Australian Prudential Regulation Authority Act 1998

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About this compilation

This compilation

This is a compilation of the *Australian Prudential Regulation Authority Act 1998* that shows the text of the law as amended and in force on 20 October 2023 (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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 to establish the Australian Prudential Regulation Authority, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Prudential Regulation Authority Act 1998*.

2 Commencement

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Definitions

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

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

APRA means the Australian Prudential Regulation Authority.

APRA member means a member of APRA, including the Chair and each Deputy Chair.

APRA Special Account means the Australian Prudential Regulation Authority Special Account established by section 52.

APRA staff member means any of the following:

(a) a person appointed by APRA under section 45; or

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(b) a person assisting APRA under section 46; or
(c) a person engaged by APRA under section 47.

ASIC means the Australian Securities and Investments Commission.

ASIC member means a member of ASIC.

ASIC staff member has the same meaning as the expression staff member has in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*.

body regulated by APRA has the meaning given by subsection (2).

Chair means the APRA member appointed as Chair of APRA.

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

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

Deputy Chair means an APRA member appointed as a Deputy Chair of APRA.

Financial Claims Scheme Special Account means the Financial Claims Scheme Special Account established by section 54A.

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

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

officer of the Reserve Bank Service means a person appointed under Part VII of the *Reserve Bank Act 1959*.

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

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prescribed New Zealand authority means the following:

(a) the Reserve Bank of New Zealand;

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

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

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

prudential regulation framework law means any of the following:

(a) this Act;

(b) the *Banking Act 1959*;

(ba) the *Financial Accountability Regime Act 2023*;

(bb) the *Financial Accountability Regime (Consequential Amendments) Act 2023*;

(c) the *Financial Institutions Supervisory Levies Collection Act 1998*;

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

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

(f) the *Financial Sector (Transfer and Restructure) Act 1999*;

(g) the *Insurance Act 1973*;

(h) the *Insurance Acquisitions and Takeovers Act 1991*;

(i) the *Life Insurance Act 1995*;

(j) the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*;

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

(k) the *Retirement Savings Accounts Act 1997*;

(l) the *Superannuation Industry (Supervision) Act 1993*;

(m) the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*;

(n) any Act imposing a levy to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies, or to which the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* applies;

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(o) another Act that is prescribed for the purposes of the section in which the expression appears.

prudential regulation or advice services means services of either or both of the following kinds:

(a) services consisting of APRA performing a role in the prudential regulation or supervision of entities;

(b) services consisting of APRA providing advice relating to the prudential regulation or supervision of entities.

Reserve Bank means the Reserve Bank of Australia.

virtual enquiry technology means any technology that allows a person to appear at all or part of a hearing, examination or other enquiry without being physically present at the hearing, examination or other enquiry.

(2) Each of the following is a ***body regulated by APRA***:

(a) an ADI, within the meaning of the *Banking Act 1959*;

(b) an authorised NOHC, within the meaning of the *Banking Act 1959*;

(c) a general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC, within the meaning of the *Insurance Act 1973*;

(d) Lloyd's, or a Lloyd's underwriter, as defined in section 3 of the *Insurance Act 1973*;

(e) a life company that is registered under section 21 of the *Life Insurance Act 1995* or a registered NOHC within the meaning of that Act;

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

(f) the trustee of a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

(g) an RSA provider, within the meaning of the *Retirement Savings Accounts Act 1997*.

Note: ADI is short for authorised deposit-taking institution, NOHC is short for non-operating holding company and RSA is short for retirement savings account.

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(3) The regulations may amend subsection (2) as in force from time to time for the purpose of:

(a) making additions to, or omissions from, the kinds of bodies or entities covered by that subsection; and

(b) changing the descriptions of the kinds of bodies or entities covered by that subsection.

4 Act binds the Crown

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

5 External Territories

This Act extends to every external Territory.

6 Application of *Criminal Code*

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

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Part 2—Establishment, functions and powers of APRA

7 Establishment of APRA

(1) The Australian Prudential Regulation Authority is established by this section.

(2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
  (a) APRA is a listed entity; and
  (b) the Chair is the accountable authority of APRA; and
  (c) the following persons are officials of APRA:
    (i) the Chair;
    (ii) the other APRA members;
    (iii) the APRA staff members; and
  (d) the purposes of APRA include:
    (i) the purposes of APRA referred to in section 8; and
    (ii) the functions of APRA referred to in section 9.

8 Purpose for establishing APRA

(1) The main purposes for which APRA exists are as follows:
  (a) regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards;
  (b) administering the financial claims schemes provided for in the *Banking Act 1959* and the *Insurance Act 1973*;
  (c) developing the administrative practices and procedures to be applied in performing that regulatory role and administration.

(2) In performing and exercising its functions and powers, APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in

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balancing these objectives, is to promote financial system stability in Australia.

8A Trans-Tasman cooperation

(1) In performing and exercising its functions and powers, APRA must:

(a) support the prescribed New Zealand authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in New Zealand; and

(b) to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in New Zealand.

(2) APRA must balance the requirements of subsection (1) with the requirements specified in section 8.

(3) If:

(a) APRA proposes to take an action; and

(b) APRA has reasonable cause to believe that the action is likely to have a detrimental effect on financial system stability in New Zealand;

APRA must, to the extent that APRA considers reasonably practicable in the circumstances, having regard to urgency or other similar constraint, consult with and consider the advice of each prescribed New Zealand authority APRA considers to be relevant in the circumstances before taking the action.

