part V would be likely to be such as to prejudice the interests of policyholders of the general insurer.

Note 1: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

Note 2: Section 116A deals with assets and liabilities in Australia.

- (2) For the purposes of subparagraph (1)(a)(iva), the requirement in this subsection is that the appointment mentioned in that subparagraph poses a significant threat to:
- (a) the operation or soundness of the general insurer; or
- (b) the interests of policyholders of the general insurer; or
- (c) the stability of the financial system in Australia.
- (3) The regulations may specify that a particular form of support for a general insurer is not to be considered external support for the purposes of subparagraphs (1)(a)(i) and (ii).

## 62N Commencement of judicial management

The judicial management of a general insurer commences:

- (a) at the time specified in the order for judicial management as the time at which the judicial management is to commence; or
- (b) if no time is so specified, when the order is made.

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**62P Moratorium—effect of judicial management on court and tribunal proceedings**

- (1) A person cannot begin or continue a proceeding in a court or tribunal covered by subsection (9) in respect of a general insurer if the general insurer is under judicial management.
- (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 and the judicial manager 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) The judicial manager may apply to the court or tribunal to be joined as a party to the proceedings for leave. If the judicial manager is joined as a party, the court or tribunal must have regard to the judicial manager'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

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- (c) if the court or tribunal decides to impose such terms—the nature of those terms.
- (6) Subsection (1) also does not apply if the judicial manager, after considering APRA's views, consents to the proceedings beginning or continuing.
- (7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).
- (8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).
- (9) A proceeding in a court or tribunal is covered by this subsection in respect of a general insurer if it is any of the following:
  - (a) a proceeding against the general insurer (including a cross-claim or third party claim against the general insurer);
  - (b) a proceeding in relation to property of the general insurer;
  - (c) a proceeding to enforce any security (including a mortgage or charge) granted by the general insurer, or by a related body corporate of the general insurer, over any property that the general insurer owns, uses, possesses, occupies or in which the general insurer otherwise has an interest.
- (10) Subsection (9) 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.
- (11) In this section, a reference to a tribunal includes a reference to the following:
  - (a) an industrial tribunal;
  - (b) an arbitral tribunal.

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**62PA Moratorium—effect of judicial management on enforcement process regarding property**

- (1) No enforcement process in relation to property of a general insurer can be begun or proceeded with if the general insurer is under judicial management.
  - (2) Subsection (1) does not apply if:
    - (a) the Federal Court 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
    - (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 under paragraph (2)(a) must give APRA and the judicial manager 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 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) The judicial manager may apply to the Federal Court to be joined as a party to the proceedings for leave. If the judicial manager is joined as a party, the Federal Court must have regard to the judicial manager'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.
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- (6) Subsection (1) also does not apply if the judicial manager consents to the process beginning or continuing.
- (7) The judicial manager cannot revoke a consent given for the purposes of subsection (6).
- (8) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (6).

**62PB Moratorium—effect of judicial 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 general insurer; and
  - (c) the general insurer is under judicial management.

Note: The Federal Court may grant an injunction under section 129D in respect of a contravention of this subsection.

- (2) Subsection (1) does not apply if the judicial manager consents to the disposal.
- (3) The judicial manager is not liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

**62PC Moratorium—Restrictions on exercise of third party property rights**

- (1) Section 440B of the *Corporations Act 2001* applies during a period in which a general insurer is under judicial management 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 the judicial manager's written consent.

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- (3) The judicial manager is not 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 62P, 62PA and 62PB.

**62PD Moratorium—effect of judicial management on supply of essential services**

- (1) If:
  - (a) a general insurer is under judicial management; and
  - (b) the judicial manager requests, or authorises someone else to request, a person or authority (the *supplier*) to supply an essential service to the general insurer in Australia; and
  - (c) the general insurer owes an amount to the supplier in respect of the supply of the essential service before the day on which the judicial manager took control of the general insurer'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 may grant an injunction under section 129D 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*.

**62PE Moratorium—effect of judicial management on annual general meeting**

- (1) This section applies to a general insurer that is required under section 250N or section 601BR of the *Corporations Act 2001* to hold an annual general meeting within a particular period.

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- (2) Despite section 250N and section 601BR of that Act, if the general insurer is under judicial management at the end of that period, the general insurer need not hold that annual general meeting.

**62R Appointment of judicial manager**

- (1) If the Federal Court orders the judicial management of a general insurer the Court must, by its order, appoint a judicial manager of the general insurer.
- (1A) If, subsequent to that order, a situation arises where there is no judicial manager of the general insurer, or it appears to the Federal Court that it is likely that such a situation will arise, the Federal Court may appoint another judicial manager of the general insurer.
- (1B) If the Federal Court appoints 2 or more judicial managers of a general insurer, or appoints one or more additional judicial managers of a general insurer:
- (a) except to the extent (if any) specified in a declaration by the Federal Court under paragraph (b), the functions and powers under this Act of a judicial manager of the general insurer may be performed or exercised by:
    - (i) all of the judicial managers of the general insurer acting jointly; or
    - (ii) each of the judicial managers of the general insurer acting individually; and
  - (b) at the time of appointment, the Federal Court may make a declaration for the purposes of paragraph (a), specifying limits or conditions on the judicial managers' ability to perform functions and exercise powers jointly or individually; and
  - (c) treat a reference in this Act to a judicial manager as being a reference to whichever one or more of those judicial managers the case requires.
- (2) The Federal Court may cancel the appointment of a judicial manager and appoint another person as judicial manager:
- (a) on application by APRA; or

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- (b) of its own motion.
- (3) APRA is entitled to be heard in proceedings before the Court for the cancellation of the appointment.

**62S Remuneration of judicial manager**

- (1) The Federal Court may give directions about:
  - (a) the remuneration and allowances that a judicial manager is to receive; and
  - (b) who is to pay the remuneration and allowances.
- (2) The Federal Court may charge the judicial manager's remuneration and allowances on the property of the general insurer under judicial management in such order of priority in relation to any existing charges on that property as the Court thinks fit.

- (3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to a charge created in accordance with subsection (2).

Note 1: The effect of this subsection is that the priority between a charge and a security interest to which the *Personal Property Securities Act 2009* applies is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to statutory interests that arise after the commencement of subsection (3) (which is the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

**62T Effect of judicial management on powers of officers etc.**

- (1) Subject to subsection (3), if the Federal Court has made an order placing a general insurer under judicial management:
  - (a) at the time the judicial management commences:
    - (i) a person with the powers and functions of an officer of the general insurer immediately before that time ceases to have those powers and functions; and
    - (ii) if the general insurer is a foreign general insurer and there is a person with the powers and functions of an

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agent of the general insurer for the purposes of section 118 immediately before that time—the person ceases to have those powers and functions; and

- (iii) the judicial manager appointed by the Court starts to have the powers and functions mentioned in subparagraph (i) (and, if applicable, subparagraph (ii)); and

(b) while the general insurer is under judicial management:

- (i) if a person mentioned in subparagraph (a)(i) or (ii) purports to act in relation to the general insurer's business, the purported act is invalid and of no effect; and
- (ii) the judicial manager has the powers and functions of the members of the board of directors of the general insurer (collectively and individually), including the board's powers of delegation.

(2) Subsection (1) does not remove an officer or agent of the general insurer from office.

(3) A general insurer may not issue policies without the leave of the Federal Court if the company is under judicial management.

Note: This section and other provisions relating to judicial management do not apply to the aspects described in subsection 62ZVA(1) of the business and management of a foreign general insurer.

(4) In this section, **officer** has the same meaning as it has in the *Corporations Act 2001*.

**62U Effect on external administrator of judicial manager managing general insurer**

(1) The appointment of an external administrator of a general insurer is terminated when the judicial management of the general insurer commences.

(2) An external administrator of a general insurer must not be appointed while the general insurer is under judicial management.

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- (3) If:
- (a) a person who ceased to be the external administrator of a general insurer under subsection (1); or
  - (b) a purported external administrator of a general insurer appointed in contravention of subsection (2);
- purports to act in relation to the general insurer's business while the general insurer is under judicial management, the purported act is invalid and of no effect.
- (4) As soon as possible after the Federal Court orders the judicial management of a general insurer and appoints a judicial manager, the judicial manager must inform the external administrator (if any) of the general insurer that the general insurer is under judicial management. However, failure to inform the external administrator does not affect the operation of this section.

**62V Judicial management 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:
- (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.
- (3) The matters are as follows:
- (a) the making by the Federal Court of an order that the body corporate be placed under judicial management;
  - (b) the commencement of the judicial management of the body corporate;

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- (c) if the body corporate is a member of a relevant group of bodies corporate:
  - (i) the making by the Federal Court of an order that another member of the group be placed under judicial management; or
  - (ii) the commencement of the judicial management of another member of the group.

**62W Continued application of other Parts of Act**

- (1) None of the matters mentioned in subsection (2) affect:
  - (a) the continued operation of other Parts of this Act in relation to a general insurer; or
  - (b) the operation of the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2023* in relation to a general insurer; or
  - (c) the obligation of a general insurer to comply with those other Parts and those Acts.
- (2) The matters are as follows:
  - (a) the making by the Federal Court of an order that the general insurer be placed under judicial management;
  - (b) the commencement of the judicial management of the general insurer.

**62X Federal Court's control of judicial manager**

- (1) A judicial manager is subject to the control of the Federal Court.
- (2) In addition to duties imposed by this Part, a judicial manager has such duties as the Federal Court directs.
- (3) A judicial manager may apply to the Federal Court at any time for instructions:
  - (a) as to the way in which the judicial management should be conducted; or

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- (b) in relation to any matter arising during the judicial management.
- (4) Before applying to the Federal Court for instructions, the judicial manager must:
  - (a) inform APRA that he or she intends to make the application; and
  - (b) give APRA written details of the application.
- (5) APRA is entitled to be heard on the application.

**62Y Powers of judicial manager**

- (1) The judicial manager of a general insurer has the following powers:
  - (a) to bring or defend any legal proceedings in the name and on behalf of the general insurer;
  - (b) to appoint a legal practitioner to help him or her in the performance of his or her duties;
  - (c) to appoint an actuary (other than the actuary appointed for the purposes of section 39) to help him or her in the performance of his or her duties;
  - (d) to sell or otherwise dispose of all or any of the property of the general insurer;
  - (e) to do all acts and execute in the name and on behalf of the general insurer all deeds, receipts and other documents;
  - (f) for the purpose of paragraph (d), to use the general insurer's common or official seal;
  - (g) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any debtor of the general insurer or under any deed executed under that Act;
  - (h) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the general insurer;
  - (i) to obtain credit, whether on the security of the general insurer or otherwise;



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- (j) to take out letters of administration of the estate of a deceased debtor, and to do anything necessary for obtaining payment of any money due from a debtor, or his or her estate, that cannot conveniently be done in the name of the general insurer;
  - (k) to appoint an agent to do anything that it is not practicable for the judicial manager to do personally or that it is unreasonable to expect him or her to do personally;
  - (l) such other powers as the Federal Court directs.
- (2) The powers conferred by this section are in addition to powers conferred on a judicial manager by any other provision of this Part.

**62Z Judicial manager's additional powers to facilitate recapitalisation**

*Powers*

- (1) A judicial manager of a general insurer 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 judicial 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.

Note: Before doing such an act, the judicial manager will usually need to get and consider a report on the fair value of each share or right concerned (see section 62ZA), and will need to report to the Federal Court and obtain the court's order for the act (see sections 62ZI and 62ZJ).

*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 judicial
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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 judicial manager may do an act under subsection (1) despite:
- (a) the *Corporations Act 2001* (without limiting the scope of section 127B 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.

**62ZA Considering report before acting under section 62Z**

*Getting and considering report on fair value of shares or rights*

- (1) Before determining terms for an act under subsection 62Z(1), the judicial 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 judicial 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 judicial manager;
    - (ii) a person who is an associate of the judicial manager under Division 2 of Part 1.2 of the *Corporations Act 2001*;
    - (iii) the company;
    - (iv) a person who is an associate of the company 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:
- (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 judicial manager proposes to issue (taking into account the relative financial risk, and voting and distribution rights, of the classes); and

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- (c) then allocate the value of each class pro rata among the shares in that class that either have been issued or that the judicial 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.

*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 62Z.

*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

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that delaying the act to enable compliance with that subsection in relation to the act would detrimentally affect:

- (a) policyholders of the general insurer concerned; 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 judicial manager concerned.
- (10) A determination made under subsection (8) is not a legislative instrument.

**62ZB Act under section 62Z 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:
- (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.
- (3) The matters are as follows:
- (a) a judicial manager doing an act under subsection 62Z(1) relating to the body corporate;
  - (b) if the body corporate is a member of a relevant group of bodies corporate—a judicial manager doing an act under subsection 62Z(1) relating to another member of the group.

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**62ZC Application by APRA for instructions to judicial manager**

- (1) APRA may apply to the Federal Court for an order that the Court give instructions to the judicial manager relating to the conduct of the judicial management of a general insurer.
- (2) The judicial manager is entitled to be heard on the application.

**62ZD Request by APRA for information**

- (1) APRA may require a judicial manager, by written notice given to the judicial manager, to give APRA information about one or more of the following matters:
  - (a) the conduct of the judicial management;
  - (b) the financial position of the general insurer under judicial management;
  - (c) a matter that APRA considers will enable APRA to perform APRA's functions under Part VC.
- (2) The notice must specify a reasonable period within which the information must be given to APRA.
- (3) A judicial manager commits an offence if:
  - (a) APRA requires the judicial manager to give APRA information under subsection (1); and
  - (b) the judicial manager refuses or fails to give the information.

Penalty: Imprisonment for 6 months or 100 penalty units, or both.
- (4) A judicial manager commits an offence if:
  - (a) APRA requires the judicial manager to give APRA information under subsection (1); and
  - (b) the judicial manager refuses or fails to give the information.

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*.

### **62ZE Duration of judicial management**

If the Federal Court orders that a general insurer be placed under judicial management, the general insurer remains under judicial management until:

- (a) the judicial management is cancelled; or
- (b) the Court orders that the general insurer be wound up.

### **62ZF Cancellation of judicial management**

- (1) A judicial manager appointed to manage a general insurer may apply to the Federal Court for an order cancelling the judicial management.
- (2) Any other interested person may apply to the Federal Court for an order cancelling the judicial management of a general insurer.
- (3) On an application under subsection (1) or (2), the Federal Court may cancel the order for the judicial management of the general insurer if it appears to the Court:
  - (a) that the purpose of the order has been fulfilled; or
  - (b) that for any reason it is undesirable that the order remain in force.
- (4) Before applying to the Federal Court under subsection (1) or (2), the judicial manager or interested person must:
  - (a) inform APRA that he or she intends to make the application; and
  - (b) give APRA written details of the application.
- (5) At the time when an order cancelling the judicial management of the general insurer comes into force:
  - (a) the judicial manager ceases to have the powers and functions of an officer of the general insurer; and
  - (b) the board of directors or other governing body of the general insurer starts to have those powers; and
  - (c) if the general insurer is a foreign general insurer and there is a person appointed as an agent of the general insurer for the

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purposes of section 118—the person starts to have the powers and functions of such an agent.

- (6) APRA is entitled to be heard on any application made under subsection (1) or (2).

## 62ZG How judicial manager is to manage

The judicial manager of a general insurer must conduct the judicial management as efficiently and economically as possible.

## 62ZH Disclaimer of onerous property

Division 7A (Disclaimer of onerous property) of Part 5.6 of the *Corporations Act 2001* applies in relation to the disclaimer of property of a general insurer by a judicial manager of the general insurer as if:

- (a) the general insurer were a company for the purposes of that Division; and
- (b) the judicial manager were the liquidator of the company; and
- (c) a reference in that Division to the Court were a reference to the Federal Court; and
- (d) subsection 568(10) of the *Corporations Act 2001* were omitted; and
- (e) the policyholders of the general insurer were the company's creditors for the purposes of subsections 568B(3) and 568E(5) of the *Corporations Act 2001*.

**Note:** One effect of this is that the judicial manager of a general insurer has essentially the same powers and duties relating to the disclaimer of property as a liquidator of a company.

## 62ZI Report by judicial manager

- (1) As soon as possible after starting to manage a general insurer, a judicial manager must file with the Federal Court a report that:
- (a) recommends the course of action listed in subsection (2) that is, in his or her opinion, most advantageous to the general



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interest of the policyholders of the general insurer while promoting financial system stability in Australia; and

(b) sets out the reasons for that recommendation.

(2) The following are the possible courses of action:

- (a) to transfer the business of the general insurer to another general insurer under Division 3A of Part III (whether the policies issued by the general insurer continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);
- (aa) to transfer the business, or part of the business, of the company to another company under section 25 of the *Financial Sector (Transfer and Restructure) Act 1999*;
- (ab) to transfer shares in the company to another company under section 25AA of the *Financial Sector (Transfer and Restructure) Act 1999*;
- (b) to allow the general insurer to carry on its business after a period of judicial management (whether the policies issued by the general insurer continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);
- (c) to do one or more of the acts described in subsection 62Z(1) (which is about various measures to recapitalise the general insurer), if that subsection applies to the general insurer;
- (d) to wind up the general insurer;
- (e) to take such other course of action as the judicial manager considers desirable, which may, for example, be a course of action that includes either or both of the following:
  - (i) altering the constitution, rules or other arrangements for governance of the general insurer, if it is registered under the *Corporations Act 2001*, to enable or facilitate the performance of the judicial manager's functions and duties, the exercise of the judicial manager's powers or a course of action described in paragraph (a), (b), (c) or (d);

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- (ii) one or more of the courses of action described in paragraphs (a), (b), (c) and (d).
- (3) A report may recommend different courses of action in respect of different parts of a general insurer's business.
- (4) If the Federal Court makes an order under section 62ZJ giving effect to a course or courses referred to in paragraph (2)(a), (b), (c) or (e) of this section, the judicial manager may file with the Court a further report or further reports dealing with matters to which a report under subsection (1) of this section may relate.
- (5) A report under subsection (4) must set out the reasons for any recommendation made in the report.
- (6) As soon as possible after filing a report under this section, the judicial manager must:
  - (a) give a copy of it to APRA; and
  - (b) apply to the Federal Court for an order to give effect to the course or courses of action stated in the report.
- (7) A report, or a copy of a report, under this section must be available for inspection by any person:
  - (a) at the Registry of the Federal Court in which the report is filed during the business hours of that Registry; and
  - (b) at such other place (if any) as APRA determines.

**62ZJ Order of Federal Court on report of judicial manager**

- (1) On an application for an order to give effect to a course or courses of action recommended in a report under section 62ZI:
  - (a) APRA and any other person interested is entitled to be heard; and
  - (b) the Federal Court may make an order giving effect to such course or courses of action as it considers in the circumstances to be most advantageous to the general interest of the policyholders of the general insurer concerned, while promoting financial system stability in Australia.

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- (2) The course or courses of action to which an order may give effect may be one or more of the following:
  - (a) one or more of the courses of action set out in subsection 62ZI(2);
  - (b) one or more other courses of action.
- (3) An order under this section:
  - (a) is binding on all persons; and
  - (b) takes effect despite anything in any of the following:
    - (i) the *Corporations Act 2001* (without limiting the scope of section 127B of this Act);
    - (ii) the constitution or other rules of the general insurer;
    - (iii) any contract or arrangement to which the general insurer is party;
    - (iv) any listing rules of a financial market in whose official list the general insurer is included.

### **62ZK Transfer of business to another general insurer**

- (1) If the Federal Court orders the transfer of the business of a general insurer to another general insurer, the judicial manager must prepare a scheme for the transfer in accordance with Division 3A of Part III.
- (2) Until the Federal Court confirms the scheme under that Part, the general insurer continues to be under judicial management.

### **62ZL Resignation**

A judicial manager appointed under this Division may resign the appointment as judicial manager by filing with the Federal Court a signed notice of resignation.

### **62ZM Immunity**

- (1) A judicial manager, or a person acting on behalf of a judicial manager, is not subject to any liability (whether civil or criminal)

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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 judicial manager by or under this Act.

- (2) Subsection (1) does not apply to an act or omission in bad faith.
- (3) A judicial manager is not liable under section 588G, 588GAB or 588GAC of the *Corporations Act 2001*. This subsection does not limit the scope of subsection (1).

*Signpost to secrecy obligations*

- (4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by judicial managers under this Act.

**62ZN 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:
  - (i) a sale or disposal of property of a general insurer under this Division by a judicial manager of the general insurer; or
  - (ii) a transfer of insurance business of a general insurer under a scheme prepared by a judicial manager of the general insurer and confirmed (with or without modifications) by the Federal Court under Division 3A of Part III;  
(whether the assets are shares in another body corporate or other assets);
- (b) an agreement or deed for carrying out a transfer described in subparagraph (a)(ii);
- (c) arrangements necessary to give effect to a scheme described in subparagraph (a)(ii);

- (d) the acquisition of shares in a general insurer as a direct result of:
- (i) the issue or sale of the shares under this Division by a judicial manager of the general insurer; or
  - (ii) the exercise of a right to acquire shares that was issued or sold under this Division by a judicial manager of the general insurer.

## **Division 1A—Statutory management of general insurers**

### **Subdivision A—General provisions relating to statutory management**

#### **62ZOA Consequences of inability or failure of general insurer etc. to meet certain requirements**

##### *Appointment of administrator or control by APRA*

- (1) APRA may take control of a general insurer's business or appoint an administrator to take control of the general insurer's business if both of the following requirements are met:
  - (a) APRA is satisfied of the matters of which the Federal Court is required to be satisfied for the purposes of section 62L or 62M;
  - (b) subsection (2) applies.
- (2) This subsection applies if APRA is satisfied that at least one of the following situations exists:
  - (a) both:
    - (i) an AFS statutory manager has taken control of a body corporate under this Act, the *Banking Act 1959* or the *Life Insurance Act 1995* (or APRA intends for that to occur); and
    - (ii) the general insurer and the body corporate are related bodies corporate;
  - (b) both:
    - (i) the general insurer's financial position is deteriorating rapidly, or is likely to deteriorate rapidly; and
    - (ii) failure to respond quickly to the deterioration would be likely to prejudice the interests of policyholders of the insurer;

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- (c) it is likely that the insurer will be unable to carry on insurance business in Australia consistently with the stability of the financial system in Australia;
  - (d) an external administrator has been appointed to a holding company of the general insurer (or a similar appointment has been made in a foreign country in respect of such a holding company), and the appointment poses a significant threat to:
    - (i) the operation or soundness of the general insurer; or
    - (ii) the interests of policyholders of the general insurer; or
    - (iii) the stability of the financial system in Australia;
  - (e) if the general insurer is a foreign general insurer:
    - (i) an application for the appointment of an external administrator of the foreign general insurer, or for a similar procedure in respect of the foreign general insurer, has been made in a foreign country; or
    - (ii) an external administrator has been appointed to the foreign general insurer, or a similar appointment has been made in respect of the foreign general insurer, in a foreign country.
- (3) APRA may take any of the actions mentioned in subsection (4) in relation to a body corporate (the ***target body corporate***) if:
- (a) the target body corporate is a body corporate that is any of the following:
    - (i) an authorised NOHC of a general insurer (the ***relevant general insurer***);
    - (ii) a subsidiary of an authorised NOHC of a general insurer (also the ***relevant general insurer***);
    - (iii) a subsidiary of a general insurer (also the ***relevant general insurer***); and
  - (b) the condition in subsection (5), (6) or (7) 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.

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- (4) 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.
- (5) The condition in this subsection is satisfied if:
  - (a) either:
    - (i) an Insurance Act statutory manager has taken control of the relevant general insurer; or
    - (ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant general insurer, and APRA intends that an Insurance Act statutory manager will take control of the relevant general insurer; 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 general insurer to maintain its operations.
- (6) The condition in this subsection is satisfied if:
  - (a) either:
    - (i) an Insurance Act statutory manager has taken control of the relevant general insurer; or
    - (ii) the conditions in paragraphs (1)(a) and (b) are satisfied in relation to the relevant general insurer, and APRA intends that an Insurance Act statutory manager will take control of the relevant general insurer; and
  - (b) APRA considers that it is necessary for an Insurance 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 general insurer;
    - (ii) an authorised NOHC of the relevant general insurer;
    - (iii) a relevant group of bodies corporate of which the relevant general insurer is a member;
    - (iv) a particular member or particular members of such a group.



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- (7) 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 (4) in respect of the target body corporate in order to enable the relevant general insurer to maintain its operations, or in order to facilitate the resolution of any of the following:
    - (i) the relevant general insurer;
    - (ii) an authorised NOHC of the relevant general insurer;
    - (iii) a relevant group of bodies corporate of which the relevant general insurer is a member;
    - (iv) a particular member or particular members of such a group.
- (8) If:
- (a) APRA is in control of a body corporate's business under this Subdivision—APRA is the ***Insurance 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 ***Insurance 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 62ZVA(1) of the business and management of a foreign general insurer.
- (9) If APRA appoints 2 or more Insurance Act statutory managers of a body corporate, or appoints one or more additional Insurance Act statutory managers of a body corporate:
- (a) the functions and powers under this Act of an Insurance Act statutory manager of the body corporate may be performed or exercised by:
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- (i) all of the Insurance Act statutory managers of the body corporate acting jointly; or
- (ii) each of the Insurance 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 Insurance Act statutory managers of the body corporate a notice in writing for the purposes of subparagraph (a)(ii), specifying limits or conditions on their ability to perform functions and exercise powers individually; and
- (c) treat a reference in this Act to an Insurance Act statutory manager as being a reference to whichever one or more of those Insurance Act statutory managers the case requires.

**62ZOB Start of control of body corporate's business by Insurance Act statutory manager**

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

Note: Subsections 62ZOQ(4) and 62ZOZA(3) also require APRA to give notice of the taking of control.

- (2) An Insurance 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 Insurance 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 Insurance 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.

**62ZOC Insurance 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
  - (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 an Insurance Act statutory manager of a body corporate's business, APRA must:
- (a) do both of the following:
    - (i) ensure that directors of the body corporate have been appointed or elected under the body corporate's constitution at a meeting called by the statutory manager in accordance with the body corporate's constitution;
    - (ii) if the body corporate is a foreign general insurer—appoint an agent in Australia for the purpose of section 118 by instrument in writing; or
  - (b) do both of the following:
    - (i) appoint directors of the body corporate by instrument in writing;
    - (ii) if the body corporate is a foreign general insurer—appoint an agent in Australia for the purpose of section 118 by instrument in writing; or

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- (c) ensure that a liquidator has been appointed:
  - (i) unless subparagraph (ii) applies—for the body corporate; or
  - (ii) if the body corporate is a foreign general insurer—for the body corporate in relation to its Australian business assets and liabilities.

*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 an Insurance Act statutory manager.
- (4) If the Insurance 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 Insurance Act statutory manager's control of the body corporate's business. If the 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 an Insurance Act statutory manager is in control of a body corporate's business, see Subdivision B.

**Subdivision B—Provisions dealing with control of a body corporate's business by an Insurance Act statutory manager**

**62ZOD Insurance Act statutory manager's powers and functions**

*Insurance Act statutory manager's powers and functions include powers and functions of board*

- (1) An Insurance Act statutory manager 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 an Insurance Act statutory manager takes control of the business of a body corporate, the directors of the body corporate cease to hold office (see section 62ZOP).

*Insurance Act statutory manager's power to obtain information*

- (2) An Insurance Act statutory manager 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 Insurance Act statutory manager any information relating to the business of the body corporate that the Insurance Act statutory manager requires. A requirement to give information may include a requirement to produce books, accounts or documents.
- (3) A person who is or has been an officer of a body corporate commits an offence if:
- (a) there is an Insurance Act statutory manager in relation to the body corporate; and
  - (b) under subsection (2), the Insurance 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: 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 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 maximum fine worked out as mentioned in Note 2.

- (4) 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.
- (5) 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.
- (6) Subsections (4) and (5) 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.

*Insurance Act statutory manager's power to sell whole or part of body corporate's business*

- (7) An Insurance 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 Insurance Act statutory manager considers appropriate.

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*Insurance Act statutory manager's powers to alter body corporate's constitution etc.*

- (8) An Insurance 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 Insurance Act statutory manager's functions and duties, or the exercise of the Insurance Act statutory manager's other powers, under this Division in relation to the body corporate; and
  - (b) promotes:
    - (i) the protection of the policyholders of the body corporate; and
    - (ii) financial system stability in Australia.
- (9) An Insurance Act statutory manager may do an act under subsection (7) or (8) despite:
- (a) the *Corporations Act 2001*; 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*

- (10) In this section:

**officer** has the meaning given by section 9 of the *Corporations Act 2001*.

**62ZOE Safeguards on exercise of Insurance Act statutory manager's powers and functions**

- (1) Despite anything else in this Subdivision, an Insurance Act statutory manager of a body corporate (the **body corporate under**
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**management**) may not perform a function or exercise a power under section 62ZOD 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 Insurance Act statutory manager under subsection 62ZOF(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 a general insurer; 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 Insurance 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:
- (a) the body corporate under management is an authorised NOHC of a general insurer; and
  - (b) the performance or the exercise requires using funds of the body corporate or a subsidiary of the body corporate to



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- increase the level of capital of the general insurer 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 a general insurer; and
- (b) the transfer of assets mentioned in that subparagraph is a transfer of funds to increase the level of capital of the general insurer to a specified level; and
- (c) the shareholders of the body corporate have agreed, by ordinary resolution, to that use of the funds.

**62ZOF Insurance Act statutory manager's additional powers to facilitate recapitalisation**

*Powers*

- (1) An Insurance 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 Insurance 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.

Note: Before doing such an act, the Insurance Act statutory manager will usually need to get and consider a report on the fair value of each share or right concerned: see section 62ZOG.

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### *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 Insurance 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) An Insurance Act statutory manager may do an act under subsection (1) despite:
  - (a) the *Corporations Act 2001*; 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.

### *Section does not apply to foreign general insurers etc.*

- (5) This section does not apply in relation to a body corporate that is:
  - (a) a foreign general insurer; or
  - (b) a subsidiary of a foreign general insurer; or
  - (c) an authorised NOHC of a foreign general insurer.

## **62ZOG Considering report before acting under section 62ZOF**

### *Getting and considering report on fair value of shares or rights*

- (1) Before determining terms for an act under subsection 62ZOF(1), the Insurance Act statutory manager must:

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- (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 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 Insurance Act statutory manager;
    - (ii) a person who is an associate of the Insurance 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.

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*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:
- (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 Insurance 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 Insurance 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

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the assumptions. A notice under this subsection is not a legislative instrument.

*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 62ZOF.

*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) policyholders with:
    - (i) if the company is a general insurer—the general insurer; or
    - (ii) if the company is not a general insurer—the relevant general insurer mentioned in subsection 62ZOA(3); 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 Insurance Act statutory manager concerned (unless that manager is APRA).
- (10) A determination made under subsection (8) is not a legislative instrument.

**62ZOH Act under section 62ZOF not ground for denying obligation**

- (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).

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- (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) an Insurance Act statutory manager of the body corporate doing an act under subsection 62ZOF(1) relating to the body corporate;
  - (b) if the body corporate is a member of a relevant group of bodies corporate—an Insurance Act statutory manager of another member of the group doing an act under subsection 62ZOF(1) in relation to that other member.

**62ZOI 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 an Insurance Act statutory manager if:
  - (a) in a case where the Insurance 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 Insurance Act statutory manager is not APRA:

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- (i) the Insurance 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
  - (iii) APRA is satisfied that the Insurance 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

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(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.

*Section 62ZOD not limited*

(7) This section does not limit section 62ZOD.

**62ZOJ 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 subsection 62ZOM(3) or Division 2 of Part IX in respect of the body corporate;
  - (b) that APRA apply for the body corporate to be wound up;
  - (c) if the body corporate is a general insurer—that APRA revoke the general insurer's authorisation under section 12;
  - (d) if the body corporate is an authorised NOHC—that APRA revoke the authorised NOHC's authorisation under section 18.

*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.



**62ZOK Insurance Act statutory manager's liabilities and duties**

*Immunity*

- (1) An Insurance Act statutory manager, or a person acting on behalf of an Insurance 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 or imposed on the Insurance 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, an Insurance 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 Insurance Act statutory manager by or under this Act. This subsection does not limit the scope of subsection (1).

*Signpost to secrecy obligations*

- (4) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by Insurance Act statutory managers under this Act.

**62ZOL Transaction by Insurance 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 an Insurance Act statutory manager was in control of the body corporate's business; and
- (b) the transaction is:

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- (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.

**62ZOM 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

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- (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.

**62ZON 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.

**62ZOO Termination of Insurance Act statutory manager'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:

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- (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 a general insurer—protect the interests of policyholders of the general insurer; or
  - (iii) promote financial system stability in Australia.
- (2) If:
  - (a) APRA is the statutory manager of a body corporate; and
  - (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 62ZOC.

**62ZOP Effect on directors of Insurance Act statutory manager taking control of a body corporate's business**

- (1) The directors of a body corporate cease to hold office when an Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of *director*, see subsection (10).
- (2) A director of a body corporate must not be appointed or elected while an Insurance Act statutory manager is in control of the body corporate's business unless the appointment is made under subsection 62ZOC(2).
- (3) The appointment of an agent of a body corporate under section 118 ceases to have effect when an Insurance Act statutory manager takes control of the body corporate's business.
- (4) A person must not be appointed as an agent of a body corporate under section 118 while an Insurance Act statutory manager is in control of the body corporate's business unless the appointment is made under subsection 62ZOC(2).

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- (5) If a person who ceased to hold office as a director of a body corporate under subsection (1), or a purported director of a body corporate appointed or elected in contravention of subsection (2), purports to act in relation to the body corporate's business while an Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.
- (6) If a person whose appointment as an agent of a body corporate under section 118 ceased to have effect under subsection (3) purports to act in relation to the body corporate's business while an Insurance Act statutory manager has control of the body corporate's business, those acts are invalid and of no effect.
- (7) Subsections (1), (2) and (5) do not apply in relation to a body corporate that is a foreign general insurer.
- (8) Subsection (9) applies if:
  - (a) subsections (1), (2) and (5) do not apply in relation to a body corporate because of subsection (7); and
  - (b) an Insurance 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 Insurance Act statutory manager has control of the body corporate's business.
- (9) 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.
- (10) For the purposes of this section, **director** has the same meaning as it has in the *Corporations Act 2001*.

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**62ZOQ Effect on external administrator of Insurance 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 an Insurance Act statutory manager takes control of the body corporate's business.

Note: For the definition of *external administrator*, see subsection 3(1).

- (2) An external administrator of a body corporate must not be appointed while an Insurance 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 an Insurance 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 an Insurance Act statutory manager will take control of the body corporate's business as soon as possible after the decision that an Insurance 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.

**62ZOR Moratorium—effect of Insurance 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 an Insurance Act statutory manager is in control of the body corporate's business.
- (2) Subsection (1) does not apply if:

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- (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 Insurance Act statutory manager, after considering APRA's views, consents to the proceedings beginning or continuing.
- (6) APRA (or the Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).
- (7) Neither APRA nor the Insurance 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:

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- (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.

**62ZOS Moratorium—effect of Insurance 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 an Insurance Act statutory manager is in control of the body corporate's business.
- (2) Subsection (1) does not apply if:
  - (a) the Federal Court 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
  - (b) the beginning or continuing of the process is in accordance with such terms (if any) as the Court imposes.
- (3) A person intending to apply for leave of the Federal Court under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Court considers that exceptional circumstances make this necessary).



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- (4) APRA may apply to the Federal Court 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 Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and
  - (c) if the 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 Insurance Act statutory manager consents to the process beginning or continuing.
- (6) APRA (or the Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (5).
- (7) Neither APRA nor the Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (5).

**62ZOT Moratorium—effect of Insurance 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
  - (c) an Insurance Act statutory manager is in control of the body corporate's business.

Note: The Federal Court may grant an injunction under section 129D in respect of a contravention of this subsection.

- (2) Subsection (1) does not apply if:
  - (a) APRA consents to the disposal; or
  - (b) the Insurance Act statutory manager consents to the disposal.

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- (3) Neither APRA nor the Insurance Act statutory manager is liable to an action or other proceedings for damages in respect of a refusal to give consent under subsection (2).

**62ZOU Moratorium—Restrictions on exercise of third party property rights**

- (1) Section 440B of the *Corporations Act 2001* applies during a period in which an Insurance 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 Insurance Act statutory manager's written consent; or
  - (b) APRA's written consent.
- (3) Neither APRA nor an Insurance 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 62ZOR, 62ZOS and 62ZOT.

**62ZOV Moratorium—effect of Insurance Act statutory management on supply of essential services**

- (1) If:
- (a) an Insurance Act statutory manager is in control of a body corporate's business; and
  - (b) the Insurance 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 Insurance Act statutory manager took control of the body corporate's business;

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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 may grant an injunction under section 129D 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*.

**62ZOW Moratorium—effect of Insurance 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 an Insurance 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.

**62ZOX Insurance Act statutory manager being in control 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;

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- (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) an Insurance 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—an Insurance Act statutory manager being in control, or being appointed to take control, of the business of another member of the group.

**62ZOY Application of other provisions**

- (1) None of the matters mentioned in subsection (2) affect:
  - (a) the continued operation of other provisions of this Act in relation to a body corporate; or
  - (b) the operation of the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2023* in relation to a body corporate; or
  - (c) the obligation of a body corporate to comply with those other provisions and those Acts.
- (2) The matters are as follows:
  - (a) the appointment of an Insurance Act statutory manager of the body corporate's business under this Division;
  - (b) the fact that an Insurance 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 an Insurance Act statutory manager.

**62ZOZ 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, 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.

**62ZOZA 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 Insurance Act statutory managers in respect of specified body corporates 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 an Insurance 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 give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all Insurance 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

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- (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.

**62ZOZB 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:
- (i) a sale or disposal of the whole or part of the business of a body corporate under this Division by an Insurance Act statutory manager in control of the body corporate's business; or
  - (ii) a transfer of insurance business of a general insurer under a scheme prepared by an Insurance Act statutory manager in control of the general insurer's business and confirmed (with or without modifications) by the Federal Court under Division 3A of Part III;
- (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 an Insurance 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 an Insurance Act statutory manager in control of the body corporate's business.

## **Division 2—Extra provisions relating to external administration of general insurers**

### **62ZP Relationship of this Division with Chapter 5 of, and Schedule 2 to, the *Corporations Act 2001***

This Division applies in relation to a general insurer in addition to Chapter 5 of, and Schedule 2 to, the *Corporations Act 2001*.

### **62ZQ Involving APRA in proposed appointment of external administrators of general insurers 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 a general insurer or of an authorised NOHC of a general insurer; or
  - (b) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a general insurer or of an authorised NOHC of a general insurer; or
  - (c) appoints an external administrator of a general insurer or of an authorised NOHC of a general insurer (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.
- (2) If there is an approved form for the notice, the person must give the notice in the approved form.
- (3) 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.
- (4) APRA is entitled to be heard on the application.

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- (5) After receiving the notice, APRA may request the person to provide details of the proposed application.

*Offence*

- (6) 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 a general insurer or of an authorised NOHC of a general insurer; or
    - (ii) makes another kind of application (whether or not to a court) for the appointment of an external administrator of a general insurer or of an authorised NOHC of a general insurer; or
    - (iii) appoints an external administrator of a general insurer or of an authorised NOHC of a general insurer (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 (3); 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
    - (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.

- (7) An offence against subsection (6) is an offence of strict liability.

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



**62ZR 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) a general insurer;
  - (b) an authorised NOHC;
  - (c) a subsidiary of a general insurer or authorised NOHC.

**62ZS Application by APRA for directions**

- (1) APRA may apply to the Federal Court for directions regarding any matter arising under:
  - (a) the winding-up of an entity covered by subsection 62ZR(4) (whether the winding-up occurs as a result of an application made under the *Corporations Act 2001* or by APRA under Division 3 of this Part); or
  - (b) the proposed winding-up of an entity covered by subsection 62ZR(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 Division 3 of this Part).
- (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.

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**62ZT APRA may request information from liquidator**

- (1) APRA may request a liquidator of an entity covered by subsection 62ZR(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 Division 3 of this Part) and the other affairs of the general insurer; 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 Division 3 of this Part) and the other affairs of the general insurer.
- (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.

## **Division 3—Extra provisions for winding up general insurers**

### **62ZU Order to wind up general insurer on APRA's application**

- (1) After an investigation of a general insurer has been made under Part V, APRA may apply to the Federal Court for an order that the general insurer be wound up.
- (2) The Federal Court may make the order if satisfied that it is in the interests of the general insurer's policyholders.
- (3) To avoid doubt, subsection (1) applies whether or not an Insurance Act statutory manager is in control of:
  - (a) unless paragraph (b) applies—the general insurer's business;  
or
  - (b) if the general insurer is a foreign general insurer—the Australian business assets and liabilities of the foreign general insurer.

### **62ZV Relationship with the *Corporations Act 2001***

Section 62ZU applies in relation to a general insurer in addition to Chapter 5 of the *Corporations Act 2001*.

Note: APRA may choose to apply under section 62ZU for an order that a general insurer be wound up. Alternatively, APRA may choose to apply under the *Corporations Act 2001* for an order that the general insurer be wound up (for example, under section 459P or 462 of that Act).

## **Division 4—Special provisions relating to foreign general insurers**

### **62ZVA Limited application of Divisions 1, 1A and 2 to foreign general insurers**

- (1) Divisions 1, 1A and 2 do not apply in relation to:
  - (a) business of a foreign general insurer (other than Australian business assets and liabilities); or
  - (b) the management of a foreign general insurer, to the extent that the management relates to such business of the foreign general insurer.
- (2) Subsection 62T(3) does not apply to the issue of policies by a foreign general insurer in the course of insurance business carried on outside Australia by the foreign general insurer.
- (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 general insurer, means the following:

- (a) the assets and liabilities of the foreign general insurer in Australia;
- (b) any other assets and liabilities of the foreign general insurer 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*.

## **Part VC—Financial claims scheme for policyholders with insolvent general insurers**

### **Division 1—Preliminary**

#### **62ZW Purpose of this Part**

The main purpose of this Part is to provide for a scheme that:

- (a) allows the Minister to make a declaration about a general insurer:
  - (i) that is under judicial management and APRA believes is insolvent; or
  - (ia) that is under statutory management under Division 1A of Part VB; or
  - (ii) for which an external administrator has been appointed under Chapter 5 of the *Corporations Act 2001* and APRA believes is insolvent; and
- (b) entitles certain persons, who have valid claims connected with certain protected policies issued by a declared general insurer, to be paid certain amounts before they would receive payment in a winding up of the general insurer; and
- (c) substitutes APRA for those persons as a creditor of the declared general insurer to the extent of the entitlements; and
- (d) allows APRA to facilitate a transfer of business from the declared general insurer 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 policies.

#### **62ZX APRA's functions relating to this Part**

APRA's functions include:

- (a) meeting entitlements under Division 3; and

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- (b) preparing, and assisting the Minister to prepare, for the application of that Division in relation to general insurers; and
- (c) meeting APRA's other obligations under this Part and the regulations made for the purposes of this Part.

**62ZY Determination that policies are not protected policies**

APRA may determine in writing that a policy is not a protected policy if it is reasonable to conclude, from the nature of the policy and/or the circumstances in which it was issued, that the policy was issued primarily to make the policyholder entitled to a payment under this Part.

**62ZZ Determination that persons do not have entitlements**

The Minister may, by legislative instrument, determine that persons in a specified class do not have entitlements under this Part.

**62ZZA Allowing extra time for claims**

- (1) Before, on or after the day prescribed by the regulations for the purposes of subparagraph 62ZZF(1)(b)(ii) or 62ZZG(1)(aa)(ii), APRA may specify in writing a later day as the day on which the period for making one or more claims that may give rise to an entitlement under this Part ends.
- (2) An instrument made under subsection (1) that specifies a day in relation to a single claim identified in the instrument is not a legislative instrument.
- (3) Otherwise, an instrument made under subsection (1) is a legislative instrument.
- (4) As soon as practicable after making an instrument described in subsection (2), APRA must take the steps it considers reasonable to inform a person whom it believes could make the claim concerned of the day specified in the instrument.

## **Division 2—Declaration of general insurer**

### **62ZZC Declaration that Division 3 applies in relation to general insurer**

- (1) The Minister may declare that Division 3 applies in relation to a specified general insurer if:
  - (a) any of the following requirements are satisfied:
    - (i) the general insurer is under judicial management under Division 1 of Part VB;
    - (ii) the general insurer is under statutory management under Division 1A of Part VB;
    - (iii) an external administrator for the general insurer has been appointed under Chapter 5 of the *Corporations Act 2001*; and
  - (b) APRA has advised the Minister under this Division that APRA believes that:
    - (i) the general insurer is insolvent as defined in section 95A of the *Corporations Act 2001*; or
    - (ii) the general insurer is a foreign general insurer and is unable to pay, from its assets in Australia (other than any assets or amount excluded by the prudential standards for the purposes of paragraph 28(b)), all its debts that are liabilities in Australia other than pre-authorisation liabilities, as and when those debts become due and payable.

Note 1: Section 116A deals with assets and liabilities in Australia.

Note 2: The declaration does not end the judicial management or statutory management of the general insurer.

#### *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 Division 3 in relation to the

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declared general insurer. 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 Part in relation to the declared general insurer. 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).

*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.



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- (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 general insurer by reference to class*

- (8) Subsection 13(3) of the *Legislation Act 2003* does not apply to a declaration under subsection (1) specifying a general insurer.

Note: This ensures that a declaration must specify a general insurer individually, and cannot specify it by reference to a class of general insurers.

**62ZZD Advice and information for decision on making declaration**

- (1) The Minister may give APRA, ASIC or the Reserve Bank of Australia a written request for advice or information about a matter relevant to making a decision about making a declaration under section 62ZZC (including a matter relating to the affairs of a general insurer).
- (2) As soon as reasonably practicable after being given the request, APRA, ASIC or the Reserve Bank of Australia must give the Minister the advice or information about the matter.
- (3) In making the decision, the Minister must take into account the advice and information 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.

**62ZZE APRA may advise Minister of its belief of insolvency**

- (1) This section applies if APRA believes that a particular general insurer:
  - (a) is insolvent as defined in section 95A of the *Corporations Act 2001*; or
  - (b) is a foreign general insurer and is unable to pay, from its assets in Australia (other than any assets or amount excluded by the prudential standards for the purposes of paragraph 28(b)), all its debts that are liabilities in Australia

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other than pre-authorisation liabilities, as and when those debts become due and payable.

Note: Section 116A deals with assets and liabilities in Australia.

(2) APRA may give the Minister written advice of APRA's belief.

## **Division 3—Early payment of claims**

### **62ZZF Entitlement to payment of claimant under protected policy**

#### *Who this section covers*

- (1) This section applies to a person if:
  - (a) the person is entitled to claim under insurance cover provided under a protected policy:
    - (i) that a general insurer issued before becoming a declared general insurer; or
    - (ii) in respect of which liability was accepted by a general insurer before becoming a declared general insurer;whether the entitlement to claim arises because the cover is provided to the person under the policy or because the person is otherwise entitled to claim under the cover; and
  - (b) the person makes a claim under that cover, in the approved form (if any), within the period:
    - (i) starting on the day prescribed by the regulations for the purposes of this subparagraph; and
    - (ii) ending on a day prescribed by the regulations for the purposes of this subparagraph or, if APRA specifies a later day, that later day; and
  - (c) APRA determines under section 62ZZI that the insurer is liable to the person in respect of the claim; and
  - (d) the person is not covered by a determination under section 62ZZ.

#### *Claims worth less than \$5,000*

- (2) The person is entitled to be paid by APRA an amount equal to the insurer's liability to the person in respect of the claim if APRA determines that the amount of the liability is less than \$5,000.

Note: Section 62ZZI requires APRA to determine not only whether the insurer has a liability in respect of the claim but also the amount of the liability.

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### *Claims worth \$5,000 or more*

- (3) The person is entitled to be paid by APRA an amount equal to the insurer's liability to the person in respect of the claim if APRA determines that:
- (a) the amount of the liability is \$5,000 or more; and
  - (b) the person meets the conditions prescribed by the regulations for the purposes of this paragraph.

Note 1: Section 62ZZI requires APRA to determine not only whether the insurer has a liability in respect of the claim but also the amount of the liability.

Note 2: Section 62ZZJ requires APRA to determine whether the person meets the prescribed conditions, if the person applies for the determination.

### *Different claim periods for different claims*

- (4) To avoid doubt, regulations for the purposes of subparagraph (1)(b)(i) or (ii) may prescribe different days for the purposes of that subparagraph applying in relation to different claims or claims under different cover.

## **62ZZFA Interim claims and payments for section 62ZZF entitlements**

- (1) This section applies if:
- (a) a person makes a claim under insurance cover provided under a protected policy, in the approved form (if any), within the period mentioned in paragraph 62ZZF(1)(b); and
  - (b) the person is not covered by a determination under section 62ZZ; and
  - (c) APRA becomes aware that the person has made an interim claim for payment of part or parts of the person's entitlement under section 62ZZF (whether or not the person has made a previous interim claim for such a payment); and
  - (d) APRA determines, under subsection (2), the amount of the interim claim mentioned in paragraph (c) that ought to be recognised as valid; and

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- (e) if the regulations prescribe conditions for the purposes of this paragraph—those conditions are met.
- (2) For the purposes of paragraph (1)(d), APRA may determine, in writing, the amount of the interim claim mentioned in subsection (1)(c), to the extent that it ought to be recognised as valid.
- (3) If the regulations prescribe conditions according to which APRA can make a determination under subsection (2), APRA can only make such a determination in accordance with those conditions.
- (4) The person is entitled to be paid by APRA an amount equal to:
  - (a) unless paragraph (b) applies—the amount mentioned in paragraph (1)(d); or
  - (b) if the regulations prescribe limits, or methods for determining limits, for entitlements under this subsection—the lesser of:
    - (i) the amount mentioned in paragraph (1)(d); or
    - (ii) the applicable limit specified in or worked out in accordance with the regulations.
- (5) If the person is entitled under subsection 62ZZF(2) or (3) to be paid an amount by APRA in respect of the claim mentioned in paragraph (1)(a), the person's entitlement under subsection (4) to be paid an amount discharges, to the extent of that amount, the person's entitlement under subsection 62ZZF(2) or (3).

## **62ZZG Entitlement to payment of third party**

### *Who this section covers*

- (1) This section applies to a person if:
  - (a) the person may recover an amount (the **recoverable amount**) in accordance with a determination made by APRA under subsection 62ZZJ(4); and
  - (aa) the person makes a claim in relation to the recoverable amount, in the approved form (if any), within the period:

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- (i) starting on the day prescribed by the regulations for the purposes of this subparagraph; and
- (ii) ending on a day prescribed by the regulations for the purposes of this subparagraph or, if APRA specifies a later day, that later day; and
- (b) the person is not covered by a determination under section 6ZZZ.

### *Recoverable amounts less than \$5,000*

- (2) The person is entitled to be paid by APRA an amount equal to the recoverable amount if APRA determines that the recoverable amount is less than \$5,000.

Note: Section 6ZZZJ requires APRA to determine not only whether it is satisfied the person could recover under various provisions but also the amount the person could recover.

### *Recoverable amounts of \$5,000 or more*

- (3) The person is entitled to be paid by APRA an amount equal to the recoverable amount if APRA determines that:
  - (a) the recoverable amount is \$5,000 or more; and
  - (b) the person meets the conditions prescribed by the regulations for the purposes of this paragraph.

Note 1: Section 6ZZZJ requires APRA to determine not only whether it is satisfied the person could recover under various provisions but also the amount the person could recover.

Note 2: Section 6ZZZJ requires APRA to determine whether the person meets the prescribed conditions, if the person applies for the determination.

## **6ZZGA Interim claims and payments for section 6ZZG entitlements**

- (1) This section applies if:
  - (a) a person makes a claim under insurance cover provided under a protected policy, in the approved form (if any), within the period mentioned in paragraph 6ZZG(1)(aa); and

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- (b) the person is not covered by a determination under section 62ZZ; and
  - (c) APRA becomes aware that the person has made an interim claim for payment of part or parts of the person's entitlement under section 62ZZG (whether or not the person has made a previous interim claim for such a payment); and
  - (d) APRA determines, under subsection (2), the amount of the interim claim mentioned in paragraph (c) that ought to be recognised as valid; and
  - (e) if the regulations prescribe conditions for the purposes of this paragraph—those conditions are met.
- (2) For the purposes of paragraph (1)(d), APRA may determine, in writing, the amount of the interim claim mentioned in subsection (1)(c), to the extent that it ought to be recognised as valid.
- (3) If the regulations prescribe conditions according to which APRA can make a determination under subsection (2), APRA can only make such a determination in accordance with those conditions.
- (4) The person is entitled to be paid by APRA an amount equal to:
- (a) unless paragraph (b) applies—the amount mentioned in paragraph (1)(d); or
  - (b) if the regulations prescribe limits, or methods for determining limits, for entitlements under this subsection—the lesser of:
    - (i) the amount mentioned in paragraph (1)(d); or
    - (ii) the applicable limit specified in or worked out in accordance with the regulations.
- (5) If the person is entitled under subsection 62ZZG(2) or (3) to be paid an amount by APRA in respect of the claim mentioned in paragraph (1)(a), the person's entitlement under subsection (4) to be paid an amount discharges, to the extent of that amount, the person's entitlement under subsection 62ZZG(2) or (3).