(4) The performance of a function or the exercise of a power by APRA is not invalid merely because of a failure by APRA to comply with this section.

9 APRA's functions

APRA has the following functions:

(a) the functions conferred on it by or under this Act or any other law of the Commonwealth;

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(b) the functions conferred on it by or under any law of a State or Territory in accordance with subsection 9A(1);

(c) the function of providing prudential regulation or advice services under agreements entered into in accordance with subsection 9A(2).

9A Conferral of functions by State or Territory laws or by agreements

Conferral of functions by or under State or Territory laws

(1) APRA may have functions or powers conferred on it by or under a law of a State or Territory if the conferral of the functions or powers is in accordance with:

(a) provisions of an agreement entered into by the Commonwealth and the State or Territory, being provisions approved by the Minister for the purposes of this subsection; or

(b) an approval given by the Minister for the purposes of this subsection.

APRA has the functions and powers so conferred by that law.

Agreements for performance of prudential regulation or advice services

(2) APRA may, with the approval of the Minister, enter into an agreement with a State, Territory or other person under which APRA is, for a fee, to provide prudential regulation or advice services (whether in Australia or a foreign country). The agreement is only effective for the purposes of this Act to the extent to which APRA's provision of the services is for a purpose or purposes within the Commonwealth's legislative power.

Subsection (2) agreement may deal with liabilities between the parties

(3) An agreement entered into in accordance with subsection (2) may make provision in relation to the circumstances in which, and the

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extent to which, one party to the agreement is liable to the other party to the agreement in respect of matters arising under or out of the agreement.

Delegation of Minister's power to approve subsection (2) agreement

(4) The Minister may, in writing, delegate the power under subsection (2) to approve the entering into of agreements to an SES employee, or acting SES employee, in the Department.

10 Advice to the Minister

(1) APRA must advise the Minister as soon as practicable if it considers that a body regulated by APRA is in financial difficulty.

(2) APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting:
   (a) matters that would improve the financial safety and efficiency, competition, contestability or competitive neutrality of the sectors in which the bodies regulated by APRA operate; or
   (b) changes to, or in relation to, any prudential regulation framework law that APRA considers would overcome or assist in overcoming problems APRA has identified in the course of performing or exercising any of its functions and powers.

(3) In addition, APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting any of the Minister's functions and powers.

10A Cooperation with other agencies

(1) The Parliament intends that APRA should, in performing and exercising its functions and powers, have regard to the desirability of APRA cooperating with other financial sector supervisory agencies, and with other agencies specified in regulations for the purposes of this subsection.

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(2) This section does not override any restrictions that would otherwise apply to APRA or confer any powers on APRA that it would not otherwise have.

Note: For example, APRA's ability to provide information to another agency remains subject to section 56.

10B Cooperation with ASIC

(1) The object of this section is to require APRA to support ASIC in performing and exercising ASIC's functions and powers effectively.

(2) In performing and exercising its functions and powers, APRA must, so far as is practicable, work in cooperation with ASIC.

(3) The performance or exercise of a function or power by APRA is not invalid merely because of a failure by APRA to comply with subsection (2).

(4) The performance or exercise of a function or power by APRA does not give rise to an action or other proceeding for damages merely because of a failure by APRA to comply with subsection (2).

(5) If a law (other than this section) requires APRA to cooperate with ASIC:

(a) this section does not affect the operation of that law; and

(b) that law does not affect the operation of this section.

11 APRA's powers

(1) APRA has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

(2) APRA's powers include, but are not limited to, the following powers:

(a) the power to acquire, hold and dispose of real and personal property;

(b) the power to enter into contracts;

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(c) the power to lease the whole or any part of land or a building for the purposes of APRA;

(d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of APRA;

(e) the power to do anything incidental to any of its functions.

(3) APRA may enter into contracts in its own right.

Note: The Chair of APRA may enter into contracts and other arrangements on behalf of the Commonwealth. See section 23 of the *Public Governance, Performance and Accountability Act 2013*.

(4) Any real or personal property held by APRA is held for and on behalf of the Commonwealth.

(5) Any money received by APRA is received for and on behalf of the Commonwealth.

(6) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

11A APRA's liabilities are Commonwealth liabilities

(1) Any financial liabilities of APRA are taken to be liabilities of the Commonwealth.

(2) For the purposes of this section:

financial liability means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

12 Directions by Minister respecting APRA policies and priorities

(1) The Minister may, by legislative instrument, give APRA a direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers.

(2) The Minister must not give a direction under subsection (1) unless he or she has:

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(a) notified APRA in writing that he or she is considering giving the direction; and

(b) given the Chair an adequate opportunity to discuss with the Minister the need for the proposed direction.

(3) The Minister must not give a direction under subsection (1) about a particular case.

(4) APRA must comply with a direction under subsection (1).

(6) This section does not limit any other powers to give directions that the Minister has under any other law.

12A Chair not subject to direction by APRA on certain matters

To avoid doubt, the Chair is not subject to direction by APRA in relation to the Chair's performance of functions, or exercise of powers, under:

(a) the *Public Governance, Performance and Accountability Act 2013*; or

(b) Part 4 or 4A of this Act;

in relation to APRA.

13 APRA is a body corporate

(1) APRA:

(a) is a body corporate with perpetual succession; and

(b) must have a seal; and

(c) may sue and be sued.

(2) However, APRA is taken, for the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

(a) to be a non-corporate Commonwealth entity, and not to be a corporate Commonwealth entity; and

(b) to be a part of the Commonwealth; and

(c) not to be a body corporate.