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**62ZZH Entitlement on basis of notionally extended cover**

- (1) If the period of insurance cover provided under a protected policy issued by a general insurer, or in respect of which liability has been accepted by a general insurer, includes the time when the insurer becomes a declared general insurer, sections 62ZZF, 62ZZFA, 62ZZG, 62ZZGA, 62ZZI and 62ZZJ apply as if the period of the cover extended for 28 days after that time, even if:
- (a) the policy is cancelled within those 28 days; or
  - (b) the period of the cover would otherwise have ended before the end of those 28 days.

Note: The effects of applying sections 62ZZF, 62ZZFA, 62ZZG and 62ZZGA as if the period of cover were extended include those sections applying as if:

- (a) the entitlement to claim under that cover were correspondingly extended; and
- (b) the liability of the insurer were also extended in respect of such claims.

- (2) However, if the policyholder cancelled the policy within those 28 days, those sections apply as if the period of the cover extended only until the cancellation of the policy.

**62ZZI APRA must determine insurer's liability in respect of claim**

- (1) If APRA becomes aware that a person has, in the period described in paragraph 62ZZF(1)(b), made a claim under insurance cover provided under a protected policy of a kind referred to in paragraph 62ZZF(1)(a), APRA must determine in accordance with the policy:
- (a) whether the insurer is liable to the person in respect of the claim; and
  - (b) the amount of that liability (if any).
- (1A) Without limiting subsection (1), the amount of the liability (if any) determined under subsection (1) may be an amount agreed to by APRA and the person.



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- (2) The determination must be made in writing as soon as reasonably practicable after APRA becomes aware that the claim has been made.

**62ZZJ Determinations APRA must make on application**

*Determination that person meets conditions prescribed*

- (1) Subsection (2) has effect if a person applies to APRA, in the approved form (if any), for a determination that the person meets the conditions prescribed by the regulations for the purposes of paragraph 62ZZF(3)(b) or 62ZZG(3)(b).
- (2) APRA must determine in writing, as soon as reasonably practicable after the application is made, whether the person meets the conditions.

*Determination that person may recover amount from insurer*

- (3) Subsection (4) has effect if a person applies to APRA, in the approved form (if any), for a determination that APRA is satisfied that any provision mentioned in subsection (4B) permits the person to recover an amount from a general insurer because of insurance cover the insurer provided under a protected policy:
- (a) that the insurer issued before becoming a declared general insurer; or
  - (b) in respect of which liability was accepted by the insurer before becoming a declared general insurer.
- (4) APRA must determine in writing, as soon as reasonably practicable after the application is made:
- (a) whether APRA is satisfied that any provision mentioned in subsection (4B) permits the person to recover an amount from the general insurer because of the insurance cover; and
  - (b) what that amount (if any) is.
- (4A) Without limiting subsection (4), the amount (if any) determined under subsection (4) may be an amount agreed to by APRA and the person.

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(4B) The provisions are as follows:

- (a) section 51 of the *Insurance Contracts Act 1984*;
- (b) section 601AG of the *Corporations Act 2001*;
- (c) any provision of any law specified in the regulations for the purposes of this paragraph.

*Giving applicant notice of determination*

(5) As soon as reasonably practicable after making a determination under subsection (2) or (4), APRA must give the applicant a copy of the determination.

**62ZZK Payment**

(1) A person's entitlement under this Division to be paid an amount may be met:

- (a) by paying the amount to the person 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 person's benefit; or
- (c) by paying part of the amount to the person and applying the rest of the amount for the person's benefit.

(1A) For the purposes of this section, treat the application of an amount, or part of an amount, in satisfaction of a liability of the person as being an application of the amount, or the part of the amount, for the person's benefit.

(2) The regulations may make provision for or in relation to the ways in which persons' entitlements under this Division to be paid amounts may be met.

**62ZZKA 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 persons (the *recipients*) in a financial year to meet (wholly or partly) the recipients' entitlements under this Division.

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*Giving each recipient an annual statement*

- (2) Within 14 days after the end of the financial year, APRA must give each of the recipients a statement about the amounts paid to, or applied for the benefit of, the recipient in the financial year. The statement must:
- (a) be in the approved form; and
  - (b) name the recipient; and
  - (c) state the recipient'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.

**62ZZL Substitution of APRA as insurer's creditor**

- (1) When a person's entitlement arises under this Division, the rights the person had against the general insurer in relation to the protected policy cease to be rights of the person and become rights of APRA, by force of this subsection.

Note 1: A person's entitlement arises under this Division when all of the relevant conditions in section 62ZZF or 62ZZG are met. This will generally happen at the last time APRA makes a relevant determination under section 62ZZI or 62ZZJ.

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Note 2: APRA's right against the general insurer has the same priority in the winding up of the general insurer as it would have had if it had continued to be a right of the person.

- (2) APRA may exercise or assign a right it has under subsection (1).

Note: Under section 11 of the *Australian Prudential Regulation Authority Act 1998*, APRA's property is generally held on behalf of the Commonwealth.

**62ZZM Meeting of entitlement taken to be payment by insurer**

- (1) When an amount of a person's entitlement under this Division connected with a general insurer and a protected policy is met, the person is taken to have been paid the amount by the general insurer under the terms and conditions of the policy.
- (1A) To avoid doubt, for the purposes of subsection 562(1) of the *Corporations Act 2001*, the amount taken to have been paid by the general insurer to the person under subsection (1) is taken to have been received by the person from the general insurer.
- (2) However, the regulations may prescribe a purpose for which a person is taken not to have been paid an amount, under the terms and conditions of a policy, by:
- (a) a general insurer; or
  - (b) a class of general insurers; or
  - (c) all general insurers.
- (3) To avoid doubt, subsection (1) does not affect the rights APRA has under section 62ZZL against the general insurer.

**62ZZMA APRA may make transferred liabilities determination where transfer of business**

- (1) APRA may make a determination (a *transferred liabilities determination*) if:
- (a) a general insurer is a declared general insurer as a result of the Minister having made a declaration under section 62ZZC; and

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- (b) APRA has made, or proposes to make, a determination under section 25 of the *Financial Sector (Transfer and Restructure) Act 1999* (compulsory transfer determination) that there is to be a total transfer or partial transfer of business from the declared general insurer to a receiving body (within the meaning of that Act); and
  - (c) the transfer of business will transfer the liabilities of the declared general insurer in respect of one or more protected policies issued by the declared general insurer; and
  - (d) APRA is satisfied that it will be able to identify each of those protected policies; and
  - (e) APRA has worked out:
    - (i) APRA's reasonable estimate of the total amount (the ***FCS amount***) to which policyholders of those protected policies will be entitled (disregarding the determination) under sections 62ZZF and 62ZZG 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 incurred by APRA in relation to the exercise of its powers and the performance of its functions under this Part relating to the declared general insurer if it did not make the determination; and
  - (f) APRA has worked out a total payment amount in accordance with section 62ZZMB; 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 general insurer;

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- (b) the receiving body;
  - (c) a description, in general or detailed terms, of all the protected policies of the declared general insurer;
  - (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.

**62ZZMB Payment amounts under transferred liabilities determination**

- (1) For the purposes of paragraph 62ZZMA(1)(f), APRA may work out:
- (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 to the receiving body in accordance with the transfer of business;

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- (b) the total value of the liabilities that will be transferred from the declared general insurer 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.

**62ZZMC 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.

*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 policyholder*

- (3) A policyholder's entitlement under this Division to be paid an amount in respect of a protected policy with the declared general insurer is reduced to nil, if the transfer of business will transfer the liability of the declared general insurer in respect of that protected policy.

*Declared general insurer liable to APRA for total payment amount*

- (4) The declared general insurer is liable to pay to APRA an amount equal to the sum of the total payment amount specified in the determination.

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- (5) That liability is due and payable to APRA when the certificate of transfer comes into force.
- (6) Despite subsection 62ZZL(1), APRA does not have the rights mentioned in that subsection.

**62ZZMD Certain provisions do not apply in relation to entitlement of receiving body as a result of transferred liabilities determination**

To avoid doubt, sections 62ZZK, 62ZZKA, 62ZZL and 62ZZM do not apply in relation to an entitlement under subsection 62ZZMC(2).



## **Division 4—Administration**

### **62ZZN APRA to try to ensure awareness of making of claims**

APRA must take all reasonable steps to ensure that it is made aware, as soon as practicable, of:

- (a) the making of a claim described in section 62ZZI within the period described in paragraph 62ZZF(1)(b); and
- (b) the time of the making of the claim.

Note: APRA might meet this requirement by requiring under section 62ZZP the general insurer concerned, or the liquidator of the general insurer, to inform APRA of the making of such a claim.

### **62ZZO Requiring assistance**

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 Part as is specified:

- (a) a general insurer (whether or not it is a declared general insurer);
- (b) a liquidator appointed in connection with the winding up, or proposed winding up, of a general insurer;
- (c) a judicial manager of a general insurer;
- (d) an administrator appointed under subsection 62ZOA(1) to take control of a general insurer's business.

Note: APRA may amend or vary the requirement in writing: see subsection 33(3) of the *Acts Interpretation Act 1901*.

### **62ZZP Obtaining information relevant to determining and paying entitlements**

- (1) APRA may, by written notice given to:
  - (a) a general insurer (whether or not it is a declared general insurer); or

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- (b) a liquidator appointed in connection with the winding up, or proposed winding up, of a general insurer; or
  - (c) a judicial manager of a general insurer; or
  - (d) an administrator appointed under subsection 62ZOA(1) to take control of a general insurer's business; or
  - (e) any other person;require the general insurer, liquidator, judicial manager, administrator or other person to give a specified person specified information 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.
- (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);
  - (d) a person to whom APRA has delegated a power or function under this Part that relates to an action described in subsection (4);
  - (e) a person who is an officer or employee of a person described in paragraph (d) and whose duties relate to an action described in subsection (4).
- (3) The information specified in the requirement may be or include personal information. This does not limit the information that may be specified in the requirement.
- (4) The actions are as follows:
  - (a) identifying a person who may have an entitlement under Division 3;
  - (b) determining whether a person has an entitlement under Division 3 (including making a determination under one or both of sections 62ZZI and 62ZZJ);
  - (c) determining the amount of an entitlement under Division 3;

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- (d) meeting an entitlement under Division 3;
- (da) preparing or giving a statement required by section 62ZZKA;
- (db) complying with an obligation under a law relating to taxation;
- (e) assessing whether and how information could be provided by a general insurer (or a liquidator of the general insurer, if one is appointed) to enable the actions described in paragraphs (a), (b), (c), (da), (db) and (d) to be taken if the general insurer were to become a declared general insurer.

**62ZZQ Enforcing requirement to give information**

*Requirement made of general insurer—civil penalty*

- (1) A general insurer must comply with a requirement made of it under section 62ZZO or subsection 62ZZP(1).

Civil penalty: 10,000 penalty units.

*Requirement made of general insurer—offence*

- (2) A general insurer 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 general insurer under section 62ZZO or subsection 62ZZP(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), so a general insurer commits an offence for each day it does not comply with a requirement under subsection 62ZZP(1) (to give information within a particular time).

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*Requirement made of general insurer—offence by officer*

- (4) An officer (as defined in section 9 of the *Corporations Act 2001*) of a general insurer commits an offence if:
- (a) the officer fails to take reasonable steps to ensure that the general insurer complies with a requirement made of it under section 62ZZO or subsection 62ZZP(1); and
  - (b) the officer's duties include ensuring that the general insurer complies with the requirement.

Penalty: 50 penalty units.

- (5) Subsection (4) does not apply to an officer who is a liquidator of the general insurer.

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 a general insurer fails to take reasonable steps to ensure that the general insurer complies with a requirement made of it under subsection 62ZZP(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
- (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 62ZZO or subsection 62ZZP(1).

Note: Action may be taken under the *Corporations Act 2001* against a liquidator who does not comply with such a requirement.

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*Requirement made of judicial manager of general insurer—civil penalty*

- (8) A judicial manager of a general insurer must comply with a requirement made of the judicial manager under section 62ZZO or subsection 62ZZP(1).

Civil penalty: 200 penalty units.

*Requirement made of judicial manager of general insurer—offence*

- (9) A judicial manager of a general insurer commits an offence if:
- (a) the judicial manager does, or refuses 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 under section 62ZZO or subsection 62ZZP(1).

Penalty: 100 penalty units.

- (10) An offence against subsection (9) is an indictable offence.

Note: Section 4K (Continuing and multiple offences) of the *Crimes Act 1914* applies to an offence against subsection (9), so the judicial manager commits an offence for each day that the judicial manager does not comply with a requirement under subsection 62ZZP(1).

*Requirement made of other person—civil penalty*

- (11) A person mentioned in paragraph 62ZZP(1)(e) must comply with a requirement made of the person under subsection 62ZZP(1).

Civil penalty: 200 penalty units.

**62ZZR Obtaining further information from claimant or applicant**

- (1) If section 62ZZI or 62ZZJ requires a determination to be made because of the making of a claim or application but there is insufficient information to make the determination:
- (a) APRA may request the claimant or applicant to give a specified person, in a specified way within a reasonable

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specified time, specified information relevant to the making of the determination, for the person to use in making the determination; and

- (b) the determination need not be made until after the information is given as requested.
- (2) The person specified in the request must be one of the following:
  - (a) APRA;
  - (b) an APRA member whose duties relate to the making of the determination;
  - (c) an APRA staff member whose duties relate to the making of the determination;
  - (d) a person to whom APRA has delegated the function of making the determination;
  - (e) a person who is an officer or employee of a person described in paragraph (d) and whose duties relate to the function of making the determination.
- (3) The information specified in the request may be or include personal information. This does not limit the information that may be specified in the request.

**62ZZS 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, a person purportedly to meet an entitlement of the person under Division 3 over the person's entitlement (if any) under that Division.

**62ZZT APRA may delegate functions and powers under this Part**

- (1) APRA may, by writing under its seal, delegate any or all of APRA's functions and powers under this Part 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.

**62ZZU 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 Part relating to a declared general insurer are a debt due by the declared general insurer to APRA.
- (2) The debt is admissible to proof against the declared general insurer in the winding up of the general insurer.
- (3) The debt has the same priority in the winding up of the declared general insurer as a claim in respect of a policy issued by the insurer.
- (4) Subsection (1) does not apply to the amounts of entitlements under Division 3.

Note: APRA may be able to recover those amounts through the rights it acquires under section 62ZZL from the person.

## **Division 5—Exceptions to Part IV of the Competition and Consumer Act 2010**

### **62ZZV 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 Part, or regulations made for the purposes of this Part;
- (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.



## Part VI—Review of decisions

### 63 Review of certain decisions

- (1) In this section:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

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

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

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

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

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may, by notice in writing given to the decision maker 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 the decision maker allows, request the decision maker to reconsider the decision.
- (3) There shall be set out in the request the reasons for making the request.
- (4) Upon receipt of the request, the decision maker shall reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as the decision maker thinks fit.
- (5) Where the decision maker does not confirm, revoke or vary a decision before the expiration of the period of 21 days after the day

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on which the decision maker received the request under subsection (2) to reconsider the decision, the decision maker shall, upon the expiration of that period, be deemed to have confirmed the decision under subsection (4).

- (6) Where the decision maker confirms, revokes or varies a decision before the expiration of the period referred to in subsection (5), the decision maker shall, by notice served on the person who made the request, inform the person of the result of the decision maker's reconsideration of the decision, set out the findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the decision maker's reasons for confirming, revoking or varying the decision, as the case may be.
- (7) Applications may be made to the Administrative Appeals Tribunal for review of decisions of a decision maker that have been confirmed or varied under subsection (4).
- (8) Where a decision is deemed, by reason of the operation of subsection (5), 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 commencing on the day on which the decision is deemed to be confirmed and ending on the twenty-eighth day after that day.
- (9) Where a person makes a request under subsection (2) in respect of a reviewable decision, 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.
- (12) A non-presidential member of the Administrative Appeals Tribunal shall not sit as a member of the Administrative Appeals Tribunal for the purposes of a review of a reviewable decision, or for the purposes of a request under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of such a decision, if he or she is a director or employee of:

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- (a) an entity of any kind carrying on (whether in Australia or elsewhere) insurance business or life insurance business; or
  - (b) if an entity referred to in paragraph (a) is a body corporate—a body corporate that is related to it.
- (12A) The question whether 2 bodies corporate are related to each other for the purposes of paragraph (12)(b) is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.
- (13) An order shall not be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of a reviewable decision except by the Administrative Appeals Tribunal.

**64 Statements to accompany notification of decisions**

- (1) Where a reviewable decision within the meaning of section 63 is made and notice in writing of the decision is given to a person affected by the decision, that notice shall include a statement to the effect that:
- (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the decision maker in accordance with subsection 63(2); 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 the decision maker upon that reconsideration confirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.
- (2) Where a decision maker confirms or varies a decision under subsection 63(4) and gives to a person notice in writing of the confirmation or variation of the decision, that notice shall 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,

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make application to the Administrative Appeals Tribunal for review of the decision.

(3) Any failure to comply with the requirements of subsection (1) or (2) in relation to a decision does not affect the validity of the decision.

(4) In this section:

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

## Part VII—Lloyd's

### Division 1—Preliminary

#### 65 Simplified outline

The following is a simplified outline of this Part:

- Lloyd's will be required to ensure that there are in existence security trust fund arrangements under which final judgments obtained in Australia against Lloyd's underwriters in respect of certain insurance liabilities may be satisfied out of trust property.
- Security trust funds in existence in fulfilment of such a requirement are called *designated security trust funds*.
- APRA may make rules that are applicable to designated security trust funds.
- Lloyd's underwriters are authorised to carry on insurance business. However, that authorisation may be suspended or cancelled if there has been a contravention of this Part.
- APRA may require the appointment of an actuary to carry out an investigation of the extent to which a designated security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund.
- APRA has powers of inquiry, direction and investigation in relation to designated security trust funds that correspond to the powers conferred by Part V in relation to authorised corporate insurers.

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

## 66 Definitions

In this Part:

***designated security trust fund*** has the meaning given by section 69.

***insurance liability*** means a liability under a contract of insurance.

***judicial trustee*** has the meaning given by section 92.

***legal personal representative*** means:

- (a) the executor of the will, or the administrator of the estate, of a deceased person; or
- (b) the trustee of the estate of a person under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by another person; or
- (d) a person who, by order of a court or otherwise, has the legal administration or control of the affairs of another person.

***qualified corporation*** means a body corporate that is:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; and
- (b) a company incorporated, or taken to be incorporated, under the *Corporation Act 2001*.

***security trust fund*** has the meaning given by section 67.

## Division 2—Security trust fund arrangements

### 67 Security trust funds

- (1) For the purposes of this Part, a **security trust fund** is a trust fund established by deed, where:
  - (a) the trust property is available to satisfy final judgments obtained in Australia against Lloyd's underwriters in respect of a class of insurance liabilities specified in the deed; and
  - (b) the trustee is a qualified corporation.
- (2) For the purposes of this Part, the class of insurance liabilities specified in the deed as mentioned in paragraph (1)(a) is said to be **secured** by the trust fund.
- (3) For the purposes of this Part, a contract of insurance is **covered** by a security trust fund if insurance liabilities under the contract are secured by the fund.
- (4) For the purposes of this section, a judgment is a **final judgment** if, and only if, it can no longer be appealed or set aside.
- (5) In this section:

**Lloyd's underwriter** includes:

  - (a) a former Lloyd's underwriter; and
  - (b) the legal personal representative of a Lloyd's underwriter or a former Lloyd's underwriter.

### 68 Security trust fund arrangements

- (1) APRA may, by legislative instrument, require Lloyd's to ensure that, at all times when the instrument is in force, there are in existence:
  - (a) such security trust fund arrangements; and
  - (b) such ancillary or incidental arrangements;

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as are specified in, or ascertained in accordance with, the instrument.

Note: The required arrangements may be varied—see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An instrument under subsection (1) may make provision for or in relation to a matter by conferring a power on APRA.
- (3) An instrument under subsection (1) may:
  - (a) require a trust deed for a security trust fund to be approved by APRA; and
  - (b) require alterations of a trust deed for a security trust fund to be approved by APRA; and
  - (c) require the trustee of a security trust fund to be approved by APRA.
- (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
- (5) If:
  - (a) an instrument under subsection (1) requires a trust deed for a security trust fund to be approved by APRA; and
  - (b) the approval is not obtained;the failure to obtain the approval does not affect the validity of the establishment or operation of the fund.
- (6) If:
  - (a) an instrument under subsection (1) requires an alteration of a trust deed for a security trust fund to be approved by APRA; and
  - (b) the approval is not obtained;the alteration has no effect.
- (7) If:
  - (a) an instrument under subsection (1) requires the trustee of a security trust fund to be approved by APRA; and
  - (b) the approval is not obtained;the failure to obtain the approval does not affect the validity of the appointment of the trustee.



- (8) Before making an instrument under subsection (1), APRA must consult Lloyd's unless APRA is satisfied that the delay that would be involved in consulting Lloyd's would be likely to prejudice the interests of the holders of contracts of insurance covered, or to be covered, by the fund or funds concerned. A failure to comply with this subsection does not affect the validity of the instrument.
- (9) Section 70 does not, by implication, limit this section.
- (11) A reference in subsection (1) to an ***ancillary or incidental arrangement*** includes a reference to an arrangement for the funding of a security trust fund.
- (12) Lloyd's must comply with an instrument in force under subsection (1).

## **69 Designated security trust funds**

In this Part, a security trust fund that is, or was at any time, in existence in fulfilment of an obligation imposed by an instrument under subsection 68(1) is called a ***designated security trust fund***.

## **70 Rules about designated security trust funds**

- (1) APRA may, by legislative instrument, make rules that are applicable to the operation of designated security trust funds.
- (2) An instrument under subsection (1) may make provision for or in relation to a matter by conferring a power on APRA.
- (3) An instrument under subsection (1) may make provision for or in relation to the following matters:
  - (a) the making available to the public of copies of trust deeds for funds;
  - (b) the keeping and retention of records in relation to funds;
  - (c) the accounts, financial reports and actuarial reports to be prepared in relation to funds;
  - (d) the auditing of accounts and financial reports prepared in relation to funds;

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- (e) the disclosure of information about funds to APRA;
  - (f) the inspection by APRA or an authorised person of records kept by funds;
  - (g) the preparation, and lodgment with APRA, of returns in relation to funds;
  - (h) the valuation of the assets of funds.
- (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
- (6) Section 68 does not, by implication, limit this section.
- (8) The trustee of a designated security trust fund must comply with any rules in force under subsection (1).
- (9) A person who intentionally or recklessly contravenes subsection (8) commits an offence punishable on conviction by a fine not exceeding 200 penalty units.

**71 Transfers to trustee of security trust fund—presumption of regularity**

If:

- (a) money or property is transferred to a person in the capacity of trustee of a particular designated security trust fund; and
  - (b) the transfer is for the purposes of this Division;
- the money or property is taken to have been transferred to the person to be held on trust in accordance with the terms of the fund's trust deed, irrespective of:
- (c) the intention of the transferor; or
  - (d) the authority or capacity of the transferor.

**72 When security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund**

- (1) For the purposes of this Part, in determining the extent to which a security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund, regard must be had to:

- (a) the arrangements relating to the establishment and operation of the fund; and
  - (b) any ancillary or incidental arrangements.
- (2) Subsection (1) does not, by implication, limit the matters to which regard may be had.
- (3) A reference in subsection (1) to an ***ancillary or incidental arrangement*** includes a reference to an arrangement for the funding of a security trust fund.

### **73 Affairs of security trust fund**

For the purposes of this Part, the ***affairs*** of a security trust fund include the extent to which the fund constitutes, or is likely to constitute, an adequate security for the class of insurance liabilities secured by the fund.

## Division 3—General powers of APRA

### 74 APRA may direct that Lloyd's underwriters must not issue or renew policies

- (1) If it appears to APRA that:
  - (a) there has been a contravention of any of the provisions of:
    - (i) this Division; or
    - (ii) Division 2 or 4; or
  - (b) as a result of an enactment of an Act of the United Kingdom, a substantial change is made in the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or
  - (c) as a result of a making of a by-law by Lloyd's, the rights or obligations of Lloyd's underwriters are substantially changed;

APRA may, by written notice given to Lloyd's, give either or both of the following directions:

  - (d) a direction that Lloyd's underwriters must not issue policies or undertake liability under contracts of insurance;
  - (e) a direction that Lloyd's underwriters must not renew policies.
- (2) If:
  - (a) a direction under subsection (1) has been in force for a period of more than 180 days; and
  - (b) Lloyd's requests APRA, in writing, to review the direction;

APRA must consider whether the direction should:

  - (c) remain in force; or
  - (d) be varied; or
  - (e) be revoked.
- (3) In considering the matter referred to in subsection (2), APRA must have regard to:
  - (a) whether an investigation under Subdivision B of Division 4 is being, or has been, undertaken; and
  - (b) whether a determination under section 93 is in force; and

- (c) such other matters (if any) as APRA considers relevant.
- (4) If:
  - (a) a request is made under subsection (2) in relation to a direction; and
  - (b) the direction is still in force immediately before the end of the period of 30 days that began when the request was made; the direction ceases to be in force at the end of that period.
- (5) A Lloyd's underwriter must comply with a direction in force under subsection (1).
- (6) A person who intentionally or recklessly contravenes subsection (5) commits an offence punishable on conviction by a fine not exceeding 200 penalty units.
- (7) A copy of a notice under subsection (1) is to be published in the *Gazette*.

## **75 Actuarial investigation of adequacy of security provided by designated security trust funds**

- (1) APRA may, by written notice given to Lloyd's, require Lloyd's to cause an actuary to be appointed to:
  - (a) carry out an investigation of the extent to which a specified designated security trust fund constitutes an adequate security for the class of insurance liabilities secured by the fund; and
  - (b) make a report on that investigation, being a report that contains statements of the actuary's opinion about each of the matters specified in the notice.
- (2) The actuary must not be:
  - (a) an officer of Lloyd's; or
  - (b) an officer of a body corporate specified in a determination made, by legislative instrument, by APRA for the purposes of this paragraph.

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- (3) Lloyd's must, within 14 days after the date on which the notice was given, advise APRA, in writing, of the name of the actuary.
- (4) If APRA notifies Lloyd's that the actuary is not acceptable to APRA, Lloyd's must, within 14 days after the date on which the notice was given:
  - (a) cause a different actuary to be appointed; and
  - (b) advise APRA, in writing, of the name of the actuary so appointed.
- (5) APRA may, within 14 days after the advice was given under subsection (3) or (4), notify Lloyd's, in writing, that the actuary is not acceptable to APRA.
- (6) Lloyd's must cause the actuary's report to be given to APRA:
  - (a) within 30 days after the date on which the notice was given to Lloyd's under subsection (1); or
  - (b) within such further time as APRA, by written notice, allows.
- (7) The actuary's report must be signed by the actuary.
- (8) Lloyd's must comply with this section.
- (10) In this section:  
*officer*, in relation to a body corporate, has the same meaning as in the *Corporations Act 2001*.

**76 Provision for liabilities in the accounts of designated security trust funds**

- (1A) APRA may give a written notice under subsection (1) if APRA has reason to believe that the provision for liabilities in the accounts of a designated security trust fund is insufficient.
- (1) APRA may, by written notice given to the trustee of the designated security trust fund, direct that the trustee must, within such period after the giving of the notice as is specified in the notice, make provision, or further provision, in the accounts of the fund:
  - (a) of a specified amount; or

- (b) of an amount determined in a specified manner;  
in respect of any or all of the liabilities secured by the fund.
- (2) The period specified in the direction must be at least 14 days.
- (3) The powers of APRA under this section are in addition to, and do not limit, the powers of APRA under Division 4.
- (4) The trustee of a designated security trust fund must comply with a direction given to the trustee under subsection (1).
- (5) If:
  - (a) a direction under subsection (1) is in force in relation to a fund; and
  - (b) the fund commences to be under judicial trusteeship in accordance with Division 5;the direction ceases to have effect on that commencement.
- (6) A direction given to the trustee of a designated security trust fund under subsection (1) does not require the trustee to incur any financial liability by way of funding the security trust fund.

## **Division 4—Investigations**

### **Subdivision A—Inquiries and directions by APRA**

#### **77 Inquiries by APRA**

- (1) APRA may, by written notice given to Lloyd's or the trustee of a designated security trust fund, require Lloyd's or the trustee, as the case may be, to give to APRA, within such period after the giving of the notice as is specified in the notice, such information about the affairs of:
  - (a) in the case of a notice given to Lloyd's—a specified designated security trust fund; or
  - (b) in the case of a notice given to the trustee of a designated security trust fund—the fund;as is specified in the notice.
- (2) The period specified in the notice must be at least 14 days.
- (3) A person must comply with a requirement under subsection (1).
- (4) A person who intentionally or recklessly contravenes subsection (3) commits an offence punishable on conviction by a fine not exceeding 200 penalty units.

#### **78 Direction not to deal with certain assets**

- (1) This section applies to a designated security trust fund if APRA has reason to believe that the fund does not constitute, or is unlikely to constitute, an adequate security for the class of insurance liabilities secured by the fund.
- (2) APRA may, by written notice given to the trustee of the fund, direct:
  - (a) that the trustee must not dispose of, or otherwise deal with or remove from Australia, any asset of the fund; or



- (b) that the trustee must not dispose of, or otherwise deal with or remove from Australia, a specified asset of the fund; or
- (c) that the trustee must deal with a specified asset of the fund on such terms and conditions as are specified in the notice.

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

(3) If:

- (a) a direction under subsection (2) has been in force in relation to a fund for a period of more than 6 months; and
- (b) Lloyd's or the trustee of the fund requests APRA, in writing, to review the direction;

APRA must consider whether the direction should:

- (c) remain in force; or
- (d) be varied; or
- (e) be revoked.

(4) In considering the matter referred to in subsection (3), APRA must have regard to:

- (a) whether an investigation under Subdivision B is being, or has been, undertaken in relation to the fund; and
- (b) whether a determination under section 93 is in force; and
- (c) such other matters (if any) as APRA considers relevant.

(5) If:

- (a) a request is made under subsection (3) in relation to a direction; and
- (b) the direction is still in force immediately before the end of the period of 30 days that began when the request was made; the direction ceases to be in force at the end of that period.

(6) A person must comply with a direction under subsection (2).

(7) A person who intentionally or recklessly contravenes subsection (6) commits an offence punishable on conviction by a fine not exceeding 200 penalty units.

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- (8) This section does not affect the validity of a transaction entered into in contravention of a direction under subsection (2).
- (9) If:
  - (a) a direction under subsection (2) is in force in relation to a fund; and
  - (b) the fund commences to be under judicial trusteeship in accordance with Division 5;the direction ceases to have effect on that commencement.

**Subdivision B—Investigations**

**79 Investigation of designated security trust fund by APRA or inspector**

- (1) If it appears to APRA that:
  - (a) a designated security trust fund does not constitute, or is unlikely to constitute, an adequate security for the class of insurance liabilities secured by the fund; or
  - (b) Lloyd's or the trustee of a designated security trust fund has contravened a provision of this Part;APRA may, by written notice given to Lloyd's, require Lloyd's to show cause, within such period after the giving of the notice as is specified in the notice, why APRA should not, on specified grounds:
  - (c) investigate the whole or any part of the affairs of the fund; or
  - (d) appoint a person to make such an investigation and report to APRA the results of his or her investigation.
- (2) The period specified in the notice must be at least 14 days.
- (3) If:
  - (a) Lloyd's fails, within the period specified in the notice, to show cause to the satisfaction of APRA why an investigation should not be made; and
  - (b) APRA is satisfied that it is in the public interest that an investigation should be made;

APRA may:

- (c) make the investigation itself; or
  - (d) in writing, appoint a person (in this Division called the *inspector*) to make the investigation.
- (4) Before beginning an investigation of a trust fund, APRA or the inspector, as the case may be, must give the trustee of the fund:
- (a) in all cases—a written notice by APRA specifying the matters into which the investigation is to be made, being the whole or some part of the affairs of the trust fund; and
  - (b) in the case of the inspector—a copy of the instrument appointing the inspector.
- (5) The inspector is to be a person resident in Australia.

## **80 Entry on premises**

- (1) If APRA or the inspector, while investigating the whole or a part of the affairs of a designated security trust fund, believes on reasonable grounds that it is necessary for the purposes of the investigation to enter land or premises occupied by:
- (a) the trustee, or a former trustee, of the fund; or
  - (b) the custodian, or a former custodian, of the fund; or
  - (c) the investment manager, or a former investment manager, of the fund;
- an authorised person (if the investigation is by APRA), or the inspector, may, at all reasonable times, enter the land or premises and may:
- (d) examine books on the land or premises that relate to the affairs of the trust fund or that the authorised person or inspector believes on reasonable grounds relate to those affairs; and
  - (e) take possession of any of those books for such period as the authorised person or inspector thinks necessary for the purposes of the investigation; and
  - (f) make copies of, or take extracts from, any of those books.

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- (2) The authorised person or the inspector must permit a person otherwise entitled to possession of the books, or a person authorised by that person, to inspect those books.
- (3) The authorised person or the inspector must not exercise the power conferred by subsection (1) to enter residential land or residential premises if the occupier of the land or premises has not consented to the entry.

**81 Powers of APRA or the inspector to obtain information etc.**

- (1) For the purposes of this section, a person is a *prescribed person* in relation to a designated security trust fund if:
  - (a) the person is, or has at any time been, the trustee, custodian or investment manager of the trust fund; or
  - (b) the person would be a prescribed person (within the meaning of Part V) in relation to a person referred to in paragraph (a) if it were assumed that a reference in the definition of *prescribed person* in subsection 50(1) to a body corporate included a reference to an individual.
- (2) If APRA or the inspector is investigating a designated security trust fund, APRA or the inspector may, by written notice given to a person who is a prescribed person in relation to the fund, require the person:
  - (a) to produce to APRA or the inspector any or all of the books relating to the affairs of the fund that are in the custody or under the control of the person; or
  - (b) to give to APRA or the inspector all reasonable assistance in connection with the investigation; or
  - (c) to appear before an authorised person or the inspector for examination concerning matters relevant to the investigation.
- (3) If books are produced to APRA or the inspector under this section:
  - (a) APRA or the inspector may take possession of them for such period as APRA or inspector thinks necessary for the purposes of the investigation; and

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- (b) APRA or inspector may make copies of, and take extracts, from them.

However, APRA must permit a person otherwise entitled to possession of the books, or a person authorised by that person, to inspect those books.

- (3A) APRA's powers under subsection (3) to make copies of, or take extracts from, books may be exercised on APRA's behalf by an authorised person.
- (4) A person who complies with a requirement of APRA or the inspector under this section does not incur any liability to any other person only because of that compliance.

## **82 Persons to comply with requirements of APRA or the inspector**

- (1) A person must not intentionally or recklessly contravene a requirement of APRA or the inspector under section 81 that is applicable to the person, to the extent to which the person is able to comply with it.

Penalty: Imprisonment for 6 months.

- (3) A person being examined by an authorised person or the inspector is not excused from answering a question put to the person by the authorised person or the inspector on the ground that the question might tend to incriminate the person.
- (4) However, if the answer might tend to incriminate the person, none of the following:
- (a) the question;
  - (b) the answer;
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the answer;
- is admissible in evidence against the person in criminal proceedings other than a prosecution for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to section 81.

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**83 Person may be represented by a legal practitioner**

A barrister or solicitor acting for a person being examined by an authorised person or the inspector:

- (a) may attend the examination; and
- (b) may, to the extent that the authorised person or the inspector allows:
  - (i) address the authorised person or the inspector; or
  - (ii) examine the person;in relation to matters in respect of which the authorised person or the inspector has questioned the person.

**84 Notes of examination of person**

- (1) An authorised person or the inspector may cause notes of an examination of a person under this Division to be recorded in writing and read to or by that person.
- (2) The authorised person or the inspector may require the person to sign the notes.
- (3) Notes signed by the person may be used in evidence in proceedings under this Act against the person. This rule has effect subject to subsections 82(3) and (4).
- (4) A copy of the notes signed by the person are to be given to the person without charge if the person makes a written request to APRA or the inspector for a copy.
- (5) If the inspector causes notes to be recorded under this section, the notes must be given to APRA with the report of the investigation concerned.

**85 Delegation**

- (1) Powers under this Division may be delegated as follows:
  - (a) APRA's powers may be delegated under section 15 of the *Australian Prudential Regulation Authority Act 1998*;

- (b) an inspector may, by signed instrument, delegate his or her powers to an APRA member or an APRA staff member.
- (2) A delegate must, on the request of the trustee of a designated security trust fund in relation to which the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy, for inspection.

## **86 Report of APRA or the inspector**

- (1) The inspector:
  - (a) may make one or more reports in writing to APRA during the investigation of the whole or a part of the affairs of the trust fund and must, if so directed in writing by APRA, make such reports as are specified in the direction; and
  - (b) must, on the completion or termination of the investigation, report in writing to APRA on the result of the investigation.
- (2) APRA must, on the completion or termination of an investigation made by APRA, make a report in writing on the result of the investigation.
- (3) A report made on the completion of the investigation must include:
  - (a) a statement of the opinion of APRA or the inspector in relation to the extent to which the fund constitutes an adequate security for the class of insurance liabilities secured by the fund; and
  - (b) the recommendations of APRA or the inspector in relation to the following:
    - (i) whether a notice should be given under subsection 93(2);
    - (ii) whether an application should be made under subsection 88(1).
- (4) APRA or inspector must not include in a report:
  - (a) a recommendation relating to the institution of criminal proceedings; or

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- (b) a statement to the effect that, in APRA's or the inspector's opinion, a specified person has committed a criminal offence.
- (5) If the inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, the inspector must advise APRA, in writing of that opinion.
- (6) APRA must give a copy of a report made by or given to APRA under this section to Lloyd's and the trustee of the fund concerned. This subsection has effect subject to subsection (7).
- (7) APRA:
  - (a) must seek the advice of the Attorney-General before giving a copy of the report to Lloyd's or the trustee; and
  - (b) must not give a copy of the report to Lloyd's or the trustee if the Attorney-General advises APRA that, having regard to proceedings that have been or might be instituted, a copy of the report should not be given to Lloyd's or the trustee.
- (8) If a copy of the report has been given to Lloyd's or the trustee, APRA may, if APRA considers that it is in the public interest to do so and after taking into consideration any advice APRA has received from the Attorney-General, cause the whole or some part of the report to be published.
- (9) A court before which proceedings (whether under this Act or otherwise) are brought against a person in respect of matters dealt with in a report under this Division may order that a copy of the report be given to the person.

**Subdivision C—Offences**

**87 Offences**

A person must not, with intent to defeat the purposes of this Division or with intent to delay or obstruct the carrying out of an investigation under this Division:



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- (a) conceal, destroy, mutilate or alter a book relating to the affairs of a trust fund the affairs of which are being investigated under this Division; or
- (b) send, cause to be sent, or conspire with another person to send, out of Australia a book or any money or property belonging to or under the control of the trustee of such a trust fund.

Penalty: Imprisonment for 6 months.

## **Division 5—Judicial trusteeship of designated security trust funds**

### **88 Application for order for judicial trusteeship**

- (1) APRA may apply to the Federal Court for an order that a designated security trust fund be placed under judicial trusteeship.
- (2) A party to the trust deed of a designated security trust fund may apply to the Federal Court for an order that the fund be placed under judicial trusteeship.
- (3) A person is not entitled to make an application under subsection (2) unless:
  - (a) the person has given APRA at least one month's notice in writing of the person's intention to apply; or
  - (b) the Federal Court grants leave to make the application.
- (4) On an application by APRA:
  - (a) Lloyd's; and
  - (b) a party to the fund's trust deed;are entitled to be heard.
- (5) On an application by a party to the fund's trust deed:
  - (a) APRA; and
  - (b) any other party to the trust deed;are entitled to be heard.

### **89 Grounds for order for judicial trusteeship**

- (1) On an application under section 88, the Federal Court may make an order that a designated security trust fund be placed under judicial trusteeship if the Federal Court is satisfied:
  - (a) that the whole or a part of the affairs of the fund have been investigated under Division 4; and

- (b) that, having regard to the results of the investigation, it is in the interests of the holders of contracts of insurance covered by the fund that the order be made.
- (2) On an application under section 88, the Federal Court may make an order that a designated security trust fund be placed under judicial trusteeship if:
  - (a) the Federal Court is satisfied:
    - (i) that section 93 has ceased to have effect; or
    - (ii) that Lloyd's has contravened section 68; or
    - (iii) that the trustee of the fund has contravened section 70; or
    - (iv) that there are reasonable grounds for believing that the management or financial position of the fund may be unsatisfactory; or
    - (v) that the time needed to make or complete an investigation of the whole or part of the affairs of the fund under Division 4 would be likely to be such as to prejudice the interests of holders of contracts of insurance covered by the fund; and
  - (b) the Federal Court is satisfied that it is in the interests of the holders of contracts of insurance covered by the fund that the order be made.

## **90 Commencement of judicial trusteeship**

The judicial trusteeship of a designated security trust fund commences:

- (a) on the day specified in the order for judicial trusteeship as the day on which judicial trusteeship is to commence; or
- (b) if no day is so specified—when the order is made.

## **91 Stay of proceedings during judicial trusteeship**

- (1) While a designated security trust fund is under judicial trusteeship, a proceeding in a court against the trustee of the fund or in relation

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to any of the property of the fund cannot be proceeded with, except:

- (a) with the judicial trustee's written consent; or
  - (b) with the leave of the Federal Court and in accordance with such terms (if any) as the Federal Court imposes.
- (2) Subsection (1) does not apply to a proceeding in respect of an offence.
- (3) A judicial trustee is not subject to any liability in respect of a refusal to give a consent for the purposes of subsection (1).

## 92 Appointment of judicial trustee

- (1) If the Federal Court orders the judicial trusteeship of a designated security trust fund, the court must, by its order:
- (a) if there is already a trustee of the fund—remove the trustee of the fund; and
  - (b) appoint an individual as the trustee of the fund while the fund remains under judicial trusteeship.

The appointee is called the *judicial trustee*.

- (2) The Court may at any time cancel the appointment of a judicial trustee and appoint another individual as judicial trustee.
- (3) This Act does not prevent the Federal Court from appointing the same individual to be the judicial trustee of 2 or more security trust funds.
- (4) Only an individual who is a registered liquidator (within the meaning of the *Corporations Act 2001*) may be appointed as a judicial trustee.

## 92A Terms and conditions of appointment of judicial trustee

- (1) The Federal Court may determine the terms and conditions of the appointment of the judicial trustee, including fees.
- (2) The determination has effect despite anything in:

- (a) any other provision of this Act; and
  - (b) an instrument under this Act; and
  - (c) any other law; and
  - (d) the trust deed relating to the fund concerned.
- (3) The Federal Court may make an order under subsection (1) to the effect that the judicial trustee's fees are to be paid out of the corpus of the fund concerned.
- (4) Subsection (3) does not limit subsection (1).

## **92B Property vesting orders**

- (1) If an individual is appointed as judicial trustee of a designated security trust fund, the Federal Court must make a written order vesting the property of the fund in the judicial trustee.
- (2) If the appointment of the judicial trustee comes to an end (otherwise than because of the winding-up of the fund) the Federal Court must make an order vesting the property of the fund in:
  - (a) if there is to be a fresh judicial trustee—the fresh judicial trustee; or
  - (b) if the appointment comes to an end because the judicial trusteeship of the fund is cancelled—the person who, upon that cancellation, becomes the trustee of the fund.
- (3) If an order is made by the Federal Court under this section vesting property of a fund in a person:
  - (a) if the property was vested in law in the trustee—the property immediately vests in law in the person named in the order by force of this Act; and
  - (b) if the property was vested in equity in the trustee—the property immediately vests in equity in the person named in the order by force of this Act.
- (4) Paragraph (3)(a) has effect subject to subsections (5) and (6).

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(5) If:

- (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
- (b) that law enables the registration of such an order; the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

(6) If:

- (a) the property is of a kind whose transfer or transmission may be registered under a law of the Commonwealth, of a State or of a Territory; and
- (b) that law enables the person named in the order to be registered as the owner of that property; the property does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

**92C Powers of judicial trustee**

While an individual is judicial trustee:

- (a) the individual has and may exercise all the rights, title and powers, and must perform all the functions and duties, of the trustee; and
- (b) the fund's trust deed, this Act, a legislative instrument under this Act and any other law, apply in relation to the individual as if the individual were the trustee.

**92D Court's control of judicial trustee**

- (1) A judicial trustee is subject to the control of the Federal Court.
- (2) In addition to duties imposed by this Division, a judicial trustee has such duties as the Federal Court directs.
- (3) A judicial trustee may apply to the Federal Court at any time for instructions:

- (a) as to the way in which the judicial trusteeship should be conducted; or
  - (b) in relation to any matter arising during the judicial trusteeship.
- (4) Before applying to the Federal Court for instructions, the judicial trustee must:
  - (a) inform APRA that he or she intends to make the application; and
  - (b) give APRA written details of the application.
- (5) APRA is entitled to be heard on the application.
- (6) The Federal Court must not give a direction or an instruction under this section that is inconsistent with the fund's trust deed.

### **92E Direction not to deal with certain assets**

- (1) If:
  - (a) a designated security trust fund is under judicial trusteeship; and
  - (b) the Federal Court is satisfied that it is in the interests of the holders of contracts of insurance covered by the fund to make an order under this subsection;the Court may order:
  - (c) that the judicial trustee must not dispose of, or otherwise deal with or remove from Australia, any asset of the fund; or
  - (d) that the judicial trustee must not dispose of, or otherwise deal with or remove from Australia, a specified asset of the fund; or
  - (e) that the judicial trustee must deal with a specified asset of the fund on such terms and conditions as are specified in the order.
- (2) The Federal Court may rescind or vary an order under subsection (1).

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**92F Provision for liabilities in the accounts of designated security trust funds**

- (1) If:
  - (a) a designated security trust fund is under judicial trusteeship; and
  - (b) the Federal Court is satisfied that it is in the interests of the holders of contracts of insurance covered by the fund to make an order under this subsection;  
the Court may order that the judicial trustee must, within such period after the making of the order as is specified in the order, make provision, or further provision, in the accounts of the fund;
  - (c) of a specified amount; or
  - (d) of an amount determined in a specified manner;in respect of any or all of the liabilities secured by the fund.
- (2) The Federal Court may rescind or vary an order under subsection (1).
- (3) An order under subsection (1) does not require the judicial trustee to incur any financial liability by way of funding the security trust fund.

**92G Application by APRA for instructions to judicial trustee**

- (1) APRA may apply to the Federal Court for an order that the Federal Court give instructions to the judicial trustee relating to the conduct of the judicial trusteeship of a designated security trust fund.
- (2) The judicial trustee is entitled to be heard on the application.
- (3) A party to the fund's trust deed is entitled to be heard on the application.

**92H Request by APRA for information**

- (1) APRA may ask a judicial trustee for information about the conduct of the judicial trusteeship.



- (2) The judicial trustee must comply with APRA's request.

### **92J Duration of judicial trusteeship**

If the Federal Court orders that a designated security trust fund be placed under judicial trusteeship, the fund remains under judicial trusteeship until:

- (a) the judicial trusteeship is cancelled; or
- (b) the fund is wound up.

### **92K Cancellation of judicial trusteeship**

- (1) A judicial trustee appointed in relation to a designated security trust fund may apply to the Federal Court for an order cancelling the judicial trusteeship.
- (2) Any other interested person may apply to the Federal Court for an order cancelling the judicial trusteeship of a designated security trust fund.
- (3) On an application under subsection (1) or (2), the Federal Court may cancel the order for the judicial trusteeship of the fund if it appears to the Court:
  - (a) that the purpose of the order has been fulfilled; or
  - (b) that for any reason it is undesirable that the order remain in force.
- (4) The Federal Court must not make an order cancelling the judicial trusteeship of the fund unless the Court is satisfied that:
  - (a) upon the cancellation taking effect, a qualified corporation will become the trustee of the fund; and
  - (b) if an instrument under subsection 68(1) requires the trustee to be approved by APRA—the trustee has been approved by APRA.
- (5) Before applying to the Federal Court under subsection (1) or (2), the judicial trustee or interested person must:

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- (a) inform APRA that the trustee or person intends to make the application; and
  - (b) give APRA written details of the application.
- (6) APRA is entitled to be heard on an application made under subsection (1) or (2).

**92L Report by judicial trustee**

- (1) As soon as practicable after becoming the judicial trustee of a designated security trust fund, the judicial trustee must file with the Federal Court a report that:
  - (a) recommends the course of action that is, in his or her opinion, most advantageous to the interests of the holders of contracts of insurance covered by the fund; and
  - (b) sets out the reasons for that recommendation.
- (2) As soon as practicable after filing a report under this section, the judicial trustee must give a copy of the report to APRA and Lloyd's.
- (3) A report, or a copy of a report, under this section must be available for inspection by any person:
  - (a) at the Registry of the Federal Court in which the report is filed, during the business hours of that Registry; and
  - (b) at such other place (if any) as APRA determines.

**92M Judicial trustee may formulate a scheme for the winding-up or dissolution, or both, of a designated security trust fund**

- (1) The judicial trustee of a designated security trust fund may, by writing, formulate a scheme for the winding-up or dissolution, or both, of the fund.
- (2) The scheme must be consistent with any principles that are set out in the fund's trust deed for the purposes of this section.
- (3) The scheme may make provision for and in relation to the following matters:

- (a) empowering the judicial trustee to make written determinations about the following matters:
    - (i) whether the fund has a liability to a holder of a contract of insurance covered by the fund;
    - (ii) if the fund has such a liability—the amount of that liability;
  - (b) requiring notification of determinations referred to in paragraph (a) to be given to affected holders of contracts of insurance covered by the fund;
  - (c) providing that, for the purposes of the winding-up of a fund:
    - (i) the trustee of the fund is taken to have a liability for the amount specified in the determination to the person to whom the determination relates; and
    - (ii) that person is to be bound by the judicial trustee's determination;
  - (d) the manner in which the assets of the fund are to be applied, in a winding-up of the fund, to discharge liabilities of the fund.
- (4) If the judicial trustee makes a determination that the fund has, or does not have, a liability to a holder of a contract of insurance covered by the fund, the Federal Court may, on application by the holder, review the determination.
- (5) Despite paragraph (3)(c), a person who is notified of an amount as mentioned in paragraph (3)(b) may dispute the amount:
- (a) in accordance with the Rules of Court of the Federal Court; or
  - (b) as the Federal Court otherwise directs in the particular case.
- (6) Subsection (3) does not limit subsection (1).
- (7) A scheme formulated under this section has no effect unless it is approved by the Federal Court on the application of the judicial trustee of the fund concerned.
- (8) The Federal Court must not approve a scheme formulated under this section unless the Court is satisfied that the scheme is in the

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interests of the holders of contracts of insurance covered by the fund concerned.

- (9) A designated security trust fund must not be wound up or dissolved except in accordance with a scheme formulated under this section.
- (10) APRA and any person interested are entitled to be heard on an application under subsection (7).

**92N Resignation**

- (1) A judicial trustee appointed under this Division may resign that appointment by filing with the Federal Court a notice of resignation.
- (2) Within 28 days after the day on which the notice of resignation was filed with the Federal Court, the Court must:
  - (a) accept the resignation; and
  - (b) appoint another individual as judicial trustee.
- (3) A resignation under subsection (1) does not take effect until it is accepted by the Federal Court under subsection (2).

**92P Indemnity**

A judicial trustee is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith in the exercise of the performance of powers, functions or duties conferred or imposed on the judicial trustee by this Act.

**92Q Security deposit**

- (1) Lloyd's must, within 28 days after the commencement of this section, deposit with APRA securities of the Commonwealth the value of which as at that commencement is not less than \$2,000,000.
- (2) If, at the end of a calendar year, the value of the securities deposited in accordance with this section falls short of \$2,000,000,

Lloyd's must, within 28 days after the end of that year, deposit with APRA securities of the Commonwealth the value of which as at the end of that year was not less than the amount of the shortfall.

- (3) An obligation imposed on Lloyd's by subsection (1) or (2) may be discharged by a company nominated in a written notice given by Lloyd's to APRA.
- (4) The deposit of securities with APRA in accordance with this section is effective to transfer the legal and beneficial interest in the securities to the Commonwealth. APRA has custody of the securities for and on behalf of the Commonwealth.