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(3) All courts, judges and persons acting judicially must:
  (a) take judicial notice of the imprint of APRA's seal appearing on a document; and
  (b) presume that the document was duly sealed.

15 Delegation by APRA

(1) APRA may, by writing under its seal, delegate any functions or powers conferred on APRA by this Act or any other law of the Commonwealth to an APRA member or to an APRA staff member.

(2) APRA may, by writing under its seal, delegate any functions or powers conferred on APRA by this Act or any other law of the Commonwealth:
  (a) if the Chair of ASIC agrees to the delegation—to the Chair of ASIC, to another ASIC member or to an ASIC staff member; or
  (b) if the Governor of the Reserve Bank agrees to the delegation—to the Governor or Deputy Governor of the Reserve Bank or to an officer of the Reserve Bank Service.

(3) In performing or exercising functions or powers delegated under subsection (1) or (2), the delegate must comply with any directions given by APRA.

Note: For information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901*.

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Part 3—APRA membership and other corporate matters

Division 1—Membership

16 Appointment of APRA members

(1) APRA is to consist of not fewer than 3 members nor more than 5 members.

(2) The APRA members are to be appointed by the Governor-General by written instrument.

(3) At least 3 of the APRA members must be appointed as full-time members, and each of the other APRA members (if any) may be appointed as a full-time or part-time member.

(4) The performance of APRA's functions or the exercise of APRA's powers is not affected by reason only that:
  (a) there are fewer than 3 APRA members; or
  (b) there are fewer than 3 full-time APRA members.

17 Restrictions on appointment

(1) A person may only be appointed as an APRA member if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge or experience relevant to APRA's functions and powers.

(2) A person may not be appointed as an APRA member if the person is a director, officer or employee of a body regulated by APRA.

(3) A person who is a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, may be appointed as an APRA member, but only if the Minister considers that the person will not be prevented from the proper

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performance of the functions of the office because of resulting conflicts of interest.

18 Appointment of Chair and Deputy Chairs

(1) The Governor-General is to appoint as Chair of APRA a person who is, or is to be, a full-time APRA member.

(2) The Governor-General may appoint as a Deputy Chair of APRA a person who is, or is to be, a full-time APRA member.

Note: For the manner in which the Chair and a Deputy Chair may be referred to, see section 18B of the *Acts Interpretation Act 1901*.

(3) Not more than 2 persons may hold office as Deputy Chair at any one time.

19 Acting appointments

(1) The Minister may:

(a) appoint a person to act as a full-time APRA member during any period when there are fewer than 5 persons who are APRA members; or

(b) appoint a person to act as a part-time APRA member during any period when:

(i) there are fewer than 5 persons who are APRA members; and

(ii) there are at least 3 persons who are full-time APRA members; or

(c) appoint a person to act in the place of a full-time APRA member or part-time APRA member during any period when the APRA member:

(i) is acting as a Deputy Chair in accordance with subsection (3); or

(ii) is absent from duty or from Australia or is, for any reason, unable to perform the functions of his or her office.

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Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Minister may appoint an APRA member to act as Chair:

(a) during a vacancy in the office of Chair, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(3) The Minister may appoint an APRA member to act as a Deputy Chair:

(a) during a period when there are fewer than 2 persons holding office as Deputy Chair; or

(b) during any period, or during all periods, when a Deputy Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office; or

(c) during any period, or during all periods, when a Deputy Chair is acting as Chair.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(4) A person appointed under paragraph (1)(a), (1)(b), (2)(a) or (3)(a) must not continue to act under the appointment for more than 12 months.

(6) A person is not eligible to be appointed to act in an office under this section if section 17 would prevent the person from being appointed as an APRA member.

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Division 2—Terms and conditions for APRA members

20 Term of office as an APRA member

An APRA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: This section has effect subject to section 24 (under which a person may resign his or her appointment as an APRA member) and section 25 (under which a person's appointment as an APRA member may be terminated).

21 Term of office as Chair or a Deputy Chair

A person appointed as Chair, or as a Deputy Chair, holds that office until:

(a) in any case—the end of his or her current term as an APRA member; or

(b) in any case—he or she otherwise stops being an APRA member; or

(c) in the case of a person appointed as a Deputy Chair—he or she is appointed as Chair;

whichever happens first.

Note: This section has effect subject to section 24 (under which a person may resign his or her appointment as Chair or a Deputy Chair).

22 Remuneration and allowances

(1) An APRA member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that the Minister determines.

(2) An APRA member is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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23 Leave of absence

(1) A full-time APRA member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may:

(a) grant a full-time APRA member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines; and

(b) grant a part-time APRA member leave of absence on the terms and conditions that the Minister determines.

24 Resignation

A person may resign his or her appointment as an APRA member, as Chair, or as a Deputy Chair, by giving a written resignation to the Governor-General.

25 Termination of appointment

(1) The appointment of an APRA member is immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.

(2) The Governor-General may terminate the appointment of an APRA member:

(a) for misbehaviour or physical or mental incapacity; or

(b) if the member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(c) in the case of a full-time member—if the member is absent from duty, except on leave of absence:

(i) for 14 consecutive days; or

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(ii) for 28 days in any period of 12 months; or

(d) in the case of a part-time member—if the member is absent, except on leave of absence, from 3 consecutive meetings of APRA; or

(e) in the case of a full-time member—if the member engages, except with the Minister's approval, in paid employment outside the functions of his or her office; or

(f) in the case of a part-time member—if the member engages in paid employment that conflicts or could conflict with the proper performance of the functions of his or her office; or

(g) the member is or becomes a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, and the Minister considers that the person is, will be, or could be, prevented from the proper performance of the functions of his or her office because of resulting conflicts of interest; or

(h) if the member fails, without reasonable excuse, to comply with subsection 48A(1) or 48B(1); or

(i) if the member has an interest that has been, or should have been, disclosed under subsection 48A(1) or 48B(1) and that conflicts, or could conflict, to a significant extent, with the proper performance of the functions of his or her office.