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

- (5) If interest is derived on securities deposited with APRA in accordance with this section, APRA must authorise the payment of an amount equal to that interest by the Commonwealth to:
  - (a) Lloyd's; or
  - (b) if a company nominated by Lloyd's deposited those securities—that company.

The Consolidated Revenue Fund is appropriated for payments under this subsection.

- (6) If, at the end of a calendar year, the value of the securities deposited in accordance with this section exceeds \$2,000,000, APRA must, after receiving a written request from Lloyd's, return to:
  - (a) Lloyd's; or
  - (b) if a company nominated by Lloyd's deposited those securities—that company;

such of those securities as APRA determines unless:

- (c) a direction is in force under section 74 or 78; or
- (d) a determination is in force under section 93; or
- (e) a designated security trust fund is under judicial trusteeship.

The value of the returned securities as at the end of that year must be less than or equal to the amount of the excess.

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- (7) For the purposes of this section, if securities are listed on the official list of a securities exchange in Australia, the **value** of those securities at a particular time is a reference to the value of those securities on that day worked out by reference to that securities exchange and:
- (a) by reference to:
    - (i) the sale of securities of the same class last recorded before that time by the securities exchange; or
    - (ii) the selling offer for securities of the same class last recorded before that time by the securities exchange;whichever is less; or
  - (b) by reference to the buying bid for securities of the same class last recorded before that time by the securities exchange;
- whichever is greater.

### **92R Application of security deposit—costs of judicial trusteeship of designated security trust fund**

- (1) The securities lodged with APRA under section 92Q are available to discharge any expenses that are directly attributable to the judicial trusteeship of a designated security trust fund under this Division.
- (2) APRA may apply the securities in discharge of those expenses.
- (3) The expenses referred to in subsection (1) include, but are not limited to:
- (a) expenses incurred in connection with an application made by APRA under this Division; and
  - (b) expenses incurred in connection with APRA being heard before the Federal Court under this Division; and
  - (c) the payment of the fees of a judicial trustee.

### **92S Return of security deposit**

- (1) If:
- (a) section 93 has ceased to have effect; and

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- (b) APRA is satisfied that there are no outstanding liabilities of Lloyd's underwriters that are covered by any designated security trust fund;

APRA must return to:

- (c) Lloyd's; or
- (d) if a company nominated by Lloyd's deposited securities with APRA under section 92Q—that company;

such of the securities lodged by Lloyd's or that company, as the case may be, under section 92Q as have not been applied under section 92R.

- (2) In this section:

***Lloyd's underwriter*** includes:

- (a) a former Lloyd's underwriter; and
- (b) the legal personal representative of a Lloyd's underwriter or a former Lloyd's underwriter.

## **Division 6—Authorisation of Lloyd's underwriters**

### **93 Lloyd's underwriters**

- (1) Subject to this Part, Lloyd's underwriters are authorized to carry on insurance business.
- (2) Where it appears to APRA that:
  - (a) there has been a contravention of any of the provisions of Division 2, 3 or 4;
  - (b) by reason of the enactment of an Act of the United Kingdom, a substantial change is made in the constitution, powers, rights or obligations of Lloyd's or of Lloyd's underwriters; or
  - (c) by reason of the making of a by-law by Lloyd's, the rights or obligations of Lloyd's underwriters are substantially changed;APRA may, by notice in writing served on Lloyd's, require Lloyd's to show cause, within such period after service of the notice, not being less than 14 days, as APRA specifies in the notice, why this section should not cease to have effect.
- (3) If Lloyd's fails to show cause to the satisfaction of APRA within the period specified in the notice, APRA may determine that this section is to cease to have effect upon:
  - (a) the expiration of the period of 3 months after the service of the notice by APRA; or
  - (b) where, within that period of 3 months:
    - (i) a request under subsection 63(2) is made in relation to the determination of APRA; or
    - (ii) proceedings are pending or have commenced in relation to the determination of APRA;the expiration of the period determined in accordance with subsection (6);whichever is the later.



- (4) If APRA makes a determination under subsection (3), it must give notice of the determination by instrument in writing served on Lloyd's.
- (5) Part VI applies to a determination of APRA under subsection (3).
- (6) Where:
  - (a) a request under subsection 63(2) is made in relation to a determination of APRA under subsection (3); or
  - (b) within the period of 3 months after the service of the notice referred to in subsection (2), proceedings in a court are pending, or have commenced but have not been determined, in relation to the determination of APRA under subsection (3);this section is to cease to have effect upon the expiration of:
  - (c) the period of 3 months after:
    - (i) the request under subsection 63(2) is made; or
    - (ii) if an application under subsection 63(7) is made in relation to the determination—the application is finally determined under the *Administrative Appeals Tribunal Act 1975* and, if no appeal in the matter is made under section 44 of that Act, the time within which such an appeal may be made has expired;
  - (d) the period of 1 month after the day on which the proceedings referred to in paragraph (b) are determined or discontinued; or
  - (e) where an appeal is instituted in relation to those proceedings within the period of 1 month referred to in paragraph (d) and a period is determined under subsection (7)—the period so determined;whichever is the later.
- (7) A court in which an appeal referred to in paragraph (6)(e) is instituted may, having regard to the possibility of an appeal to the High Court, determine a period for the purposes of that subsection at the expiration of which this section is to cease to have effect.

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- (8) In subsections (6) and (7), ***appeal*** includes application for leave to appeal.
- (9) For the purposes of this section, where an application for leave to appeal is granted, the application shall be deemed not to have been determined or discontinued so long as:
  - (a) the leave granted remains capable of being exercised; or
  - (b) an appeal instituted in pursuance of the leave is pending.
- (10) Subject to any decision given or order made by virtue of Part VI or any order made by a court, this section ceases to have effect upon the expiration of the period upon the expiration of which it is, under subsection (3), to cease to have effect. APRA must then cause notice that this section has ceased to have effect to be published in the *Gazette*.

## **Division 7—Miscellaneous**

### **94 Trustee of designated security trust fund not to be treated as carrying on insurance business**

To avoid doubt, the trustee of a designated security trust fund does not commit an offence against section 9 or 10 only because the trustee does an act in the capacity of trustee.

#### **94A Injunctions**

- (1) If the trustee of a designated security trust fund has engaged, is engaging, or proposes to engage, in any conduct in contravention of this Part or the fund's trust deed, the Federal Court may, on the application of APRA, grant an injunction:
  - (a) restraining the trustee from engaging in the conduct; or
  - (b) if the Court thinks it desirable to do so, requiring the trustee to do a particular act.
- (2) If the trustee of a designated security trust fund has refused or failed, or is proposing to refuse or fail, to do an act that the trustee is required by this Part or the fund's trust deed to do, the Federal Court may, on the application of APRA, grant an injunction requiring the trustee to do the act.
- (3) The Court may grant an interim injunction pending the determination of an application.
- (4) The Court may discharge or vary an injunction granted under subsection (1) or (2).
- (5) APRA cannot be required, as a condition of the grant of an interim injunction, to give an undertaking as to damages.
- (6) The power of the Court to grant an injunction restraining a trustee from engaging in conduct may be exercised:

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- (a) whether or not it appears to the Court that the trustee intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the trustee has previously engaged in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a trustee to do an act may be exercised whether or not it appears to the Court that the trustee intends to refuse or fail, or to continue to refuse or fail, to do that act or thing.
- (8) The powers conferred on the Court by this section are in addition to, and not instead of, any other powers of the Court.

**95 Agent of Lloyd's**

- (1) Lloyd's must at all times be represented for the purposes of this Act by an individual resident in Australia and appointed by Lloyd's as the agent of Lloyd's for the purposes of this Act.
- (2) Subsections 118(2) to (5) (inclusive) apply to Lloyd's in a corresponding way to the way in which they apply to a body corporate of the kind referred to in subsection 118(1).
- (3) Subsections 118(2) to (5) (inclusive) apply to an appointment under subsection (1) of this section in a corresponding way to the way in which they apply to an appointment under subsection 118(1).
- (4) Anything done in his or her representative capacity by a person appointed by Lloyd's as, or to act as, its agent in accordance with this section (including section 118 as applied by this section) is taken, for the purposes of this Part, to have been done by Lloyd's. However this subsection does not affect any liability of the agent under this Part.

## **96 Address for service**

- (1) Lloyd's must at all times have an address in Australia for service for the purposes of this Act.
- (2) The address does not become the address for service of Lloyd's until Lloyd's has given notice in writing of the address to APRA. An address so notified continues to be the address for service of Lloyd's until another address has been so notified.

## **97 Lloyd's to give notice of by-laws**

If:

- (a) an Act of the United Kingdom is enacted relating specifically to Lloyd's; or
- (b) a by-law is made under the Acts of the United Kingdom known as Lloyd's Acts 1871-1951 or any later Act of the United Kingdom relating to Lloyd's;

Lloyd's must, within the period of 21 days after the enactment of the Act or the making of the by-law, give notice to APRA accordingly.

## **98 Part does not authorise Lloyd's underwriter to carry on any business the underwriter could not otherwise have carried on**

Nothing in this Part authorizes the carrying on by a Lloyd's underwriter of any business that the underwriter would not have been authorized to carry on if this Part had not been enacted.

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## Part VIII—Effect of Act on other laws

### 99 Operation of State and Territory laws on section 10

- (1) It is the intention of the Parliament that section 10 (which provides that a body corporate or Lloyd's underwriter commits an offence in certain circumstances) is not to apply to the exclusion of a law of a State or Territory.
- (2) However, section 10 applies to the exclusion of a law of a State or Territory to the extent that the effect of the law is to authorise:
  - (a) a body corporate or a Lloyd's underwriter to carry on insurance business generally; or
  - (b) a body corporate that is not a general insurer to carry on specified insurance business or to carry on insurance business included in a specified class of insurance business.

### 100 Act not to affect certain State and Territory laws

Subject to section 99, it is the intention of the Parliament that no provision of this Act shall apply to the exclusion of a law of a State or Territory in so far as that law has the effect of:

- (a) prohibiting a person from carrying on, or affecting the right of a person to carry on, insurance business by reason only of the person's failure to comply with that law in relation to the payment of an amount of money by way of stamp duty or otherwise;
- (b) requiring a specified contract of insurance or a contract included in a specified class of contracts of insurance to be made with a specified person or a person included in a specified class of persons;
- (c) prohibiting a person other than a specified person or a person included in a specified class of persons, from carrying on specified insurance business or insurance business included in a specified class of insurance business or from undertaking

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- liability under a specified contract of insurance or a contract included in a specified class of contracts of insurance;
- (d) requiring a person authorized under this Act to carry on insurance business:
- (i) to carry on any specified insurance business or insurance business included in a specified class of insurance business; or
  - (ii) to undertake liability under a specified contract of insurance or a contract of insurance included in a specified class of contracts of insurance;
- (e) limiting or affecting:
- (i) the class or classes of insurance business that a person authorized under this Act to carry on insurance business may carry on; or
  - (ii) the class or classes of contracts of insurance under which such a person may undertake liability; or
- (f) making provision for or in relation to a prescribed matter.

**102 Laws about accounts or accounting records**

It is the intention of the Parliament that this Act shall not apply to the exclusion of a law of the Commonwealth or of a State or Territory in so far as that law makes provision with respect to accounts or accounting records of a body corporate.

**103 Parts V and VA not to affect operation of certain laws**

It is the intention of the Parliament that Parts V and VA shall not apply to the exclusion of a law of the Commonwealth or of a State or Territory in so far as that law makes provision for an investigation into the affairs of a body corporate or other person.

## Part IX—Directions

### Division 1—Recapitalisation directions

#### 103A Who this Division applies to

- (1) This Division applies to a general insurer 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 judicial manager.
- (2) Subsections (3) and (4) apply if:
  - (a) APRA has given a recapitalisation direction to the general insurer under subsection 103B(1) (the ***primary recapitalisation direction***); and
  - (b) the general insurer 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 an Insurance Act statutory manager.
- (3) This Division applies to the NOHC/NOHC subsidiary in the same way that it does to a general insurer.
- (4) However, disregard the following provisions in applying this Division to the NOHC/NOHC subsidiary:
  - (a) subsection 103B(1);
  - (b) subsection 103C(1).
- (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.

### **103B Recapitalisation direction by APRA**

- (1) APRA may give a general insurer a direction (a ***recapitalisation direction***) that requires the insurer to increase the insurer's level of capital to the level specified in the direction if:
  - (a) the insurer informs APRA that:
    - (i) the insurer considers that the insurer is likely to become unable to meet the insurer's obligations; or
    - (ii) the insurer is about to suspend payment; or
  - (b) APRA considers that, in the absence of external support:
    - (i) the insurer may become unable to meet the insurer's obligations; or
    - (ii) the insurer may suspend payment; or
    - (iii) it is likely that the insurer will be unable to carry on insurance business in Australia consistently with the interests of the insurer's policyholders; or
    - (iv) it is likely that the insurer will be unable to carry on insurance business in Australia consistently with the stability of the financial system in Australia; or
  - (c) the insurer:
    - (i) becomes unable to meet the insurer's obligations; or
    - (ii) suspends payment.
- (1A) Subsection (1B) applies if subsections 103A(3) and (4) apply to a NOHC/NOHC subsidiary because of a primary recapitalisation direction given to a general insurer (as mentioned in subsection 103A(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 requires the NOHC/NOHC subsidiary to do anything that is specified in the direction.

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- (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.
- (2A) The regulations may specify that a particular form of support is not external support for the purposes of paragraph (1)(b).
- (3) A recapitalisation direction is not a legislative instrument.
- (4) A recapitalisation direction may deal with the time by which, or period during which, it is to be complied with.
- (5) APRA may, by notice in writing to the general insurer, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.
- (6) The direction has effect until APRA revokes it by notice in writing to the general insurer. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

**103C Additional contents of a recapitalisation direction**

- (1) A recapitalisation direction may direct a general insurer to issue:
  - (a) shares, or rights to acquire shares, in the insurer; 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 103B(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
    - (ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;
  - (b) acquire:

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- (i) shares, or rights to acquire shares, in the general insurer mentioned in subsection 103B(1A); or
    - (ii) other capital instruments in the general insurer mentioned in subsection 103B(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 general insurer 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):
- (a) must not specify a kind of capital instrument unless that kind of capital instrument is specified in the regulations; and

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- (b) may specify that the capital instruments must have the characteristics specified in the direction.

**103D Compliance with a recapitalisation direction**

*Giving members of the general insurer notice of share issue etc.*

- (1) As soon as practicable after a general insurer issues shares, rights to acquire shares, or other capital instruments, in compliance with a recapitalisation direction, the insurer must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the insurer 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) A general insurer 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 127B of this Act); and
  - (b) the insurer's constitution; and
  - (c) any contract or arrangement to which the insurer is a party; and
  - (d) any listing rules of a financial market in whose official list the insurer is included.

**103E 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 a general insurer to issue shares, or rights to acquire shares, in the insurer, unless APRA is

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satisfied that compliance with this section would detrimentally affect:

- (a) the policyholders of the insurer; 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 103B(1B), treat the reference in paragraph (1)(a) to “the policyholders of the insurer” as being a reference to “the policyholders of the general insurer mentioned in subsection 103B(1A)”.
- (2) APRA must:
- (a) obtain a report on the fair value of the shares, or rights to acquire shares, in the insurer 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 insurer; or
    - (ii) a person who is an associate of the insurer under Division 2 of Part 1.2 of the *Corporations Act 2001*; including any circumstances in which the expert gives the insurer or person advice, or acts on behalf of the insurer or person, in the proper performance of the functions attaching to the expert’s professional capacity or business relationship with the insurer 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 103B(1B), treat the references in paragraph (3)(c) to “the insurer” as being a reference to “the NOHC/NOHC subsidiary mentioned in subsection 103B(1B)”.

**103F Determination of the fair value of shares by an expert**

- (1) In determining the fair value for each share in a general insurer for the purposes of paragraph 103E(3)(a), the expert must:
- (a) first, assess the value of the insurer as a whole, in accordance with the assumptions (if any) notified to the expert by the Minister for the valuation of the insurer; and
  - (b) then, allocate that value among the classes of shares in the insurer 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.

**103G Determination of the fair value of rights by an expert**

- (1) In determining the fair value for each right to acquire shares in a general insurer for the purposes of paragraph 103E(3)(a), the

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expert must act 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.

**103H Ascertaining the fair value of other capital instruments**

- (1) APRA must comply with this section before giving a recapitalisation direction that directs a general insurer to issue capital instruments other than shares, or rights to acquire shares, in the insurer.
- (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.

**103J Contravention of certain provisions does not affect the validity of recapitalisation direction etc.**

A contravention of:

- (a) section 103E or subsection 103F(1) or 103G(1); or
- (b) section 103H 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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**103K 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 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.
- (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.

**103L 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 general insurer that is given the direction; and
  - (b) a summary of the direction.



*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 general insurer; or
  - (b) any recapitalisation directions made during a specified period in respect of any general insurers;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 general insurer, 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.

**103M Non-compliance with a recapitalisation direction**

- (1) A general insurer commits an offence if:
- (a) the insurer 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 insurer.

Penalty: 50 penalty units.

- (2) However, subsection (1) does not apply if:
- (a) the insurer made reasonable efforts to comply with the recapitalisation direction; and
  - (b) the insurer's contravention is due to circumstances beyond the insurer'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 a general insurer does, or refuses or fails to do, an act in circumstances that give rise to the insurer committing an offence against subsection (1), the insurer 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 insurer 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 a general insurer commits an offence if:
- (a) the officer refuses or fails to take reasonable steps to ensure that the insurer complies with a recapitalisation direction given to the insurer; and

- (b) the officer's duties include ensuring that the insurer complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

- (5) If an officer of a general insurer refuses or fails to take reasonable steps to ensure that the insurer complies with a recapitalisation direction given to the insurer 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*.

### **103N 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 a general insurer as a direct result of:
  - (i) the issue of the shares in compliance with a recapitalisation direction given to the insurer; 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 a general insurer.

## Division 2—Other directions

### 104 APRA may give directions in certain circumstances

*Basis on which directions may be given*

- (1) APRA may give a body corporate that is a general insurer or an authorised NOHC a direction of a kind specified in subsection (3) if APRA has reason to believe that:
  - (a) the body corporate has contravened a provision of this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or
  - (b) the body corporate is likely to contravene this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*, and the direction is reasonably necessary for one or more prudential matters relating to the body corporate; or
  - (c) the body corporate has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or
  - (d) the direction is necessary in the interests of:
    - (i) if the body corporate is a general insurer—policyholders of the general insurer; or
    - (ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or
  - (e) the body corporate is, or is about to become, unable to meet its liabilities; or
  - (f) there is, or there might be, a material risk to the security of the body corporate's assets; or
  - (g) there has been, or there might be, a material deterioration in the body corporate's financial condition; or
  - (h) the body corporate is conducting its affairs in an improper or financially unsound way; or

- (i) the failure to issue a direction would materially prejudice the interests of:
    - (i) if the body corporate is a general insurer—policyholders of the general insurer; or
    - (ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or
  - (j) the body corporate is conducting its affairs in a way that may cause or promote instability in the Australian financial system.
- (1A) APRA may give a body corporate that is a general insurer or is an authorised NOHC a direction of a kind specified in subsection (3) if APRA has reason to believe that:
- (a) a subsidiary of the body corporate has contravened a provision of this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or
  - (b) a subsidiary of the body corporate is likely to contravene this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or
  - (c) 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 a general insurer—policyholders of the general insurer; or
    - (ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or
  - (d) a subsidiary of the body corporate is, or is about to become, unable to meet the subsidiary's liabilities; or
  - (e) there is, or there might be, a material risk to the security of the assets of a subsidiary of the body corporate; or
  - (f) there has been, or there might be, a material deterioration in the financial condition of a subsidiary of the body corporate; or

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- (g) a subsidiary of the body corporate is conducting the subsidiary's affairs in an improper or financially unsound way; or
  - (h) 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
  - (j) 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 a general insurer—the general insurer; or
    - (ii) if the body corporate is an authorised NOHC—any general insurer that is a subsidiary of the NOHC; or
  - (k) 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 a general insurer—policyholders of the general insurer; or
    - (ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC.
- (1B) However, APRA can only make a direction as a result of a ground referred to in paragraph (1A)(a), (b), (d), (e), (f), (g) or (j) if APRA considers that the direction is reasonably necessary for one or more prudential matters relating to the body corporate.
- (1C) APRA may give a body corporate that is a subsidiary of a general insurer or of an authorised NOHC a direction of a kind specified in subsection (3) if:
- (a) APRA has given the general insurer or authorised NOHC a direction under subsection (1A) because one or more of the grounds referred to in that subsection have been satisfied in respect of the subsidiary; or
  - (b) APRA may give the general insurer or authorised NOHC a direction under subsection (1A) because one or more of the

grounds referred to in that subsection have been satisfied in respect of the subsidiary.

- (1D) APRA cannot give a direction under subsection (1C) to a body corporate of a kind specified in regulations (if any) made for the purposes of this subsection.
- (1E) Subsections (1), (1A) and (1C) do not limit each other.

*Requirements for direction*

- (2) 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 (1C)—the ground referred to in subsection (1A) as a result of which the direction is given; or
    - (ii) otherwise—the ground referred to in subsection (1) or (1A) as a result of which the direction is given.

*APRA may disregard external support*

- (2A) In deciding whether to give a direction under subsection (1), (1A) or (1C) to a body corporate, APRA may disregard any external support for the body corporate.
- (2B) The regulations may specify that a particular form of support is not external support for the purposes of subsection (2A).

*Contents of directions*

- (3) 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:
- (a) to comply with the whole or a part of this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*;
  - (b) to comply with a condition or direction referred to in paragraph (1)(c);

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- (c) to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;
- (d) to remove a director or senior manager from office;
- (e) 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;
- (f) to appoint a person or persons as a director or senior manager of the body corporate for such term as APRA directs;
- (g) to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;
- (h) not to give financial accommodation to any person;
- (i) not to renew any policy;
- (j) not to borrow any amount;
- (k) not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;
- (l) not to repay any amount paid on shares;
- (m) not to pay a dividend on any shares;
- (n) not to pay or transfer any amount 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 provide, or further provide, in its accounts for the purposes of this Act, regulations made under this Act and the prudential standards, a specified amount or an amount determined in a specified way in respect of its liabilities or the value of a specified asset of the body corporate;
- (q) to order an actuarial investigation of the affairs of the body corporate, at the expense of the body corporate, by an actuary chosen by APRA;
- (r) to terminate the appointment of the actuary appointed by the body corporate and to appoint another actuary to hold office for such terms as APRA directs;



- (s) not to issue any policy, undertake any liability under any contract of insurance or collect any premium;
- (t) not to discharge any policy or other liability;
- (u) to make changes to the body corporate's systems, business practices or operations;
- (v) 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;
- (w) 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 does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

- (4) Without limiting subsection (3), a direction referred to in a paragraph of that subsection may:
  - (a) deal with only some of the matters referred to in that paragraph; or
  - (b) deal with a particular class or particular classes of those matters; or
  - (c) make different provision with respect to different matters or different classes of matters.
- (4A) Without limiting the generality of paragraph (3)(w), a direction under that paragraph to a foreign general insurer may be any one or more of the following:
  - (a) a direction that the foreign general insurer act in a way so as to ensure that:
    - (i) a particular asset, or a particular class of assets, of the foreign general insurer is returned to the control (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia; or

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- (ii) a particular liability, or a particular class of liabilities, of the foreign general insurer ceases to be the responsibility (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia;
- (b) a direction that the foreign general insurer not act in a way that has the result that:
  - (i) a particular asset, or a particular class of assets, of the foreign general insurer ceases to be under the control (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia; or
  - (ii) a particular liability, or a particular class of liabilities, of the foreign general insurer becomes the responsibility (however described) of the part of the foreign general insurer's insurance business that is carried on in Australia.
- (4B) The kinds of direction that may be given as mentioned in subsection (3) are not limited by any other provision in this Part.
- (4C) The kinds of direction that may be given as mentioned in a particular paragraph of subsection (3) are not limited by any other paragraph of that subsection.
- (5) The direction may deal with the time by which, or period during which, it is to be complied with.

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

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

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- (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.

### *Variation and revocation of directions*

- (8) 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 or appropriate.
- (9) APRA may, by notice in writing to the body corporate, revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.
- (10) 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) or (d); or
  - (b) under subsection (1A) as a result of the ground referred to in paragraph (1A)(a), (b) or (c); or
  - (c) under subsection (1C) as a result of the ground referred to in paragraph (1C)(a) or (b), to the extent that the paragraph relates to a ground referred to in paragraph (1A)(a), (b) or (c).

### *Definitions*

- (11) In this section, the expression **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: **Senior manager** is defined in section 3 of this Act.

## **105 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).

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(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).

(1B) The matters are as follows:

- (a) the body corporate being subject to a direction by APRA under section 104;
  - (b) if the body corporate is a member of a relevant group of bodies corporate—another member of the group being subject to a direction by APRA under section 104.
- (2) If the body corporate is prevented from fulfilling its obligations under the contract because of a direction under section 104, other than a direction under paragraph 104(3)(t), the other party or parties to the contract are, subject to any orders made under subsection (3) of this section, relieved from obligations owed to the body corporate under the contract.
- (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 section 104. 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); or
  - (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 section 104.

## **106 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 section 104. The notice must include the name of the general insurer, 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 section 104 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*

- (3) If the Treasurer requests APRA to provide information about:
  - (a) any directions given under section 104 to a particular general insurer, authorised NOHC or other body corporate; or
  - (b) any directions given under section 104, during a specified period, to any general insurers, authorised NOHCs or other bodies corporate;

APRA must comply with the request.

### *Power to inform Treasurer of direction*

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

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

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

### 108 Non-compliance with a direction

- (1) A general insurer, an authorised NOHC or another 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 section 104; and
  - (c) there is no order in force under section 7 determining that this subsection does not apply to the general insurer, authorised NOHC or other body corporate.

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

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

- (3) If a general insurer, an authorised NOHC or another body corporate does or fails to do an act in circumstances that give rise to the insurer, NOHC or other body corporate committing an offence against subsection (1), the insurer, NOHC or other body corporate (as the case requires) 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 insurer, 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.

- (4) An officer of a general insurer, an authorised NOHC or another body corporate commits an offence if:
  - (a) the officer fails to take reasonable steps to ensure that the insurer, NOHC or other body corporate complies with a direction given to it under section 104; and
  - (b) the officer's duties include ensuring that the insurer, NOHC or other body corporate complies with the direction or with a class of directions that includes the direction; and
  - (c) there is no order in force under section 7 determining that subsection (1) does not apply to the insurer, authorised NOHC or other body corporate.