(3) In spite of anything contained in this section, if an APRA member:

(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

(b) has not reached his or her maximum retiring age (within the meaning of that Act);

then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

(4) In spite of anything contained in this section, if an APRA member:

(a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;

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then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

(5) In spite of anything contained in this section, if an APRA member:

(a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and

(b) is under 60 years of age;

then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

26 Other terms and conditions

An APRA member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

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Division 3—APRA meetings

27 Times and places of meetings

(1) APRA must hold the meetings that are necessary for the efficient performance and exercise of its functions and powers.

(2) Meetings are to be held at the times and places that the Chair determines.

(3) The Chair must convene a meeting if requested in writing by 2 or more APRA members.

28 Quorum

At a meeting:

(a) if APRA consists of 3 or 4 APRA members—2 APRA members; or

(b) in any other case—3 APRA members;

constitute a quorum.

29 Who is to preside at meetings

(1) The Chair must preside at all meetings at which he or she is present.

(2) In the absence of the Chair from a meeting:

(a) if there are 2 Deputy Chairs available to preside at the meeting—the Chair may nominate one of them to preside at the meeting; or

(b) if there is only one Deputy Chair available to preside at the meeting—that Deputy Chair is to preside at the meeting.

(3) If neither the Chair nor any Deputy Chair is present at a meeting, the APRA members present must elect one of their number to preside.

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30 Voting at meetings

(1) A question arising at a meeting is to be determined by a majority of the votes of the APRA members present and voting.

(2) The person presiding at a meeting has:
  (a) a deliberative vote; and
  (b) if necessary, also a casting vote.

31 Conduct of meetings

(1) APRA may regulate proceedings at its meetings as it considers appropriate.

(2) However, proceedings at a meeting must not be inconsistent with this Division.

Note 1: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which APRA members may participate in meetings.

Note 2: Requirements relating to disclosure of interests are contained in Division 1 of Part 4A of this Act.

32 APRA resolutions without meetings

A resolution is taken to have been passed at a meeting if:
  (a) APRA has determined:
    (i) that resolutions may be passed in accordance with this section; and
    (ii) the method of indicating agreement with a resolution passed in accordance with this section; and
  (b) without meeting, a majority of the APRA members indicate agreement with the resolution in accordance with the method determined by APRA; and
  (c) that majority would have constituted a quorum at a meeting; and
  (d) all APRA members were informed of the proposed resolution, or reasonable efforts were made to inform all APRA members of the proposed resolution.

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Part 4—APRA staff members

45 Appointment of permanent, temporary and casual staff

(1) The Chair may, on behalf of APRA, appoint such permanent, temporary or casual staff as he or she considers necessary for the performance of APRA's functions.

(2) The terms and conditions of appointment (including as to remuneration) are to be determined by the Chair.

46 Staff seconded to APRA

APRA may be assisted by persons appointed or engaged under the *Public Service Act 1999*, and by officers and employees of authorities of the Commonwealth or prescribed New Zealand authorities, whose services are made available to APRA in connection with the performance or exercise of any of its functions or powers.

47 Consultants and other people engaged to perform services

(1) The Chair may, on behalf of APRA, engage consultants or other people to provide advice to APRA or perform services for APRA.

(2) The terms and conditions of engagement (including as to remuneration) are to be determined by the Chair.

48 Appointments of person appointed to perform specific roles

(1) Under other laws of the Commonwealth, APRA has power to appoint people to perform particular roles (for example, investigators and administrators under Division 2 of Part II of the *Banking Act 1959*, Division 1A of Part VB of the *Insurance Act 1973* or Division 1AA of Part 8 of the *Life Insurance Act 1995*). A person appointed to perform such a role must be:

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(a) a person who has been appointed by the Chair under section 45; or

(b) a person who is assisting APRA under section 46; or

(c) a person who has been engaged by the Chair under section 47.

(2) Subsection (1) does not apply to an appointment made under, or for the purposes of, the *Financial Accountability Regime Act 2023*.

48AA Delegation by Chair

(1) The Chair may, in writing, delegate any functions or powers conferred on the Chair by this Part or Part 4A to an APRA member (other than the Chair) or to an APRA staff member.

(2) In performing or exercising functions or powers delegated under subsection (1), the delegate must comply with any directions given by the Chair.

Note: For information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901*.

48AB APRA Values

(1) The Chair must determine, in writing, the APRA Values.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

(2) The Chair must uphold and promote the APRA Values.

(3) APRA members (other than the Chair) and staff appointed under section 45 must uphold the APRA Values.

(4) To avoid doubt, an instrument under subsection (1) is not a legislative instrument.

48AC APRA Code of Conduct

(1) The Chair must determine, in writing, the APRA Code of Conduct.

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Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

(2) The APRA Code of Conduct applies to APRA members and staff appointed under section 45.

(3) To avoid doubt, an instrument under subsection (1) is not a legislative instrument.