Penalty: 50 penalty units.

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

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

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

- (6) If an officer of a general insurer, an authorised NOHC or another body corporate fails to take reasonable steps to ensure that the insurer, NOHC or other body corporate complies with a direction given to it under section 104 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).

**Part IX** Directions  
**Division 2** Other directions

**Section 108**

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



## **Division 3—Secrecy and disclosure provisions relating to all directions**

### **109 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 policyholders of any general insurer 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 109C(2) and 109C(5).

### **109A 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 109(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.

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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 109B, 109C, 109D, 109E, 109F or 109G; 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*).

**109B Disclosure of publicly available information**

A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, to the extent that the information has already been lawfully made available to the public.

**109C Disclosure allowed by APRA**

- (1) A person covered by subsection 109A(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) 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 109A(2) in relation to a specified direction; or
  - (b) a specified person covered by subsection 109A(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 109A(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.

*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.

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**109D Disclosure to legal representative for purpose of seeking legal advice**

A person covered by subsection 109A(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.

**109E Disclosure allowed by APRA Act secrecy provision**

- (1) A person covered by subsection 109A(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
  - (ia) a Financial Regulator Assessment Authority official (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
- (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 subsection 56(3), (4), (5), (5AA), (5AB), (5AC), (6), (6AA), (6AB), (6A), (7), (7A), (7B) or (7C) of that Act.

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*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 109B, 109C, 109D, 109F or 109G.

**109F Disclosure in circumstances set out in the regulations**

A person covered by subsection 109A(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.

**109G Disclosure for purpose**

A person covered by subsection 109A(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 109A(2) in relation to the direction disclosed that information to the relevant person for a particular purpose in accordance with section 109C, 109D, 109E or 109F, or in accordance with a previous operation of this section; and
- (b) the disclosure by the relevant person is for the same purpose.

**109H Exceptions operate independently**

Sections 109B, 109C, 109D, 109E, 109F and 109G do not limit each other.

## Part X—Miscellaneous

### 114 Use of words “insurance” and “insurer”

#### *Use of the word “insurance”*

- (1) A person commits an offence if:
- (a) the person carries on a business or is proposing to carry on a business; and
  - (b) the person uses the word **insurance** to describe (expressly or by implication) a product or service that the person supplies, or proposes to supply, in the course of carrying on the business; and
  - (c) the product or service is not insurance; and
  - (d) it is likely in all the circumstances (including the use of the word **insurance**) that the product or service could be mistakenly believed to be insurance.

#### Penalty:

- (a) in the case of an individual—50 penalty units; or
- (b) in the case of a body corporate—500 penalty units.

#### *Use of the word “insurer”*

- (2) A person commits an offence if:
- (a) the person carries on a business or is proposing to carry on a business; and
  - (b) the person uses the word **insurer** to describe (expressly or by implication) the person in connection with a product or service that the person supplies, or proposes to supply, in the course of carrying on the business; and
  - (c) either:
    - (i) the product or service is not insurance; or

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- (ii) the person would breach a requirement mentioned in subsection (3) if the person supplied the product or service in the course of carrying on the business; and
- (d) in a case where the product or service is not insurance—it is likely in all the circumstances (including the use of the word *insurer*) that the product or service could be mistakenly believed to be insurance.

Penalty:

- (a) in the case of an individual—50 penalty units; or
  - (b) in the case of a body corporate—500 penalty units.
- (3) For the purposes of subparagraph (2)(c)(ii), the requirements are the requirements imposed by the following provisions:
- (a) section 9 or 10 of this Act (need to be authorised to carry on insurance business);
  - (b) section 17 of the *Life Insurance Act 1995* (registration of life companies);
  - (c) section 10 of the *Private Health Insurance (Prudential Supervision) Act 2015* (carrying on health insurance business without registration).

*Exceptions*

- (4) Subsections (1) and (2) do not apply if:
- (a) the person is a government entity; or
  - (b) the person:
    - (i) is covered by a determination under subsection (6); and
    - (ii) if that determination is subject to conditions—meets those conditions; or
  - (c) the product or service is of a kind prescribed by the regulations; or
  - (d) the product or service is State insurance (within the meaning of paragraph 51(xiv) of the Constitution) not extending beyond the limits of the State concerned.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

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- (5) A **government entity** is:
- (a) a Department of State of the Commonwealth; or
  - (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*; or
  - (c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*; or
  - (d) a Department of State of a State or Territory; or
  - (e) an entity that is established for a public purpose by a law of the Commonwealth, a State or a Territory.

### *Determinations by ASIC*

- (6) ASIC may, by legislative instrument determine that subsections (1) and (2) do not apply to a specified person or class of persons. The determination may be subject to conditions.
- (7) ASIC must not:
- (a) revoke a determination under subsection (6) relating to a specified person; or
  - (b) vary such a determination by varying or including conditions to which the determination is subject;
- unless ASIC has notified the person in writing that it is considering revoking or varying the determination.

### *Strict liability*

- (8) Subsections (1) and (2) are offences of strict liability.

## **115 Power to require production of information, books, accounts or documents**

- (1) For the purposes of the relevant legislation, APRA or a person authorised (in writing) by APRA for the purposes of this section may:
- (a) require an officer of a general insurer, authorised NOHC or the subsidiary of an authorised insurer or authorised NOHC to produce to APRA or the person information, books, accounts or documents in respect of the general insurer,



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authorised NOHC or subsidiary of a general insurer or authorised NOHC; and

- (b) inspect, take extracts from and make copies of any such books, accounts or documents.

(1A) In subsection (1):

***relevant legislation*** means:

- (a) this Act; or
  - (b) Part 2 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*
- (2) For the purpose of considering an application made (whether before or after the commencement of this subsection) by a body corporate for an authorisation to carry on insurance business or NOHC authorisation, APRA or a person authorised (in writing) by APRA for the purposes of this section may:
- (a) require an officer of the body corporate to produce to APRA any information, books, accounts or documents in respect of the body corporate; and
  - (b) inspect, take extracts from and make copies of any such books, accounts or documents.
- (3) An officer of a body corporate shall comply with a requirement made under subsection (1) or (2).
- (4) In this section, ***officer*** includes a director or secretary, or an employee concerned in the management, of the body corporate.

Penalty: Imprisonment for 3 months.

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

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**115AA Information relating to contraventions of section 9 or 10 etc.**

If APRA believes on reasonable grounds that a person has, or may have, custody or control of information or documents relating to conduct of the person or another person that constitutes, or may constitute:

- (a) a contravention of section 9 or 10; or
- (b) the aiding, abetting, counselling or procuring of a contravention of section 9 or 10;

APRA or an authorised person may, by written notice given to the person, require the person to give the information in writing signed by that person, or to produce the documents, within the time and in the manner specified in the notice.

**115AB Persons to comply with requirements of APRA or authorised person**

- (1) A person commits an offence if he or she refuses or fails to comply with a notice given to the person under section 115AA, to the extent to which the person is able to comply with it.

Penalty: 50 penalty units.

- (2) A person is not excused from complying with a notice on the ground that doing so might tend to incriminate the person.
- (3) However, if the person is an individual and informs APRA or the authorised person, before giving information, that the information might tend to incriminate him or her, the information is not admissible in evidence against him or her in criminal proceedings other than a prosecution for:
  - (a) an offence against subsection (1); or
  - (b) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

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**115A Access to premises**

- (1) For the purpose of ascertaining whether a body corporate that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC has contravened or failed to comply with the provisions of the relevant legislation, an authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books of the body corporate.
- (2) Where an authorized person has reason to believe that:
  - (a) a body corporate that is a general insurer, authorised NOHC or the subsidiary of a general insurer or authorised NOHC has contravened or failed to comply with the provisions of the relevant legislation; and
  - (b) there are, on any premises, books of the body corporate;the authorized person may make an application to a magistrate for a warrant authorizing the authorized person to enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books of the body corporate.
- (3) If, on an application under subsection (2), the magistrate is satisfied by information on oath or affirmation:
  - (a) that there is reasonable ground for believing that:
    - (i) the body corporate has contravened or failed to comply with the provisions of the relevant legislation; and
    - (ii) there are, on the premises, books of the body corporate; and
  - (b) that the issue of the warrant is reasonably required for the purposes of the relevant legislation;the magistrate may grant a warrant authorizing the authorized person, with such assistance as the authorized person thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, and if necessary by force, for the purpose of searching for, inspecting, taking extracts from and making copies of any such books.

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- (4) Where an authorized person has entered any premises in pursuance of subsection (1) or in pursuance of a warrant granted under subsection (3), he or she may search for, inspect, take extracts from and make copies of any books of the body corporate.

- (5) In this section:

**authorized person** means APRA or a person authorized by APRA, in writing, for the purposes of this section.

**relevant legislation** means:

- (a) this Act; or
- (b) the *Financial Sector (Collection of Data) Act 2001*; or
- (c) Part 2 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

### 116 General insurer not to carry on insurance business after start of winding up

- (1) If a general insurer is started to be wound up:
- (a) the insurer must not carry on insurance business after the start of the winding up; and
  - (b) APRA must ensure that a notice is published in the *Gazette* stating that the insurer is no longer allowed to carry on insurance business because of the start of the winding up.
- (2) A general insurer doesn't contravene subsection (1) merely because it is carrying on business for the purpose of discharging liabilities assumed by it before the start of the winding up.
- (3) In the winding up of a general insurer, the insurer's assets in Australia must not be applied in the discharge of its liabilities other than its liabilities in Australia unless it has no liabilities in Australia.

Note: Section 116A deals with assets and liabilities in Australia.

- (3A) For the purposes of subsection (3), a pre-authorisation liability of a general insurer is taken not to be a liability in Australia of the general insurer.

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- (4) Nothing in this section affects the validity of a contract entered into by a general insurer after it is started to be wound up.
- (5) This section has effect and must be complied with despite anything in any law of a State or Territory.

**116A Assets and liabilities in Australia**

- (1) For the purposes of sections 28, 62M, 62ZZC and 62ZZE, an amount is taken to be an asset in Australia of a general insurer if:
  - (a) the insurer expects to recover the amount under a contract of reinsurance entered into with a person who is outside Australia; and
  - (b) the amount relates to claims in respect of liabilities in Australia of the insurer, whether or not the claims have been paid by the insurer; and
  - (c) under the terms of the contract, payments by way of reinsurance are to be made in Australia.

Note 1: Section 28 requires general insurers to hold sufficient assets.

Note 2: Section 62M provides for the appointment of a judicial manager for a foreign general insurer if its assets in Australia referred to in that section are, or are likely to become, insufficient to enable it to meet its liabilities in Australia other than pre-authorisation liabilities as they become due.

Note 3: Sections 62ZZC and 62ZZE are concerned with APRA believing a foreign general insurer is unable to pay, from its assets in Australia referred to in those sections, all its debts that are liabilities in Australia other than pre-authorisation liabilities, as and when those debts become due and payable.

- (2) For the purposes of sections 28, 62M, 62ZZC, 62ZZE and 116, a liability is taken to be a liability in Australia of a general insurer if it is undertaken by the insurer under a contract of insurance (including reinsurance) made in Australia or in respect of which a proposal was accepted or a policy issued in Australia, other than a contract:
  - (a) that relates only to a liability contingent on an event that can happen only outside Australia, not being a liability that the body corporate has undertaken to satisfy in Australia; or

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- (b) if the insurer carries on insurance business both in and outside Australia—that relates only to a liability that the insurer has undertaken to satisfy outside Australia.

Note: Subsection 116(3) gives priority to discharge of liabilities in Australia when a general insurer is being wound up.

- (3) For the purposes of sections 28, 62M, 62ZZC, 62ZZE and 116, a liability is also taken to be a liability in Australia of a general insurer if it is undertaken by the insurer under a contract of insurance (including reinsurance) made outside Australia or in respect of which a proposal was accepted or a policy issued outside Australia, if the contract:

- (a) relates to a liability contingent on an event that can happen only in Australia; or
- (b) if the insurer carries on insurance business both in and outside Australia—relates to a liability that the insurer has undertaken to satisfy in Australia;

and any part of the negotiations or arrangements leading to the making of the contract, the acceptance of the proposal or the issue of the policy took place or were made in Australia.

- (4) For the purposes of sections 28, 62M, 62ZZC, 62ZZE and 116, unless the contrary intention appears, a reference to liabilities of a body corporate includes a reference to provision for liabilities made in its accounts, or directed in accordance with section 104 to be made, but does not include:

- (a) a liability in respect of share capital; or
- (b) where the body corporate is registered under section 21 of the *Life Insurance Act 1995*, a liability that is, in accordance with that Act:
  - (i) referable to a class of life insurance business carried on by the body corporate in respect of which it has established a statutory fund under that Act; or
  - (ii) charged on any of the assets of such a statutory fund.

- (5) The whole or such part as APRA determines of an amount owed to a body corporate by way of portions of premiums retained under a contract of reinsurance by a person outside Australia is, for the

purposes of sections 28, 62M, 62ZZC and 62ZZE, to be taken to be an asset in Australia of the body corporate.

- (6) Where:
- (a) a determination has been made under subsection (5); and
  - (b) it appears at any time to APRA that the determination is no longer necessary or should be varied;
- APRA must, by notice in writing served on the body corporate concerned, revoke or vary the determination, as the case may be.
- (7) Part VI applies to a decision by APRA under subsection (5) or (6) to determine an amount or to vary such a determination.

### **117 Address for service in Australia**

- (1) A body corporate that is not incorporated in Australia and:
- (a) is a foreign general insurer; or
  - (b) is a subsidiary of a foreign general insurer;
- must, at all times, have an address for service in Australia for the purposes of this Act.
- (2) An address becomes the address for service for the insurer or subsidiary when written notice of the address is given to APRA. (The address continues to be the address for service until APRA is given written notice of another address.)
- (3) If:
- (a) written notice has been given to APRA of an address for service in Australia for a foreign general insurer; and
  - (b) a body corporate that is a subsidiary of the foreign general insurer is not incorporated in Australia; and
  - (c) no written notice has been given to APRA of an address for service in Australia for the subsidiary;
- the address for service in Australia for the foreign general insurer is taken, from the time when the notice referred to in paragraph (a) was or is given, to have been, or to be, the address for service in Australia for the subsidiary for the purposes of this Act.

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**118 Agent in Australia**

- (1) A body corporate that is not incorporated in Australia and:
  - (a) is a foreign general insurer; or
  - (b) is a subsidiary of a foreign general insurer;must, at all times while it is such an insurer or subsidiary, be represented for the purposes of this Act by an agent appointed by it for the purposes of this Act.
- (2) Subject to subsection (3B), where the agent of a body corporate appointed under subsection (1) is, or is about to be, absent from Australia or, for any reason, unable to perform the duties of such an agent, the body corporate shall, if it does not revoke the appointment and appoint another agent under that subsection, appoint another agent to act as the agent of the body corporate for the purposes of this Act during the absence or inability.
- (3) Where an agent appointed under subsection (2) to act as the agent of a body corporate is, or is about to be, absent from Australia or, for any reason, unable to perform the duties of such an agent, the body corporate shall revoke the appointment and appoint another agent under that subsection.
- (3A) A body corporate may appoint an agent to act as the agent of the body corporate for the purposes of this Act during all periods when the agent of the body corporate appointed under subsection (1) is absent from Australia or, for any reason, unable to perform the duties of such an agent.
- (3B) Subsection (2) does not apply in relation to an absence from Australia of the agent of a body corporate appointed under subsection (1), or to an inability, for any other reason, of such an agent to perform the duties of such an appointment, if an agent in Australia is, during the absence or inability, performing, or available to perform, the duties of the agent in pursuance of an appointment under subsection (3A).
- (4) An appointment under this section is taken not to have been duly made or revoked until the body corporate has given written notice



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of the appointment or revocation to APRA, specifying the agent's name and:

- (a) in the case of an appointment of an individual resident in Australia—the place of residence of the individual appointed; or
- (b) in the case of an appointment of a body corporate incorporated in Australia—either the head office, registered office or principal office of the body corporate in Australia.

(4A) If:

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

the agent specified in the notice referred to in paragraph (a) is taken, from the time when that notice was or is given:

- (d) to have been, or to be, the agent of the subsidiary for the purposes of this Act; and
  - (e) to have had, or to have, the place of residence, head office, registered office or principal office specified in that notice.
- (5) Everything done by an agent appointed under this section in that agent's representative capacity shall, for the purposes of this Act, be deemed to have been done by the body corporate, but this subsection does not affect any liability of the agent under this Act.
- (6) An agent appointed under this section must be:
  - (a) an individual resident in Australia; or
  - (b) a body corporate incorporated in Australia.

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**120 Saving if section 93 ceases to have effect**

If section 93 ceases to have effect, a Lloyd's underwriter does not commit an offence against subsection 10(2) by reason only that the underwriter is carrying on business for the purpose of discharging liabilities assumed by the underwriter before section 93 ceased to have effect.

**121 Service of documents and notices**

- (1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act may be served or given:
  - (a) in the case of a person other than a body corporate, by serving it personally upon the person or by sending it by registered post to the person at his or her usual or last known place of abode or business;
  - (b) in the case of a body corporate incorporated in Australia, by leaving it at or sending it by registered post to the registered office of the body corporate; or
  - (c) in the case of a body corporate (other than Lloyd's) not incorporated in Australia, by leaving it at the address for service of the body corporate notified to APRA in accordance with section 117 or by sending it by registered post to the body corporate at that address; or
  - (d) in the case of Lloyd's, by leaving it at the address for service notified to APRA in accordance with section 96 or by sending it by registered post to Lloyd's at that address.
- (2) In subsection (1), **registered office** means the office of the body corporate that is the registered office in accordance with the law of the State or Territory by or under which the body corporate is incorporated.

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Section 122**122 Register to be kept**

- (1) For the purposes of this Act, APRA shall cause to be kept a register to be known as the Register of General Insurers and Authorised NOHCs.
- (2) Subject to this Act and to any regulations, the Register shall be kept in such form and manner as APRA directs.

**123 Inspection of Register and auditors' certificates**

- (1) A person may, on application in accordance with the regulations and on payment of the prescribed fee (if any):
  - (a) inspect the Register of General Insurers and Authorised NOHCs; and
  - (aa) inspect an auditor's certificate lodged with APRA under section 49L; and
  - (c) make a copy of, or take extracts from, such an auditor's certificate.
- (3) For the purposes of this section, if information contained in a document lodged with APRA has been stored in electronic form by APRA, a person is taken to have made a copy of, or taken an extract from, that document if APRA gives the person a printout of, or of the relevant parts of, the information.
- (4) If an applicant under subsection (1) requests that a copy be provided in an electronic form, APRA may provide the relevant information:
  - (a) on a data processing device; or
  - (b) by way of electronic transmission.

**124 Evidence and judicial notice**

- (1) A certificate under APRA's seal certifying as to any matter relating to the contents of the Register of Authorized Insurers shall be received in all courts as prima facie evidence of the matter certified.

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- (1A) In proceedings in any court, a certificate under APRA's seal that a requirement of this Act specified in the certificate:
- (a) had or had not been complied with at a date or within a period specified in the certificate; or
  - (b) has been complied with upon a date specified in the certificate, but not before that date;
- is prima facie evidence of the matters specified in the certificate.
- (3) In this section, **court** includes a Federal court and a court of a State or Territory and all persons authorized by a law of the Commonwealth, of a State or of a Territory or by consent of parties to receive evidence.

### 125 APRA Act secrecy provisions apply

Section 56 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

### 126 Acceptance and enforcement of undertakings

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with APRA's consent.
- (3) If APRA considers that the person who gave the undertaking has breached any of its terms, APRA may apply to the Federal Court for an order under subsection (4).
- (4) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Federal Court may make all or any of the following orders:
  - (a) an order directing the person to comply with that term of 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

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person has obtained directly or indirectly and that is reasonably attributable to the breach;

- (c) any order that the Federal 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 Federal Court considers appropriate.

**127 Severability**

- (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act has, by force of this subsection, the effect it would have if reference to a NOHC in relation to a body corporate were expressly limited to a reference to a NOHC of a general insurer.
- (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 a general insurer were expressly limited to a reference to such 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 a general insurer were expressly limited to a reference to such a subsidiary that carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.
- (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 such 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

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such a subsidiary of an authorised NOHC, being a NOHC that carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.

- (5) 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 a general insurer were expressly limited to a reference to such a holding company that is a corporation to which paragraph 51(xx) of the Constitution applies;
  - (b) this Act has effect as if a reference to a holding company of a general insurer were expressly limited to a reference to such a holding company that carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.

### 127A Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

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**127B 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 49B 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.

**127C 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 109A (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*.

### 127D Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

- (aa) section 62ZM;
- (a) section 62ZOK;
- (d) section 127B;
- (e) section 127C;
- (g) section 58 of the *Australian Prudential Regulation Authority Act 1998*.

### 127E Act has effect despite the Corporations Act

This Act has effect despite any provision of the *Corporations Act 2001*.

### 127F Civil penalty for contravening section 8A of the *Terrorism and Cyclone Insurance Act 2003*

A person commits a separate contravention of this section for each calendar year during all or part of which the person fails to comply



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with subsection 8A(1) of the *Terrorism and Cyclone Insurance Act 2003*.

Note: That subsection requires most general insurers to reinsure specified cyclone risks with the Australian Reinsurance Pool Corporation. It also applies to syndicates of Lloyd's underwriters, and to unauthorised foreign insurers, who choose to reinsure such risks with the Corporation.

Civil penalty: 1,000 penalty units.

**128 Signing of documents**

- (2) A person shall not sign a document required by or under this Act to be signed if he or she knows that the document is false or misleading in a material particular.

Penalty: Imprisonment for 3 months.

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

**128A Continuing offences**

- (1) This section applies to an offence under section 7A, 9, 10, 14, 20 or 28.
- (2) If APRA considers that a person has done an act or failed to do an act in circumstances that give rise to the commission of an offence to which this section applies, APRA may give the person a written notice that APRA considers the person may have committed the offence.
- (3) A person:
- (a) who does an act or fails to do an act in circumstances that give rise to the commission of an offence to which this section applies; and

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(b) receives a notice under subsection (2) in respect of the offence;

also commits the offence in respect of each day, after the person receives the notice, on which the circumstances that gave rise to the commission of the offence continue (including the day of conviction for the offence or any later day).

Note 1: This section does not affect the application of section 4K of the *Crimes Act 1914* to offences against this Act or the regulations.

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 section, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty above.

### 129 Time for bringing proceedings

Notwithstanding anything in any other Act, proceedings for the summary prosecution of an offence against this Act may be brought at any time within the period of 3 years after the commission of the offence or, with the consent in writing of the Attorney-General, at any later time.

### 129AA Institution of offence proceedings no bar to judicial management or winding up

The institution of proceedings against a body corporate for an offence against this Act, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2023* does not prevent the institution of proceedings for:

- (a) the judicial management; or
- (b) the winding-up;

of the body corporate on a ground that relates to the matter that constitutes the offence.

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**129A Joinder of charges and penalties for certain offences**

- (1) Charges against the same person for any number of offences against section 9, 10 or 108 may be joined in the same information or complaint if those offences relate to doing or failing to do the same act or thing.
- (2) If a person is convicted of 2 or more offences referred to in subsection (1), being offences related to doing or failing to do the same act or thing, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

**129D Injunctions***Restraining injunctions*

- (1) If a person (the **perpetrator**) has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
  - (a) a contravention of:
    - (i) this Act, the regulations or the prudential standards; 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 Act, regulations, standards, condition or direction; or
  - (c) aiding, abetting, counselling or procuring a person to contravene the Act, regulations, standards, condition or direction; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the Act, regulations, standards, 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 Act, regulations, standards, condition or direction; or

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(f) conspiring with others to contravene the Act, regulations, standards, condition or direction;  
the Federal Court may grant an injunction in accordance with subsection (2).

### *Nature of injunction*

- (2) If granted, the injunction:
- (a) is to restrain the perpetrator from engaging in the conduct; and
  - (b) if in the opinion of the court it is desirable to do so, may also require the perpetrator to do any act or thing.

The court may only grant the injunction on the application of APRA, and may grant it on such terms as the court thinks appropriate.

### *Performance injunctions*

- (3) If a person (the **unwilling 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 by:
- (a) this Act, the regulations or the prudential standards; or
  - (b) a condition imposed or specified under this Act; or
  - (c) a direction by APRA under this Act;
- to do, the Federal Court may, on the application of APRA, grant an injunction, on such terms as the court thinks appropriate, requiring the unwilling person to do that act or thing.

### *Consent injunctions*

- (4) If an application for an injunction under subsection (1) or (3) has been made, the Federal 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 that subsection applies.

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*Interim injunctions*

- (5) If in the opinion of the Federal Court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

*Variation or discharge of injunctions*

- (6) The Federal Court may discharge or vary an injunction granted under this section.

*Restraining injunctions*

- (7) The power of the Federal 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 person if the first-mentioned person engages in conduct of that kind.

*Performance injunctions*

- (8) The power of the Federal 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 person if the first-mentioned person refuses or fails to do that act or thing.

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### *Damages undertakings*

- (9) If APRA applies to the Federal Court for the grant of an injunction under this section, the court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

### *Damages orders*

- (10) If the Federal 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.

### *This section extends Federal Court's powers*

- (11) The powers this section gives the Federal Court are additional to (and do not limit) its other powers.

## **129E Civil penalties**

Schedule 1 (Civil penalties) has effect.

## **130 Preparation of forms**

Strict compliance with a prescribed form or a form determined by APRA is not necessary and substantial compliance is sufficient.

## **131 Costs of investigations**

The expenses of and incidental to an investigation under section 52 shall be paid by the Commonwealth.

Section 131A

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**131A Authorising contracts etc. for protecting policyholders' 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 policyholders and prospective policyholders under insurance policies (issued by general insurers and Lloyd's underwriters) in ways that are consistent with the continued development of a viable, competitive and innovative insurance 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 \$10,000,000,000 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 \$10,000,000,000 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(b) of the *Banking Act 1959*.

Note: That purpose is making a payment under a contract or arrangement whose making was authorised under this section.

## Section 131B

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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) The authorisation or amendment commences from the time it is made, despite subsection 12(1) of the *Legislation Act 2003*.
- (9) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the authorisation or amendment.

## **131B Borrowing funds for payments under authorised contracts etc.**

- (1) Subsection (2) applies if the Minister has determined under section 131A 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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Section 132

with, the approval, so that the total unrepaid borrowing under this section is not more than \$10,000,000,000 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.