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Part 4A—Disclosure of interests of APRA members, APRA staff members and delegates

Division 1—Disclosure of interests of APRA members

48A Standing obligation to disclose interests

(1) An APRA member must disclose any interest that the member has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

(2) Subsection (1) applies to interests:
  (a) whether direct or indirect, and whether or not pecuniary; and
  (b) whether acquired before or after the APRA member's appointment.

(3) The disclosure must be by notice in writing given to the Minister, and to each of the other APRA members, as soon as practicable after the APRA member becomes aware of the potential for conflict of interest.

(4) Without limiting subsection (1), interests that must be disclosed under that subsection include:
  (a) any agreement, understanding or expectation that the APRA member will:
    (i) resume a previous business relationship (whether or not that relationship existed immediately before the member's appointment); or
    (ii) enter into a new business relationship;
  when the member ceases to be a member; and

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(b) any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph (a).

(5) Paragraphs (4)(a) and (b) apply to agreements, understandings or arrangements entered into, or expectations arising, before or after the member's appointment.

(6) The obligation to disclose an interest described in paragraph (4)(a) is subject to the following provisions:

(a) disclosure is required whether or not the field of business or legal nature of the relationship has been determined;

(b) if the interest is an expectation to enter into a new business relationship—the interest does not have to be disclosed unless the member can identify the other party, or one or more other parties, to the relationship.

48B Obligation to disclose interests before deciding a particular matter

(1) An APRA member who has an interest that could conflict with the proper performance of the functions of his or her office, as they give the member a role in deciding a particular matter, must not perform the role in deciding the matter unless:

(a) the member has disclosed that interest to each of the other APRA members; and

(b) each of the other APRA members has consented to the member performing that role in deciding that matter despite the possible conflict of interest.

(2) Subsection (1) applies to interests:

(a) whether direct or indirect, and whether or not pecuniary; and

(b) whether acquired before or after the APRA member's appointment.

(3) An APRA member, other than the Chair, who gives a consent under paragraph (1)(b) must, as soon as practicable, advise the Chair that he or she has given the consent.

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(4) If an interest is disclosed under subsection (1), the Chair must, as soon as practicable, give the Minister a written notice:
  (a) describing the interest and the matter; and
  (b) advising the Minister whether the other APRA members have consented as mentioned in paragraph (1)(b).

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Division 2—Disclosure of interests of APRA staff members and delegates

48D The Chair to ensure adequate disclosure of interests requirements apply to APRA staff members and delegates

The Chair must take reasonable steps to ensure that there are, where appropriate, adequate disclosure of interests requirements applying to:

(a) APRA staff members; and

(b) people (other than APRA members and APRA staff members) performing or exercising functions or powers delegated to them by APRA under section 15.

Note: Under section 48AA, the Chair can delegate the power conferred on him or her by this section.

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Division 3—Miscellaneous

48E Application of section 29 of the *Public Governance, Performance and Accountability Act 2013*

Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply in relation to:

(a) an APRA member; or

(b) an APRA staff member; or

(c) a person to whom paragraph 48D(b) applies.

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Part 5—Financial and taxation matters

Division 1—APRA's finances and the APRA Special Account

50 APRA's share of levy money

Determination of Commonwealth costs

(1) The Minister is to make, by legislative instrument, for each financial year, either of the following determinations:

(a) a determination specifying the amount of the levy money payable to the Commonwealth, in respect of levy for that financial year, to cover the following costs to the Commonwealth:

(i) costs incurred in connection with supporting the integrity and efficiency of markets in which leviable bodies operate;

(ii) costs incurred in connection with promoting the interests of consumers in markets in which leviable bodies operate;

(iii) the cost of administering the function of making determinations about the release on compassionate grounds of benefits that are in a superannuation entity or retirement savings account;

(iv) the cost of governing and maintaining the superannuation transactions network;

(v) costs relating directly or indirectly to the regulation of leviable bodies;

(b) a determination, in respect of each class of levy for that financial year, specifying the amount of the levy money payable to the Commonwealth in respect of that class of levy for that financial year, to cover the following costs to the Commonwealth:

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(i) costs incurred in connection with supporting the integrity and efficiency of markets in which leviable bodies operate;

(ii) costs incurred in connection with promoting the interests of consumers in markets in which leviable bodies operate;

(iii) the cost of administering the function of making determinations about the release on compassionate grounds of benefits that are in a superannuation entity or retirement savings account;

(iv) the cost of governing and maintaining the superannuation transactions network;

(v) costs relating directly or indirectly to the regulation of leviable bodies.

Note: Regulations made under the *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* provide for the making of determinations about the release of benefits on compassionate grounds.

(1A) The Minister may make, by legislative instrument, for each financial year, a determination specifying the proportion of amounts of levy money paid to APRA, on behalf of the Commonwealth, for the year, that is to be credited to the APRA Special Account on an ongoing basis.

Crediting to APRA Special Account

(2) The proportion determined under subsection (1A) of any amount of levy money paid to APRA, on behalf of the Commonwealth, for a financial year, is to be credited to the APRA Special Account.

(3) If the amount of levy money paid to APRA, on behalf of the Commonwealth, for a financial year, exceeds the sum of:

(a) the amount determined under paragraph (1)(a), or the total of the amounts determined under paragraph (1)(b), for that financial year; and

(b) the proportion determined under subsection (1A) of amounts of levy money, for that financial year;

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the excess is to be credited to the APRA Special Account.

Note: The annual financial statements of APRA, in respect of the APRA Special Account, must be prepared in accordance with the accounting standards and with rules made for the purposes of section 42 of the *Public Governance, Performance and Accountability Act 2013*.