### 132 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for:

- (a) prescribing matters in connexion with an application to APRA for an authority under Part III;
- (e) prescribing matters in connexion with access to documents lodged with APRA and the supplying of copies of such documents; and
- (f) providing for penalties, not exceeding a fine of 10 penalty units or imprisonment for a period not exceeding 3 months, for offences against the regulations.

## **Schedule 1—Civil penalties**

Note: See section 129E.

### **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 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.

*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  $\frac{1}{5}$  of the relevant amount specified for the provision.

**4 Recovery of a pecuniary penalty**

If the Federal Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and

**Schedule 1** Civil penalties

**Part 1** Contravention of a civil penalty provision

Clause 5

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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 must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty order.

## **Part 2—Civil penalty proceedings and criminal proceedings**

### **6 Civil proceedings after criminal proceedings**

The Federal Court 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.

**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.

## 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 how an amendment is to be made. If, despite the misdescription, the amendment

## Endnotes

### Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.



## Endnote 2—Abbreviation key

## Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Insurance Act 1973	76, 1973	19 June 1973	Parts I and II (ss. 1–20): Royal Assent ss. 44 and 109: 23 Nov 1973 ( <i>see Gazette</i> 1973, No. 176) s. 113(1)–(3): 3 Nov 1980 ( <i>see Gazette</i> 1980, No. S200) s. 132: 1 Aug 1973 ( <i>see Gazette</i> 1973, No. 92B) Remainder: 1 Aug 1974 ( <i>see Gazette</i> 1974, No. 62)	
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	ss. 9(1) and 10
Federal Court of Australia (Consequential Provisions) Act 1976	157, 1976	9 Dec 1976	1 Feb 1977 ( <i>see</i> s. 2 and <i>Gazette</i> 1977, No. S3)	—
Insurance Amendment Act 1977	31, 1977	18 May 1977	ss. 3, 12, 13(2), (3), 14, 16–18, 20, 22–25, 27(2), 28, 35 and 38: 28 June 1977 ( <i>see Gazette</i> 1977, No. S114) s. 4(1): 1 Feb 1975 s. 4(2): 13 Dec 1976 s. 4(3): 14 Nov 1977 ( <i>see Gazette</i> 1977, No. S244) ss. 27(1), 29 and 30: 1 Aug 1974 Remainder: Royal Assent	ss. 13(3), 15(2) and 24(2)–(7)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Companies (Miscellaneous Amendments) Act 1981	92, 1981	18 June 1981	(s 25–35): 1 July 1982 (s 2(3) and gaz 1982, No S124)	—
Census and Statistics Amendment Act (No. 2) 1981	177, 1981	8 Dec 1981	1 Mar 1983 (gaz 1983, No. S36)	—
<b>as amended by</b>				
Statute Law (Miscellaneous Amendments) Act (No. 1) 1982	26, 1982	7 May 1982	(s 73–75): 1 Mar 1983 (s 2(3) and gaz 1983, No S36)	—
Health Legislation Amendment Act 1983	54, 1983	1 Oct 1983	Part V (s. 132): 1 Feb 1984 (s 2(2))	—
Insurance Amendment Act 1983	129, 1983	22 Dec 1983	s. 3(c): Repealed before commencing (s 2(2)) s. 24: 1 Oct 1985 ( <i>see Gazette</i> 1985, No. S310) Remainder: 19 Jan 1984	ss. 8(2), 10(2), 14(2), 15(2), 24(2), 27(2) and 44–48
<b>as amended by</b>				
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s. 3: 19 January 1984 (s 2(14))	s. 5(1)
Insurance Legislation Amendment Act 1989	16, 1989	20 Apr 1989	( <i>see</i> 16, 1989 below)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s. 3: 23 July 1984 (s 2(1))	s. 5(1)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Trade Commission (Transitional Provisions and Consequential Amendments) Act 1985	187, 1985	16 Dec 1985	Part VIII (s. 60): 6 Jan 1986 (s 2(1))	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	s. 3: 18 Dec 1986 (s 2(1))	ss. 5(1) and 6(3), (4)
Insurance and Superannuation Commissioner (Consequential Provisions) Act 1987	99, 1987	5 Nov 1987	23 Nov 1987 ( <i>see Gazette</i> 1987, No. S310)	ss. 32 and 33
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s. 3: 3 June 1988 (s 2(1))	s. 5(1)
Industrial Relations (Consequential Provisions) Act 1988	87, 1988	8 Nov 1988	ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 ( <i>see</i> s. 2(2) and <i>Gazette</i> 1989, No. S53)	—
Insurance Legislation Amendment Act 1989	16, 1989	20 Apr 1989	ss. 5, 6, 9–18, 22(2), 23, 26(a), 27–32, 33(a), 34(2), 38, 39, 45(a), (b), (d), 47 and 48: 20 Oct 1989 Remainder: 18 May 1989	—
Insurance Amendment Act 1991	32, 1991	20 Mar 1991	20 Mar 1991	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991	149, 1991	21 Oct 1991	1 Nov 1991	—
Insurance Laws Amendment Act 1991	1, 1992	6 Jan 1992	6 Jan 1992	ss. 28–35
Insurance Acquisitions and Takeovers Act 1991	6, 1992	6 Jan 1992	15 Mar 1992 ( <i>see Gazette</i> 1992, No. S72)	—
Corporate Law Reform Act 1992	210, 1992	24 Dec 1992	Sch 2: 23 June 1993 (s 2(3) and gaz 1993, No S186)	—
CSL Sale Act 1993	88, 1993	30 Nov 1993	Part 1 (ss. 1–4), ss. 7 and 47: Royal Assent ss. 5 and 6: 22 Feb 1991 Remainder: 3 June 1994 ( <i>see Gazette</i> 1994, No. S209)	—
Insurance Laws Amendment Act 1994	48, 1994	7 Apr 1994	ss. 1–3, 10 and 40: Royal Assent s. 41: 6 Jan 1992 Remainder: 1 Oct 1994 ( <i>see Gazette</i> 1994, No. GN38)	ss. 7–9
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	1 July 1995 ( <i>see</i> s. 2 and <i>Gazette</i> 1995, No. GN24)	—
Superannuation Industry (Supervision) Legislation Amendment Act 1995	144, 1995	12 Dec 1995	Sch 1: 12 Dec 1995 (s 2(1))	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 9 (item 21): 25 Nov 1996 (s 2(1))	s. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
<b>as amended by</b>				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4))	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	2 June 1997 ( <i>see</i> s. 2 and <i>Gazette</i> 1997, No. S202)	—
Financial Laws Amendment Act 1997	107, 1997	30 June 1997	Sch 5: 30 June 1997 (s 2(1))	Sch. 5 (items 17, 26, 123)
Insurance Laws Amendment Act 1998	35, 1998	22 Apr 1998	Schedule 1: 30 Apr 1998 ( <i>see Gazette</i> 1998, No. S188) Schedule 2 (items 1–26, 28–32): 1 July 2000 ( <i>see Gazette</i> 2000, No. GN25) Remainder: Royal Assent	Sch. 1 (items 30–34), and Sch. 2 (items 25–27)
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (items 98–113): 1 July 1998 (s 2(2))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Sch 9 (items 1–149): 1 July 1998 (para 2(2)(g)) Sch 9 (items 150–197): 1 July 2000 (para 2(10)(b))	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Company Law Review Act 1998	61, 1998	29 June 1998	Sch 4 (items 11, 12) and Sch 5 (item 33): 1 July 1998 (s 2(2), (5) and gaz 1998, No S317)	—
<b>as amended by</b>				
Taxation Laws Amendment (Company Law Review) Act 1998	63, 1998	29 June 1998	Sch 7: 1 July 1998 (s 2(1) and gaz 1998, No S317)	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (items 106–113): 1 July 1999 (s 3(2)(e), (16) and gaz 1999, No S283) Sch 8 (items 1–6, 22): 17 June 1999 (s 3(1))	Sch 8 (items 1–6, 22)
<b>as amended by</b>				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (item 4): 18 Jan 2001 (s 2(1))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 254–261, 418, 419): 24 May 2001 (s 2(3))	Sch. 2 (items 418, 419)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001	31, 2001	28 Apr 2001	s 1–3, Sch 1 (items 1–4) and Sch 2: 28 Apr 2001 (s 2(1)) Sch 1 (items 171, 172): 18 Jan 2001 (s 2(2)) Remainder: 15 Dec 2001 (s 2(4))	—
<b>as amended by</b>				
Treasury Legislation Amendment (Application of Criminal Code) Act (No. 3) 2001	117, 2001	18 Sept 2001	Schedule 2 (item 1): 15 Dec 2001 (s 2(4))	—
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 277–290): 15 July 2001 (s 2(3) and gaz 2001, No S285)	s 4–14
<b>as amended by</b>				
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Sch 4 (item 2): 15 July 2001 (s 2(1) item 6)	—



## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
General Insurance Reform Act 2001	119, 2001	19 Sept 2001	Schedules 1 and 3: 1 July 2002 Remainder: Royal Assent	Sch. 2 (items 1–4, 6–11) Sch. 2 (item 5) (am. by 37, 2002, Sch. 4 [item 18])
<b>as amended by</b>				
Financial Sector Legislation Amendment Act (No. 1) 2002	37, 2002	26 June 2002	Sch 4 (item 18): 19 Sept 2001 (s 2(1) item 4)	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (item 19): 1 July 2002 (s 2(1) item 37)	—
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2 and <i>Gazette</i> 2002, No. GN24)	Sch. 2 (item 45) and Sch. 3
Financial Services Reform (Consequential Provisions) Act 2001	123, 2001	27 Sept 2001	Sch 1 (items 240–244): 11 Mar 2002 (s 2(1), (6))	—
Financial Sector Legislation Amendment Act (No. 1) 2002	37, 2002	26 June 2002	Sch 4 (items 1–17): 1 July 2002 (s 2(1) item 3)	—
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Schedule 3 (item 52): 12 May 2003 (see s. 2 and <i>Gazette</i> 2002, No. GN49)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003	36, 2003	2 May 2003	1 July 2003	—
Australian Prudential Regulation Authority Amendment Act 2003	42, 2003	24 June 2003	ss. 1–3: Royal Assent Remainder: 1 July 2003 (see s. 2(1) and <i>Gazette</i> 2003, No. S230)	Sch. 3
Financial Sector Legislation Amendment Act (No. 1) 2003	116, 2003	27 Nov 2003	Schedule 5: 28 Nov 2003	—
<b>as amended by</b>				
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (item 12): 28 Nov 2003 (s 2(1) item 32)	—
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Schedule 1 (items 219, 220): 16 May 2005	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 27): 1 July 2002 (s 2(1) item 17)	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 4 (item 17): Royal Assent	—
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Schedule 2 (item 53): 1 Apr 2007 (see s. 2(1))	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007	149, 2007	24 Sept 2007	Schedule 2: 1 July 2008 Schedule 3: 22 Oct 2007 Remainder: Royal Assent	Sch. 2 (item 7)
<b>as amended by</b>				
Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Sch 1 (item 71) and Sch 3 (items 65, 66): 1 July 2008 (s 2(1) items 3, 9)	—
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Schedule 1 (items 53–66, 292, 296) and Schedule 4 (items 43–50): Royal Assent Schedule 1 (items 177–188): 1 Jan 2008	Sch. 1 (items 292, 296)
Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Sch 1 (items 10–21), Sch 2 (items 7–16), Sch 3 (items 1–27, 44–64) and Sch 4 (items 18–27, 43): 26 May 2008 (s 2(1) items 2, 5, 6, 8, 11) Sch 1 (items 72–83) and Sch 3 (item 67): 1 July 2008 (s 2(1) items 4, 10) Sch 3 (items 39–43): Never commenced (s 2(1) item 7)	Sch 1 (item 21), Sch 2 (item 16), Sch 3 (item 27) and Sch 4 (item 43)
Private Health Insurance Legislation Amendment Act 2008	54, 2008	25 June 2008	25 June 2008	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008	105, 2008	17 Oct 2008	Sch 1 (items 18–34, 62): 18 Oct 2008 (s 2(1) items 2, 3) Schedule 3 (items 1–26): 18 Oct 2008	Sch. 1 (item 62) and Sch. 3 (items 8, 10, 12, 15, 17)
Tax Laws Amendment (2009 Measures No. 2) Act 2009	42, 2009	23 June 2009	Sch 1 (items 30–33): Royal Assent	Sch. 1 (item 31)
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 18 (item 11): 1 July 2009 (s 2(1) item 41)	—
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 215): 27 Feb 2010 Sch 2 (items 7, 14): 28 Aug 2009	Sch. 2 (item 14)
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Sch 5 (item 24): 30 Jan 2012 (F2011L02397)	—
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 2 (items 1–83, 85–93) and Sch 6 (items 1, 30–42): 27 July 2010 Sch 2 (item 84): 1 Jan 2011 (s 2(1) item 6)	Sch. 2 (items 92, 93)
<b>as amended by</b>				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 2 (item 15): 27 July 2010 (s 2(1) item 15)	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 68, 69, 164): 1 Jan 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 730–732) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 81): 22 Sept 2012 (s 2(1) item 2)	—
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Schedule 2 (item 190): 3 Dec 2012 (s. 2(1))	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 21): 24 June 2014	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 9 (items 189–192) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
<b>as amended by</b>				
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 1 (item 22): 25 Mar 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 305–310): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 196, 401): 10 Mar 2016 (s 2(1) item 6)	—
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 2 (items 278–283): 1 Mar 2017 (s 2(1) item 5)	—
Financial System Legislation Amendment (Resilience and Collateral Protection) Act 2016	43, 2016	4 May 2016	Sch 1 (items 43, 44, 48): 1 June 2016 (s 2(1) item 2)	Sch 1 (item 48)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 3 (item 26): 21 Oct 2016 (s 2(1) item 1)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Treasury Laws Amendment (Banking Measures No. 1) Act 2018	9, 2018	5 Mar 2018	Sch 4 (items 2–4): 5 Mar 2018 (s 2(1) item 4)	—
Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018	10, 2018	5 Mar 2018	Sch 2: 5 Mar 2018 (s 2(1) item 2)	Sch 2 (items 139– 145)
Treasury Laws Amendment (Putting Consumers First— Establishment of the Australian Financial Complaints Authority) Act 2018	13, 2018	5 Mar 2018	s 4: 5 Mar 2018 (s 2(1) item 1) Sch 3 (items 6, 32): 5 Mar 2022 (s 2(1) item 8)	s 4 and Sch 3 (item 32)
Corporations Amendment (Asia Region Funds Passport) Act 2018	61, 2018	29 June 2018	Sch 2A (item 8): 18 Sept 2018 (s 2(1) item 2)	—
Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019	10, 2019	12 Mar 2019	Sch 1 (items 21–24): 1 July 2019 (s 2(1) item 2)	Sch 1 (item 24)
Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020	6, 2020	17 Feb 2020	Sch 1 (items 93, 94): 18 Feb 2020 (s 2(1) item 2)	—
Corporations Amendment (Corporate Insolvency Reforms) Act 2020	130, 2020	15 Dec 2020	Sch 1 (item 110): 1 Jan 2021 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Hayne Royal Commission Response) Act 2020	135, 2020	17 Dec 2020	Sch 6 (items 1–5) and Sch 12 (item 11): 1 Jan 2021 (s 2(1) items 8, 12)	—
Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Act 2021	64, 2021	29 June 2021	Sch 1 (items 10, 11, 14): 1 July 2021 (s 2(1) item 2)	Sch 1 (item 14)
Treasury Laws Amendment (2021 Measures No. 5) Act 2021	127, 2021	7 Dec 2021	Sch 2 (items 57, 58): 8 Dec 2021 (s 2(1) item 3)	—
Treasury Laws Amendment (Cyclone and Flood Damage Reinsurance Pool) Act 2022	13, 2022	31 Mar 2022	Sch 1 (items 1, 27–30): 31 Mar 2022 (s 2(1) item 1)	Sch 1 (items 27–30)
Financial Accountability Regime (Consequential Amendments) Act 2023	68, 2023	14 Sept 2023	Sch 1 (items 35–48) and Sch 2 (items 1, 24): 15 Sept 2023 (s 2(1) items 2, 4)	Sch 2 (items 1, 24)
Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023	69, 2023	14 Sept 2023	Sch 1 (items 110–112): 1 Jan 2024 (s 2(1) item 3)	—



## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023	76, 2023	20 Sept 2023	Sch 2 (items 661–667): 20 Oct 2023 (s 2(1) item 2) Sch 4 (items 79–89, 112–115): <u>awaiting commencement</u> (s 2(1) item 15) Sch 6 (items 33, 34): 21 Sept 2023 (s 2(1) item 22)	<u>Sch 4 (item 114)</u>

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Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 2A.....	ad No 119, 2001  am No 105, 2008; No 9, 2018
s 3.....	am No 216, 1973; No 157, 1976; No 31, 1977; No 92, 1981; No 54, 1983; No 129, 1983; No 99, 1987; No 87, 1988; No 16, 1989; No 1, 1992; No 5, 1995; No 60, 1996; No 62, 1997; No 107, 1997; No 35, 1998; No 48, 1998; No 54, 1998; No 44, 1999; No 55, 2001; No 119, 2001; No 121, 2001; No 123, 2001; No 105, 2002; No 42, 2003; No 32, 2007; No 149, 2007; No 154, 2007; No 25, 2008; No 54, 2008; No 105, 2008; No 54, 2009; No 82, 2010; No 169, 2012; No 31, 2014; No 62, 2014; No 5, 2015; No 10, 2018  ed C56  am No 61, 2018; No 130, 2020; No 135, 2020; No 127, 2021; No 76, 2023 ( <u>Sch 4 items 78, 79</u> )
s. 3A.....	ad. No. 1, 1992  am. No. 54, 1998  rep. No. 119, 2001  ad. No. 149, 2007 (as rs. by No. 25, 2008)  am No 76, 2023 ( <u>Sch 4 item 112</u> )
s. 4.....	am. No. 92, 1981; No. 72, 1984  rs. No. 107, 1997  am. Nos. 55 and 119, 2001  rs No 10, 2018  ed C56
s 4A.....	ad No 10, 2018  ed C56
s 4B.....	ad No 10, 2018
s. 5.....	am. No. 31, 1977; No. 129, 1983; No. 187, 1985; No. 38, 1988; No. 149, 1991; No. 88, 1993; No. 44, 1999; No. 119, 2001
s. 6.....	rs. No. 216, 1973; No. 119, 2001

## Endnote 4—Amendment history

Provision affected	How affected
s. 7.....	rs. No. 119, 2001 am. No. 154, 2007; No. 25, 2008
s. 7A.....	ad. No. 119, 2001 am. No. 82, 2010 (as am. by No. 136, 2012)
<b>Part II</b>	
s. 8.....	rs No 99, 1987; No 54, 1998 am No 123, 2001; No 135, 2020; <u>No 76, 2023</u>
<b>Part III</b>	
Part III.....	rs. No. 119, 2001
<b>Division 1</b>	
s. 9.....	am. No. 129, 1983 rep. No. 99, 1987 ad. No. 119, 2001 am. No. 82, 2010 (as am. by No. 136, 2012)
s. 10.....	rs. No. 31, 1977 rep. No. 99, 1987 ad. No. 119, 2001 am. No. 82, 2010 (as am. by No. 136, 2012)
s. 11.....	rep. No. 99, 1987 ad. No. 119, 2001
s. 11A.....	ad. No. 149, 2007
<b>Division 2</b>	
s. 12.....	am. No. 31, 1977 rep. No. 99, 1987 ad. No. 119, 2001 am. No. 36, 2003; No. 82, 2010
s. 13.....	am. No. 216, 1973 rs. No. 31, 1977 rep. No. 129, 1983 ad. No. 119, 2001 am. No. 25, 2008

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Endnote 4—Amendment history

Provision affected	How affected
s. 14.....	am. No. 31, 1977; No. 129, 1983 rep. No. 99, 1987 ad. No. 119, 2001 am. No. 116, 2003; No. 82, 2010 (as am. by No. 136, 2012)
Division 3	
s. 15.....	rs No 31, 1977 am No 129, 1983 rep No 99, 1987 ad No 119, 2001 am No 25, 2008; No 10, 2018; No 68, 2023
s. 16.....	rep. No. 31, 1977 ad. No. 119, 2001
s. 16A.....	ad. No. 82, 2010
s. 17.....	rep. No. 31, 1977 ad. No. 119, 2001 am. No. 116, 2003; No. 25, 2008; No. 82, 2010 (as am. by No. 136, 2012)
Division 3A	
ss. 17A–17E.....	ad. No. 119, 2001
s. 17F .....	ad. No. 119, 2001 am. No. 105, 2008
ss. 17G–17I.....	ad. No. 119, 2001
Division 4	
s. 18.....	rep. No. 99, 1987 ad. No. 119, 2001 am. No. 82, 2010
s. 19.....	am. No. 31, 1977 rs. No. 129, 1983 rep. No. 99, 1987 ad. No. 119, 2001 am. No. 25, 2008

## Endnote 4—Amendment history

Provision affected	How affected
s. 19A.....	ad. No. 129, 1983 rs. No. 107, 1997 rep. No. 54, 1998
s. 20.....	am. No. 129, 1983 rep. No. 99, 1987 ad. No. 119, 2001 am. No. 116, 2003; No. 82, 2010 (as am. by No. 136, 2012)
s. 21.....	rs. No. 129, 1983 am. No. 107, 1997; No. 35, 1998; No. 31, 2001 rs. No. 119, 2001 am. No. 25, 2008; No. 10, 2018; No. 68, 2023
s. 22.....	am. No. 92, 1981; No. 129, 1983; No. 107, 1997; Nos. 54 and 61, 1998; No. 137, 2000 rs. No. 119, 2001
s. 22A.....	ad. No. 82, 2010
s. 23.....	am. No. 129, 1983; No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 121, 2001 rs. No. 119, 2001
s. 23A.....	ad. No. 10, 2018
<b>Division 5</b>	
s. 24.....	am. No. 129, 1983; No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 121, 2001 rs. No. 119, 2001 am. No. 25, 2008
s. 25.....	rep. No. 31, 1977 ad. No. 119, 2001 am. No. 37, 2002; No. 149, 2007; No. 25, 2008; No. 68, 2023
s. 25A.....	ad. No. 37, 2002 rs. No. 25, 2008 am. No. 25, 2008
s. 26.....	rep. No. 129, 1983

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Endnote 4—Amendment history

Provision affected	How affected
	ad. No. 119, 2001
	am. No. 37, 2002
	rs. No. 25, 2008
s. 26A.....	ad. No. 82, 2010
s. 27.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997; No. 54, 1998
	rs. No. 119, 2001
	am. No. 116, 2003; No. 149, 2007; No. 25, 2008; No. 82, 2010 (as am. by No. 136, 2012)
<b>Division 6</b>	
s. 28.....	am. No. 54, 1998
	rs. No. 119, 2001
	am. No. 105, 2008; No. 82, 2010 (as am. by No. 136, 2012)
s. 28A.....	ad. <u>No 76, 2023</u>
s. 29.....	rs. No. 129, 1983
	am. No. 1, 1992; No. 107, 1997; No. 54, 1998
	rs. No. 119, 2001
	am. No. 69, 2023
s. 30.....	am. No. 31, 1977; No. 129, 1983; No. 168, 1986; No. 48, 1994; No. 5, 1995; No. 107, 1997; Nos. 48 and 54, 1998; No. 44, 1999
	rs. No. 119, 2001
s. 31.....	am. No. 31, 1977; No. 129, 1983; No. 168, 1986; No. 5, 1995; No. 107, 1997; No. 54, 1998; No. 31, 2001
	rs. No. 119, 2001
<b>Part IIIA</b>	
Part IIIA.....	ad. No. 119, 2001
<b>Division 1</b>	
s. 32.....	am. No. 31, 1977
	rs. No. 119, 2001
	am. No. 37, 2002; No. 154, 2007; No. 25, 2008; No. 82, 2010; No. 126, 2015; No. 10, 2018
s. 33.....	am. No. 31, 1977; No. 92, 1981; No. 129, 1983; No. 168, 1986; No. 48, 1994; No. 107, 1997; No. 54, 1998

## Endnote 4—Amendment history

Provision affected	How affected
	rs. No. 119, 2001
	am. No. 37, 2002
	rep. No. 154, 2007
s. 34.....	am. No. 107, 1997; Nos. 35 and 54, 1998
	rs. No. 119, 2001
s. 34A.....	ad. No. 35, 1998
	am. No. 54, 1998; No. 31, 2001 (as rep. by No. 117, 2001)
	rep. No. 119, 2001
s. 35.....	am. No. 129, 1983; No. 107, 1997
	rs. No. 119, 2001
s. 35A.....	ad. No. 116, 2003
	rep. No. 154, 2007
<b>Division 2</b>	
Division 2 .....	rep. No. 25, 2008
	ad No 10, 2018
s. 36.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997; No. 54, 1998
	rs. No. 119, 2001
	rep. No. 25, 2008
s. 36A.....	ad No 10, 2018
	am No 76, 2023
s. 36B .....	ad No 10, 2018
s. 36C .....	ad No 10, 2018
s. 37.....	am. No. 129, 1983; No. 32, 1991; No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 31, 2001
	rs. No. 119, 2001
	am. No. 116, 2003
	rep. No. 25, 2008
<b>Division 3</b>	
s. 38.....	rs. No. 119, 2001
s. 38AA.....	ad. No. 154, 2007
	am. No. 82, 2010

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 4</b>	
Division 4 .....	ad. No. 154, 2007 am No 10, 2019
Subdivision A .....	rep No 10, 2019
s. 38A.....	ad. No. 154, 2007 am. No. 82, 2010; No 10, 2018 rep No 10, 2019
s 38B.....	ad. No. 154, 2007 rep No 10, 2019
s 38C.....	ad No 154, 2007 rep No 10, 2019
s 38D.....	ad No 154, 2007 rep No 10, 2019
s 38E .....	ad. No. 154, 2007 am. No. 82, 2010; No 10, 2018 rep No 10, 2019
Subdivision B heading.....	rep No 10, 2019
s. 38F .....	ad. No. 154, 2007
<b>Part IV</b>	
Part IV.....	rs. No. 119, 2001
<b>Division 1</b>	
Division 1 heading.....	rs. No. 82, 2010
s. 39.....	am. No. 92, 1981; No. 129, 1983; No. 107, 1997 rs. No. 119, 2001 am. No. 154, 2007; No. 25, 2008; No. 82, 2010
s. 40.....	am. No. 129, 1983; No. 107, 1997; No. 54, 1998; No. 31, 2001 rs. No. 119, 2001 rep. No. 154, 2007 ad. No. 82, 2010
s. 41.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997; No. 54, 1998 rs. No. 119, 2001