(4) If:

(a) the Commonwealth refunds any levy money that has been paid to APRA; and

(b) apart from this subsection an amount equal to that levy money would otherwise be credited to the APRA Special Account;

that amount is not to be credited to the APRA Special Account.

(5) If:

(a) the Commonwealth refunds any levy money that has been paid to APRA; and

(b) that levy money has already been credited to the APRA Special Account;

that amount is to be debited from the APRA Special Account.

Definitions

(6) In this section:

leviable body has the same meaning as in the *Financial Institutions Supervisory Levies Collection Act 1998*.

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

(a) the *Financial Claims Scheme (ADIs) Levy Act 2008*;

(b) the *Financial Claims Scheme (General Insurers) Levy Act 2008*;

(c) the *Private Health Insurance (Collapsed Insurer Levy) Act 2003*;

(d) the *Superannuation (Financial Assistance Funding) Levy Act 1993*.

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levy money:

(a) in relation to levy, means any amount paid or payable to the Commonwealth in respect of levy; or

(b) in relation to a particular class of levy, means any amount paid or payable to the Commonwealth in respect of that class of levy.

retirement savings account has the same meaning as in the *Retirement Savings Accounts Act 1997*.

superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

superannuation transactions network means the network used to send and receive:

(a) payments and information of a kind referred to in subsection 34K(6) of the *Superannuation Industry (Supervision) Act 1993* in compliance with the superannuation data and payment regulations and standards (within the meaning of that Act); and

(b) payments and information of a kind referred to in subsection 45B(6) of the *Retirement Savings Accounts Act 1997* in compliance with the data and payment regulations and standards relating to RSAs (within the meaning of that Act).

51 Charges for APRA's services etc.

(1) APRA may, by legislative instrument, fix charges to be paid to APRA by a person in respect of:

(a) services and facilities APRA provides the person; or

(b) applications or requests (however described) made to APRA under any law of the Commonwealth.

The instrument may also provide for the waiver or refund of charges.

(1A) Subsection (1) does not apply to a fee payable to APRA under an agreement entered into in accordance with subsection 9A(2).

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(2) A charge fixed under subsection (1) must be reasonably related to the costs and expenses incurred or to be incurred by APRA in relation to the matters to which the charge relates and must not be such as to amount to taxation.

52 Australian Prudential Regulation Authority Special Account

(1) The Australian Prudential Regulation Authority Special Account is established by this section.

(2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

53 Credits to the APRA Special Account

(1) There must be credited to the APRA Special Account amounts equal to the following:

(a) all money appropriated by the Parliament for the purposes of the APRA Special Account;

(b) amounts received under an agreement or contract entered into under section 9A or 11;

(c) amounts required to be credited to the APRA Special Account in accordance with section 50;

(d) amounts of any fees, charges or penalties paid to APRA, on behalf of the Commonwealth, under section 51 or any other law of the Commonwealth except the following:

(i) Part 3A of the *Financial Institutions Supervisory Levies Collection Act 1998*;

(ii) the *Financial Accountability Regime Act 2023*;

(e) an amount specified in a declaration under section 16AD of the *Banking Act 1959* or section 62ZZC of the *Insurance Act 1973* as an amount to be credited to the APRA Special Account.

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

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(2) To avoid doubt, if:

(a) the amount specified in a declaration described in paragraph (1)(e) is credited to the APRA Special Account; and

(b) the declaration is later amended so as to increase the amount;

only the increase, and not the whole of the increased amount, is to be credited to the Account as a result of the amendment.

Note: Crediting the whole of the increased amount to the Account would lead to double-counting of the amount specified in the declaration before the amendment.

54 Purposes of the APRA Special Account

(1) This section sets out the purposes of the APRA Special Account.

(2) Amounts standing to the credit of the APRA Special Account may be debited for the following purposes:

(a) in payment or discharge of the costs, expenses and other obligations incurred by APRA in the performance of its functions or the exercise of its powers;

(b) in payment of any remuneration or allowances payable to persons appointed or engaged under this Act;

(c) in making any other payments which APRA is authorised or required to make under this Act or any other law of the Commonwealth.

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

(3) However, payments of the following kinds must not be debited from the APRA Special Account:

(a) payments to meet entitlements described in section 54C (Purposes of the Financial Claims Scheme Special Account), and other payments referred to in that section;

(b) collapsed insurer assistance payments within the meaning of section 54H (Purposes of the Collapsed Insurer Special Account);

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(c) payments described in subsection 318-10(1) of the *Private Health Insurance Act 2007* (Purpose of the Risk Equalisation Special Account).

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

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

(4) If a declaration under section 16AD of the *Banking Act 1959* or section 62ZZC of the *Insurance Act 1973* specifying an amount to be credited to the APRA Special Account is amended so as to reduce the amount, an amount equal to the reduction must be debited from the Account.

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Division 2—Financial Claims Scheme Special Account and related borrowing

Subdivision A—Financial Claims Scheme Special Account

54A Financial Claims Scheme Special Account

(1) The Financial Claims Scheme Special Account is established by this section.

(2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

54B Credits to the Financial Claims Scheme Special Account

(1) There must be credited to the Account amounts equal to the following:

(a) an amount specified in a declaration under section 16AD of the *Banking Act 1959* or section 62ZZC of the *Insurance Act 1973* as an amount to be credited to the Financial Claims Scheme Special Account;

(b) an amount borrowed under this Division.

(2) To avoid doubt, if:

(a) the amount specified in a declaration described in paragraph (1)(a) is credited to the Financial Claims Scheme Special Account; and

(b) the declaration is later amended so as to increase the amount;

only the increase, and not the whole of the increased amount, is to be credited to the Account as a result of the amendment.

Note: Crediting the whole of the increased amount to the Account would lead to double-counting of the amount specified in the declaration before the amendment.

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54C Purposes of the Financial Claims Scheme Special Account

The purposes of the Financial Claims Scheme Special Account are as follows:

(a) APRA:

(i) meeting account-holders' entitlements under Subdivision C (Payment of account-holders with declared ADI) of Division 2AA of Part II of the *Banking Act 1959*; or

(ia) meeting the entitlement of a receiving body under subsection 16AIC(2) of that Act (Payment of receiving body under transferred liabilities determination), to the extent that the entitlement is comprised of the FCS payment amount mentioned in paragraph 16AIB(1)(a) of that Act; or

(ii) paying APRA's agents or delegates amounts equal to the entitlements the agents or delegates meet on APRA's behalf or in the performance of APRA's delegated functions;

(b) APRA:

(i) meeting persons' entitlements under Division 3 (Early payment of claims) of Part VC of the *Insurance Act 1973*; or

(ia) meeting the entitlement of a receiving body under subsection 62ZZMC(2) of that Act (Payment of receiving body under transferred liabilities determination), to the extent that the entitlement is comprised of the FCS payment amount mentioned in paragraph 62ZZMB(1)(a) of that Act; or

(ii) paying APRA's agents or delegates amounts equal to the entitlements the agents or delegates meet on APRA's behalf or in the performance of APRA's delegated functions;

(c) repayment of principal under a borrowing under this Division;

(d) payment of interest and other costs connected with a borrowing under this Division.

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

54D Debits to reflect reduced amounts specified in declarations

If a declaration under section 16AD of the *Banking Act 1959* or section 62ZZC of the *Insurance Act 1973* specifying an amount to be credited to the Financial Claims Scheme Special Account is amended so as to reduce the amount, an amount equal to the reduction must be debited from the Account.

Subdivision B—Borrowing for payments from the Financial Claims Scheme Special Account

54E Borrowing

(1) With the Finance Minister's written approval, APRA may, on behalf of the Commonwealth, borrow money on terms and conditions specified in, or consistent with, the approval.

(2) However, the borrowing must not:
  (a) be of an amount greater than the sum of the amounts specified in declarations under either section 16AD of the *Banking Act 1959* or section 62ZZC of the *Insurance Act 1973* as amounts that are to be credited to the Financial Claims Scheme Special Account; or
  (b) be for a period longer than 12 months.

(3) If an amount is borrowed under this section in connection with a declaration described in paragraph (2)(a), the declaration has effect for future applications of this section as if the amount specified in the declaration were reduced by the amount previously borrowed in connection with the declaration.

(4) APRA must not borrow money except under this section.

(5) The Finance Minister may delegate, in writing, to an SES employee or acting SES employee in the Department that is

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administered by the Finance Minister, the Finance Minister's power of approval for the purposes of subsection (1).

(6) 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 APRA.

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

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Division 2A—Collapsed insurer special account

54F Private Health Insurance Collapsed Insurer Special Account

(1) The Private Health Insurance Collapsed Insurer Special Account (the ***Collapsed Insurer Special Account***) is established by this section.

(2) The Collapsed Insurer Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

54G Credits to the Collapsed Insurer Special Account

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

(a) collapsed insurer levy; or

(b) late payment penalty in respect of unpaid amounts of collapsed insurer levy.

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

54H Purposes of the Collapsed Insurer Special Account

(1) The purposes of the Collapsed Insurer Special Account are as follows:

(a) APRA making payments (***collapsed insurer assistance payments***) to help meet a collapsed insurer's liabilities to the people insured under its complying health insurance policies that the collapsed insurer is unable to meet itself;

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(b) APRA making payments by way of refund, in accordance with regulations made for the purpose of this paragraph, of amounts paid (or purportedly paid) by way of:

(i) collapsed insurer levy; or

(ii) late payment penalty in respect of unpaid amounts of collapsed insurer levy;

(c) meeting APRA's administrative costs associated with APRA making payments referred to in paragraph (a) or (b).

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

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

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

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

(4) In this section:

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

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

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Division 3—Taxation of APRA

55 Liability to taxation

(1) Subject to subsection (2), APRA is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

(2) Subject to subsection (3), the regulations may provide that subsection (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory, or to laws included in a specified class of laws of the Commonwealth or of a State or Territory.

Note: Despite subsection (1), APRA may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*).

(3) If regulations made for the purpose of subsection (2) provide that subsection (1) does not apply in relation to the laws of the Commonwealth that impose income tax, APRA is to be taken not to be a public authority for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*.

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Part 5A—Giving information etc. to ASIC

55A ASIC may request information or documents

(1) ASIC may request APRA to give it any of the following:
  (a) specified information or documents covered by section 55C;
  (b) information or documents covered by section 55C of a specified kind.

(2) The request must be in writing.

(3) ASIC may, in writing, amend or withdraw the request.

55B APRA must comply with request

(1) If ASIC gives APRA a request under section 55A, APRA must comply with the request as soon as practicable.

(2) APRA need not notify any person (other than ASIC) that it plans to comply with subsection (1), or has complied with that subsection.

(3) Despite subsection (1), APRA need not comply with the request if:
  (a) the Chair makes a determination under subsection (4); and
  (b) the Chair gives a copy of the determination to ASIC.