## Endnote 4—Amendment history

Provision affected	How affected
s. 42.....	am. No. 129, 1983 rs. No. 119, 2001 am. No. 37, 2002 rep. No. 154, 2007
s 43.....	am No 129, 1983; No 54, 1998 rs No 119, 2001 am No 37, 2002; No 154, 2007; No 25, 2008; No 82, 2010; No 68, 2023
s. 43A.....	ad. No. 25, 2008
s 44.....	am No 129, 1983; No 1, 1992; No 107, 1997; No 35, 1998; No 54, 1998; No 31, 2001 rep No 121, 2001 ad No 119, 2001 rs No 25, 2008 am No 68, 2023
s. 45.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997 rs. No. 35, 1998 am. No. 54, 1998 rep. No. 121, 2001 ad. No. 119, 2001 rs. No. 25, 2008
s. 46.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997; No. 54, 1998 rs. No. 119, 2001 am. No. 82, 2010
s. 47.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997 rs. No. 119, 2001 am. No. 116, 2003 rep. No. 154, 2007
s 48.....	am No 129, 1983; No 107, 1997; No 35, 1998; No 54, 1998; No 31, 2001 rs No 119, 2001; No 154, 2007

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Endnote 4—Amendment history

Provision affected	How affected
	am No 25, 2008; No 11, 2016; No 68, 2023
s. 48A.....	ad. No. 1, 1992
	am. No. 107, 1997; No. 54, 1998; No. 31, 2001
	rep. No. 119, 2001
s. 48B.....	ad. No. 1, 1992
	am. No. 54, 1998
	rep. No. 119, 2001
Division 2	
s. 49.....	am No 129, 1983; No 107, 1997; No 54, 1998
	rep No 121, 2001
	ad No 119, 2001
	am No 116, 2003; No 82, 2010 (as am by No 136, 2012); No 68, 2023
s. 49A.....	ad No 107, 1997
	rs No 119, 2001
	am No 154, 2007; No 82, 2010 (as am by No 136, 2012); No 68, 2023
s. 49B.....	ad No 107, 1997
	am No 48, 1998; No 54, 1998; No 44, 1999
	rs No 119, 2001
	am No 116, 2003; No 82, 2010; No 68, 2023
s. 49C.....	ad. No. 107, 1997
	am. No. 54, 1998; No. 137, 2000
	rs. No. 119, 2001
	rep No 10, 2018
s. 49D.....	ad. No. 107, 1997
	am. No. 54, 1998
	rs. No. 119, 2001
	rep. No. 154, 2007
	ad. No. 82, 2010
s. 49DA.....	ad. No. 82, 2010
Division 3	
s. 49E.....	ad. No. 107, 1997

## Endnote 4—Amendment history

Provision affected	How affected
	am. Nos. 48 and 54, 1998; No. 44, 1999
	rs. No. 119, 2001
s. 49F .....	ad. No. 107, 1997
	am. No. 54, 1998; No. 31, 2001
	rs. No. 119, 2001
	am. No. 82, 2010 (as am. by No. 136, 2012)
s. 49G.....	ad. No. 107, 1997
	am. No. 54, 1998; No. 55, 2001
	rs. No. 119, 2001
s. 49H.....	ad. No. 107, 1997
	am. No. 54, 1998
	rs. No. 119, 2001
	am. No. 25, 2008
<b>Division 4</b>	
s. 49J .....	ad. No. 107, 1997
	am. Nos. 35 and 54, 1998; No. 31, 2001
	rep. No. 121, 2001
	ad. No. 119, 2001
	am. No. 82, 2010
s. 49K.....	ad. No. 107, 1997
	rs. No. 35, 1998
	am. No. 54, 1998
	rep. No. 121, 2001
	ad. No. 119, 2001
s. 49L .....	ad. No. 107, 1997
	am. No. 54, 1998
	rs. No. 119, 2001
	am. No. 116, 2003; No. 82, 2010 (as am. by No. 136, 2012)
<b>Division 5</b>	
s. 49M .....	ad. No. 107, 1997
	rs. No. 119, 2001

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### Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 25, 2008
s. 49N.....	ad. No. 107, 1997
	am. No. 54, 1998; No. 31, 2001
	rs. No. 119, 2001
	am. No. 37, 2002
	rep. No. 25, 2008
s. 49P .....	ad. No. 107, 1997
	am. No. 54, 1998
	rep. No. 121, 2001
	ad. No. 119, 2001
	am. No. 116, 2003
	rep. No. 25, 2008
s. 49Q.....	ad. No. 119, 2001
	am. No. 82, 2010 (as am. by No. 136, 2012)
<b>Division 6</b>	
Division 6 .....	ad. No. 154, 2007
s. 49R.....	ad. No. 154, 2007
	am. No. 82, 2010
Part IVA.....	ad. No. 107, 1997
	rep. No. 119, 2001
<b>Part V</b>	
Part V heading .....	rs. No. 149, 2007
s 50.....	am No 92, 1981; No 1, 1992; No 210, 1992; No 107, 1997; No 54, 1998; No 55, 2001 (as am by No 116, 2003); No 119, 2001; No 8, 2007; No 10, 2018; No 76, 2023
s. 51.....	am. No. 31, 1977; No. 129, 1983; No. 48, 1994; No. 107, 1997; No. 54, 1998; Nos. 31 and 119, 2001
	rep. No. 25, 2008
s 52.....	am No 129, 1983; No 1, 1992; No 107, 1997; No 54, 1998; No 119, 2001; No 121, 2001; No 100, 2005; No 149, 2007; No 25, 2008; No 82, 2010; No 11, 2016
s. 53.....	rep. No. 1, 1992

## Endnote 4—Amendment history

Provision affected	How affected
s. 54.....	am. No. 129, 1983; No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 119, 2001
s. 55.....	am. No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 119, 2001 (as am. by No. 100, 2005)
s. 56.....	am. No. 129, 1983; No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 137, 2000; No 4, 2016
s. 57.....	am. No. 1, 1992; No. 54, 1998
s. 58.....	am. No. 1, 1992; No. 107, 1997; No. 54, 1998
s. 59.....	am. No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 119, 2001; No. 42, 2003
s. 60.....	am. No. 129, 1983; No. 1, 1992; No. 107, 1997; No. 54, 1998; No. 119, 2001; No. 25, 2008; No. 82, 2010
s. 61.....	am. No. 129, 1983; No. 107, 1997
s. 62.....	am. No. 31, 1977; No. 129, 1983; No. 168, 1986; No. 1, 1992; No. 107, 1997; No. 54, 1998; Nos. 31, 119 and 121, 2001 rep. No. 25, 2008
<b>Part VA</b>	
Part VA.....	ad. No. 149, 2007
ss. 62A–62H .....	ad. No. 149, 2007
s. 62J .....	ad. No. 149, 2007
<b>Part VB</b>	
Part VB heading.....	rs No 10, 2018
Part VB .....	ad. No. 105, 2008
<b>Division 1</b>	
s 62K.....	ad No 105, 2008
s 62L .....	ad No 105, 2008 am No 10, 2018
s 62M.....	ad No 105, 2008 am No 82, 2010; No 10, 2018; No 68, 2023
s. 62N.....	ad. No. 105, 2008
s 62P .....	ad No 105, 2008 rs No 10, 2018

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Provision affected	How affected
s 62PA.....	ad No 10, 2018
s 62PB.....	ad No 10, 2018
s 62PC.....	ad No 10, 2018
s 62PD.....	ad No 10, 2018
s 62PE.....	ad No 10, 2018
s 62Q.....	ad No 105, 2008 rep No 10, 2018
s. 62R.....	ad. No. 105, 2008 am. No. 82, 2010; No 10, 2018
s. 62S.....	ad. No. 105, 2008 am. No. 131, 2009
s. 62T.....	ad. No. 105, 2008 am. No. 82, 2010 rs No 10, 2018
s. 62U.....	ad. No. 105, 2008 am No 10, 2018
s. 62V.....	ad. No. 105, 2008 am No 43, 2016 rs No 10, 2018
s 62W.....	ad No 105, 2008 am No 10, 2018; No 68, 2023
s. 62X.....	ad. No. 105, 2008
s. 62Y.....	ad. No. 105, 2008
s. 62Z.....	ad. No. 105, 2008 am No 10, 2018
s. 62ZA.....	ad. No. 105, 2008
s. 62ZB.....	ad. No. 105, 2008 am No 43, 2016 rs No 10, 2018
s. 62ZC.....	ad. No. 105, 2008
s. 62ZD.....	ad. No. 105, 2008

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## Endnote 4—Amendment history

Provision affected	How affected
	rs. No. 82, 2010
s 62ZE.....	ad No 105, 2008
s 62ZF .....	ad No 105, 2008
	am No 10, 2018
s 62ZG .....	ad No 105, 2008
s 62ZH .....	ad No 105, 2008
s. 62ZI.....	ad. No. 105, 2008
	am. No. 82, 2010; No 10, 2018
s 62ZJ.....	ad No 105, 2008
	am No 10, 2018
s 62ZK .....	ad No 105, 2008
	am No 10, 2018
s 62ZL.....	ad No 105, 2008
s 62ZM.....	ad No 105, 2008
	rs No 10, 2018
	am No 6, 2020
s. 62ZN .....	ad. No. 105, 2008
	am. No. 103, 2010
s. 62ZO .....	ad. No. 105, 2008
	rep No 10, 2018
<b>Division 1A</b>	
Division 1A.....	ad No 10, 2018
<b>Subdivision A</b>	
s 62ZOA .....	ad No 10, 2018
s 62ZOB.....	ad No 10, 2018
s 62ZOC.....	ad No 10, 2018
<b>Subdivision B</b>	
s 62ZOD .....	ad No 10, 2018
s 62ZOE.....	ad No 10, 2018
s 62ZOF .....	ad No 10, 2018
s 62ZOG .....	ad No 10, 2018

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### Endnote 4—Amendment history

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Provision affected	How affected
s 62ZOH .....	ad No 10, 2018 ed C57
s 62ZOI.....	ad No 10, 2018
s 62ZOJ.....	ad No 10, 2018
s 62ZOK .....	ad No 10, 2018 am No 6, 2020
s 62ZOL.....	ad No 10, 2018 am No 6, 2020
s 62ZOM.....	ad No 10, 2018
s 62ZON .....	ad No 10, 2018
s 62ZOO .....	ad No 10, 2018
s 62ZOP .....	ad No 10, 2018
s 62ZOQ .....	ad No 10, 2018
s 62ZOR.....	ad No 10, 2018
s 62ZOS .....	ad No 10, 2018
s 62ZOT .....	ad No 10, 2018
s 62ZOU .....	ad No 10, 2018
s 62ZOV .....	ad No 10, 2018
s 62ZOW.....	ad No 10, 2018
s 62ZOX .....	ad No 10, 2018
s 62ZOY .....	ad No 10, 2018 am No 68, 2023
s 62ZOZ.....	ad No 10, 2018
s 62ZOZA.....	ad No 10, 2018 am <u>No 76, 2023</u>
s 62ZOZB .....	ad No 10, 2018
<b>Division 2</b>	
s 62ZP.....	ad No 105, 2008 am No 11, 2016
s. 62ZQ .....	ad. No. 105, 2008 am. No. 82, 2010

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## Endnote 4—Amendment history

Provision affected	How affected
	rs No 10, 2018
s 62ZR.....	ad No 105, 2008
	am No 10, 2018
s 62ZS .....	ad No 105, 2008
	am No 10, 2018
s 62ZT .....	ad No 105, 2008
	am No 10, 2018
<b>Division 3</b>	
s. 62ZU .....	ad. No. 105, 2008
	am No 10, 2018
s. 62ZV .....	ad. No. 105, 2008
	am. No. 82, 2010; No. 136, 2012; No 10, 2018
	ed C56
<b>Division 4</b>	
Division 4 .....	ad No 10, 2018
s 62ZVA .....	ad No 10, 2018
<b>Part VC</b>	
Part VC .....	ad. No. 105, 2008
<b>Division 1</b>	
s. 62ZW .....	ad. No. 105, 2008
	am. No. 82, 2010; No 10, 2018
ss. 62ZX–62ZZ.....	ad. No. 105, 2008
s. 62ZZA .....	ad. No. 105, 2008
	am. No. 82, 2010
s. 62ZZB .....	ad. No. 105, 2008
	rep. No. 82, 2010
<b>Division 2</b>	
s. 62ZZC .....	ad. No. 105, 2008
	am. No. 82, 2010; No 126, 2015; No 10, 2018
s. 62ZZD .....	ad. No. 105, 2008
s. 62ZZE .....	ad. No. 105, 2008

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am. No. 82, 2010
<b>Division 3</b>	
s 62ZZF.....	ad No 105, 2008
	am No 82, 2010
s 62ZZFA.....	ad No 10, 2018
s 62ZZG.....	ad No 105, 2008
	am No 82, 2010; No 10, 2018
s 62ZZGA.....	ad No 10, 2018
s 62ZZH.....	ad No 105, 2008
	am No 82, 2010; No 10, 2018
s 62ZZI.....	ad No 105, 2008
	am No 82, 2010
s 62ZZJ.....	ad No 105, 2008
	am No 82, 2010; No 10, 2018
s. 62ZZK.....	ad. No. 105, 2008
	am No 10, 2018
s. 62ZZKA.....	ad. No. 42, 2009
	am No 10, 2018
s. 62ZZL.....	ad. No. 105, 2008
s. 62ZZM.....	ad. No. 105, 2008
	am. No. 42, 2009; No. 82, 2010; No 10, 2018
s 62ZZMA.....	ad No 10, 2018
s 62ZZMB.....	ad No 10, 2018
s 62ZZMC.....	ad No 10, 2018
s 62ZZMD.....	ad No 10, 2018
<b>Division 4</b>	
s. 62ZZN.....	ad. No. 105, 2008
s. 62ZZO.....	ad. No. 105, 2008
	am. No. 82, 2010; No 10, 2018
s. 62ZZP.....	ad. No. 105, 2008
	am. No. 42, 2009; No. 82, 2010; No 10, 2018

## Endnote 4—Amendment history

Provision affected	How affected
s. 62ZZQ .....	ad. No. 105, 2008
	am. No. 82, 2010; No 10, 2018
ss. 62ZZR–62ZZT .....	ad. No. 105, 2008
s. 62ZZU .....	ad. No. 105, 2008
	am. No. 82, 2010
<b>Division 5</b>	
Division 5 heading .....	rs. No. 103, 2010
s. 62ZZV .....	ad. No. 105, 2008; No. 103, 2010
<b>Part VI</b>	
Part VI .....	rs. No. 31, 1977
s. 63 .....	rs. No. 31, 1977
	am. No. 129, 1983; No. 107, 1997; No. 54, 1998; No. 119, 2001; No. 37, 2002; No. 38, 2005; No. 25, 2008
s. 64 .....	rep. No. 31, 1977
	ad. No. 129, 1983
	am. No. 107, 1997; No. 54, 1998; No. 25, 2008
<b>Part VII</b>	
<b>Division 1</b>	
Division 1 .....	ad. No. 35, 1998
s. 65 .....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No. 25, 2008
s. 66 .....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 55, 2001
<b>Division 2</b>	
Division 2 .....	ad. No. 35, 1998
s. 67 .....	rep. No. 31, 1977
	ad. No. 35, 1998
s. 68 .....	rep. No. 31, 1977
	ad. No. 35, 1998

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 54, 1998; No. 154, 2007
s. 69.....	rep. No. 31, 1977
	ad. No. 35, 1998
s. 70.....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No. 154, 2007; No 4, 2016
ss. 71–73 .....	rep. No. 31, 1977
	ad. No. 35, 1998
<b>Division 3</b>	
Division 3 heading.....	rs. No. 54, 1998
Division 3 .....	ad. No. 35, 1998
s. 74.....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No. 25, 2008; No 4, 2016
s. 75.....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No. 55, 2001; No. 154, 2007
s. 76.....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No. 25, 2008
<b>Division 4</b>	
Division 4 .....	ad. No. 35, 1998
<b>Subdivision A</b>	
Subdivision A heading.....	rs. No. 54, 1998
Heading to s. 77 .....	am. No. 54, 1998
s. 77.....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No 4, 2016
s. 78.....	rep. No. 31, 1977
	ad. No. 35, 1998
	am. No. 54, 1998; No. 46, 2011; No. 25, 2008; No 4, 2016

## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision B</b>	
s. 79.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998
s. 80.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998; No. 137, 2000
s. 81.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998
s. 82.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998; No. 137, 2000
ss. 83, 84.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998
s. 85.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998; No. 42, 2003
s. 86.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998
<b>Subdivision C</b>	
s. 87.....	rep. No. 31, 1977 ad. No. 35, 1998
<b>Division 5</b>	
Division 5 .....	ad. No. 35, 1998
s. 88.....	rep. No. 31, 1977 ad. No. 35, 1998 am. No. 54, 1998
s. 89.....	rep. No. 157, 1976

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### Endnote 4—Amendment history

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Provision affected	How affected
	ad. No. 35, 1998
ss. 90, 91 .....	rep. No. 31, 1977
	ad. No. 35, 1998
s 92.....	rep No 31, 1977
	ad No 35, 1998
	am No 55, 2001; No 11, 2016
ss. 92A–92C.....	ad. No. 35, 1998
s. 92D.....	ad. No. 35, 1998
	am. No. 54, 1998
ss. 92E, 92F .....	ad. No. 35, 1998
s. 92G.....	ad. No. 35, 1998
	am. No. 54, 1998
s. 92H.....	ad. No. 35, 1998
	am. No. 54, 1998
s. 92J .....	ad. No. 35, 1998
ss. 92K–92M.....	ad. No. 35, 1998
	am. No. 54, 1998
ss. 92N–92P .....	ad. No. 35, 1998
ss. 92Q, 92R.....	ad. No. 35, 1998
	am. No. 54, 1998; No. 25, 2008
s. 92S .....	ad. No. 35, 1998
	am. No. 25, 2008
<b>Division 6</b>	
Division 6 heading.....	ad. No. 35, 1998
s. 93.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997; Nos. 35 and 54, 1998; No. 119, 2001; No. 25, 2008; No. 46, 2011 <u>exp (s 93(3), (6), (10))</u>
<b>Division 7</b>	
Division 7 heading.....	ad. No. 35, 1998
s. 94.....	am. No. 129, 1983; No. 107, 1997 rs. No. 35, 1998

## Endnote 4—Amendment history

Provision affected	How affected
	am. No. 119, 2001; No 4, 2016
s. 94A.....	ad. No. 35, 1998
	am. No. 54, 1998
s. 95.....	am. No. 107, 1997
	rs. No. 35, 1998
s. 96.....	am. No. 54, 1998
	rs. No. 35, 1998
	am. No. 54, 1998
s. 97.....	rs. No. 35, 1998
	am. No. 54, 1998
s. 98.....	am. No. 107, 1997
<b>Part VIII</b>	
s. 99.....	rs. No. 119, 2001
s. 100.....	am. No. 107, 1997
s. 101.....	rep. No. 31, 1977
s. 102.....	am. No. 92, 1981; No. 119, 2001
s. 103.....	am. No. 92, 1981; No. 149, 2007
<b>Part IX</b>	
Part IX.....	rep. No. 54, 1998
	ad. No. 25, 2008
<b>Division 1</b>	
Division 1 .....	ad. No. 82, 2010
s 103A.....	ad No 82, 2010
	am No 10, 2018
s 103B.....	ad No 82, 2010
	am No 10, 2018
s 103C.....	ad No 82, 2010
	am No 10, 2018
s 103D.....	ad No 82, 2010
	am No 10, 2018
s 103E .....	ad No 82, 2010

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
	am No 10, 2018
s 103F .....	ad No 82, 2010
s 103G.....	ad No 82, 2010
s 103H.....	ad No 82, 2010
s. 103J .....	ad. No. 82, 2010
s. 103K.....	ad. No. 82, 2010
	am No 43, 2016
	rs No 10, 2018
s. 103L .....	ad. No. 82, 2010
	am No 10, 2018
s. 103M.....	ad. No. 82, 2010
s. 103N.....	ad. No. 82, 2010
	am. No. 82, 2010
<b>Division 2</b>	
Division 2 heading.....	ad. No. 82, 2010
s. 104.....	rep. No. 129, 1983
	ad. No. 25, 2008
	am. No. 82, 2010; No 10, 2018
s. 105.....	am. No. 31, 1977; No. 129, 1983; No. 1, 1992; No. 107, 1997
	rep. No. 54, 1998
	ad. No. 25, 2008
	am. No. 105, 2008; No 43, 2016; No 10, 2018
s. 105A.....	ad. No. 31, 1977
	am. No. 129, 1983; No. 107, 1997
	rep. No. 54, 1998
s. 106.....	am. No. 129, 1983; No. 107, 1997
	rep. No. 54, 1998
	ad. No. 25, 2008
	am No 10, 2018; <u>No 76, 2023</u>
s. 107.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997
	rep. No. 54, 1998



## Endnote 4—Amendment history

Provision affected	How affected
	ad. No. 25, 2008
	rep No 10, 2018
s. 108.....	am. No. 31, 1977; No. 129, 1983
	rep. No. 54, 1998
	ad. No. 25, 2008
	am No 10, 2018
<b>Division 3</b>	
Division 3 .....	ad No 10, 2018
s 109.....	rs No 31, 1977
	am No 129, 1983; No 107, 1997
	rep No 54, 1998
	ad No 10, 2018
s 109A.....	ad No 10, 2018
s 109B.....	ad No 10, 2018
s 109C.....	ad No 10, 2018
s 109D.....	ad No 10, 2018
s 109E.....	ad No 10, 2018
	am No 135, 2020
	ed C60
	am No 64, 2021
s 109F.....	ad No 10, 2018
s 109G.....	ad No 10, 2018
s 109H.....	ad No 10, 2018
s 110.....	rep No 31, 1977
s 111.....	rep No 31, 1977
s 112.....	rep No 31, 1977
s 113.....	am No 31, 1977; No 129, 1983
	rep No 16, 1989
	ad No 107, 1997
	am No 54, 1998; No 31, 2001
	rep No 123, 2001

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### Endnote 4—Amendment history

Provision affected	How affected
s 114.....	am No 54, 1998 rep No 119, 2001
<b>Part X</b>	
s 114.....	ad No 135, 2020
s 115.....	rs No 31, 1977 am No 129, 1983; No 107, 1997; No 54, 1998; No 119, 2001; No 121, 2001; No 36, 2003
ss. 115AA, 115AB.....	ad. No. 149, 2007
s. 115A.....	ad. No. 31, 1977 am. No. 107, 1997; No. 54, 1998; Nos. 119 and 121, 2001; No. 36, 2003; No. 149, 2007
s. 116.....	am. No. 107, 1997; No. 54, 1998 rs. No. 119, 2001 am. No. 105, 2008
s. 116A.....	ad. No. 119, 2001 am. Nos. 25 and 105, 2008; No. 75, 2009; No. 82, 2010
s. 117.....	am. No. 107, 1997; No. 54, 1998 rs. No. 119, 2001 am. No. 37, 2002
s. 117A.....	ad. No. 1, 1992 am. No. 107, 1997; Nos. 31 and 121, 2001 rep. No. 119, 2001
s. 118.....	am. No. 31, 1977; No. 107, 1997; No. 54, 1998; No. 119, 2001; No. 37, 2002; No. 149, 2007
s. 119.....	am. No. 129, 1983; No. 48, 1994; No. 107, 1997; Nos. 48 and 54, 1998 rep. No. 119, 2001
s. 120.....	am. No. 107, 1997; No. 35, 1998; No. 119, 2001; No 4, 2016
s. 121.....	am. No. 107, 1997; Nos. 35 and 54, 1998
s. 122.....	am. No. 54, 1998; No. 119, 2001
s 123.....	am No 129, 1983; No 1, 1992; No 35, 1998; No 54, 1998; No 119, 2001, No 121, 2001 rep <u>No 76, 2023</u>

## Endnote 4—Amendment history

Provision affected	How affected
s. 124.....	am. No. 31, 1977; No. 54, 1998; No 61, 2016 ed C54
s. 125.....	am. No. 129, 1983 rs. No. 54, 1998
s 126.....	rs No 31, 1977 am No 99, 1987; No 6, 1992 rs No 107, 1997 rep No 54, 1998 ad No 119, 2001
s 127.....	am No 31, 1977; No 177, 1981 (as am by No 26, 1982); No 129, 1983 (as am by No 72, 1984); No 107, 1997 rep No 54, 1998 ad No 119, 2001 am No 10, 2018
s 127A.....	ad No 105, 2008
s 127B.....	ad No 10, 2018
s 127C.....	ad No 10, 2018
s 127D.....	ad No 10, 2018 am No 76, 2023
s 127E.....	ad No 10, 2018
s 127F.....	ad No 13, 2022
s 128.....	am No 92, 1981; No 129, 1983; No 16, 1989; No 1, 1992; No 107, 1997; No 35, 1998; No 137, 2000; No 31, 2001; No 55, 2001; No 119, 2001; No 121, 2001
s 128A.....	ad No 119, 2001 am No 25, 2008
s 129.....	am No 129, 1983
s 129AA.....	ad No 10, 2018 am No 68, 2023
s 129A.....	ad No 129, 1983 am No 119, 2001; No 25, 2008

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 129B .....	ad No 129, 1983 rep No 107, 1997
s 129C .....	ad No 144, 1995 am No 62, 1997; No 119, 2001 rep No 13, 2018
s 129D .....	ad No 144, 1995 am No 54, 1998; No 119, 2001 rs No 75, 2009
s 129E .....	ad No 105, 2008
s. 130.....	am. No. 107, 1997; No. 54, 1998
s. 131.....	am. No. 1, 1992; No. 119, 2001
s. 131A.....	ad. No. 105, 2008 am No 62, 2014; No 126, 2015
s 131B .....	ad. No. 105, 2008
s. 132.....	am. No. 31, 1977; No. 129, 1983; No. 107, 1997; Nos. 48 and 54, 1998; No. 121, 2001
Schedule.....	am. No. 31, 1977; No. 129, 1983; No. 54, 1998 rep. No. 35, 1998
<b>Schedule 1</b>	
Schedule 1.....	ad. No. 105, 2008
<b>Part 1</b>	
cc. 1–5.....	ad. No. 105, 2008
<b>Part 2</b>	
cc. 6–9.....	ad. No. 105, 2008

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