(4) The Chair may determine, in writing, that APRA need not comply with the request if the Chair considers that complying with the request would compromise the proper functioning of APRA.

(5) The Chair's power to make a determination under subsection (4) may only be exercised by the Chair personally.

(6) If the Chair makes a determination under subsection (4), the Chair must give the following to the Financial Regulator Assessment Authority as soon as practicable:
  (a) a copy of the determination;

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(b) a written statement of the reasons why the Chair made the determination.

55C Information and documents covered by request

(1) This section covers information or documents if:

(a) in the case of information—the information was given or produced (whether or not voluntarily) to APRA in writing by another person (including a person advising APRA); and

(b) in the case of documents—the documents were given or produced (whether or not voluntarily) to APRA by another person (including a person advising APRA); and

(c) ASIC considers the information or documents to be relevant to the exercise or performance of its functions or powers.

(2) Without limiting the scope of subsection (1), this section also covers information in writing or documents that:

(a) are required or permitted to be created by law as a record (however described); and

(b) are created in accordance with that law.

Example: Notes of an examination recorded in writing in accordance with subsection 58(1) of the *Insurance Act 1973*.

(3) Without limiting the scope of subsection (1), and despite subsection (4), this section also covers information in writing or documents of a kind specified in the regulations.

(4) Despite subsections (1) and (2), this section does not cover any of the following kinds of information or documents:

(a) information or documents concerning the internal administrative functioning of APRA;

(b) information or documents that discloses matter in respect of which APRA or any other person has claimed legal professional privilege;

(c) information or documents of a kind specified in the regulations.

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55D Notifying ASIC of reasonable belief of material breach of ASIC provisions

(1) Subsection (2) applies if APRA has a reasonable belief that a material breach of a legislative provision of which ASIC has the general administration may have occurred, or may be occurring.

(2) APRA must notify ASIC of that reasonable belief as soon as practicable.

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Part 6—Secrecy

56 Secrecy—general obligations

(1) In this section:

body regulated by APRA includes a body that has at any time been a body regulated by APRA.

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

Financial Regulator Assessment Authority official means an entrusted person within the meaning of the *Financial Regulator Assessment Authority Act 2021*.

financial sector entity has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

officer means:

(a) an APRA member; or

(b) an APRA staff member; or

(c) any other person who, because of his or her employment, or in the course of that employment:

(i) has acquired protected information; or

(ii) has had access to protected documents;

other than an employee of the body to which the information or document relates.

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

produce includes permit access to.

protected document means a document given or produced (whether before or after the commencement of this section) under,

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or for the purposes of, a prudential regulation framework law and containing information relating to the affairs of:

(a) a financial sector entity; or

(b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or

(c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity; or

(ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) or (4D) of the *Financial Sector (Collection of Data) Act 2001*; or

(cb) a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959*; or

(cc) a person in relation to whom information is, or was, required to be given under the *Financial Accountability Regime Act 2023*;

other than:

(d) a document containing information that has already been lawfully made available to the public from other sources; or

(da) a document given or produced to ASIC under, or for the purposes of, a provision of the *Financial Accountability Regime Act 2023*, other than a document given or produced to ASIC by APRA; or

(e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:

(i) administered by the Commissioner of Taxation; or

(ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

It also includes a document that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than a document containing information that has already been lawfully made available to the public from other sources.

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protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and relating to the affairs of:

(a) a financial sector entity; or

(b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or

(c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity; or

(ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) or (4D) of the *Financial Sector (Collection of Data) Act 2001*; or

(cb) a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959*; or

(cc) a person in relation to whom information is, or was, required to be given under the *Financial Accountability Regime Act 2023*;

other than:

(d) information that has already been lawfully made available to the public from other sources; or

(da) information given or produced to ASIC under, or for the purposes of, a provision of the *Financial Accountability Regime Act 2023*, other than information given or produced to ASIC by APRA; or

(e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:

(i) administered by the Commissioner of Taxation; or

(ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

It also includes information that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than information that has

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already been lawfully made available to the public from other sources.

registered entity means a corporation that is, or has at any time been, a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

(2) A person who is or has been an officer commits an offence if:

(a) the person directly or indirectly:

(i) discloses information acquired in the course of his or her duties as an officer to any person or to a court; or

(ii) produces a document to any person or to a court; and

(b) the information is protected information, or the document is a protected document; and

(c) the disclosure or production is not in accordance with subsection (3), (4), (5), (5AA), (5A), (5AB), (5AC), (5B), (5C), (5D), (6), (6AA), (6AB), (6A), (7), (7A), (7B), (7C), (7D), (7E), (7F), (7G), (7H), (7J), (7K) or (7L).

Penalty: Imprisonment for 2 years.

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

(3) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purposes of a prudential regulation framework law.

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

(4) It is not an offence if the disclosure of protected information or the production of a protected document by a person:

(a) is by an employee of the person to whose affairs the information or document relates; or

(b) occurs after the person to whose affairs the information or document relates has agreed in writing to the disclosure or production.

Note: A 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) It is not an offence if the disclosure of protected information or the production of a protected document by a person:

(a) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency (including foreign agencies) specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency; or

(aa) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the operator of the AFCA scheme (within the meaning of the *Corporations Act 2001*) to perform its functions or exercise its powers, and the disclosure or production is to that operator; or

(b) is to another person and is approved by APRA by instrument in writing.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(5AA) It is not an offence if the disclosure of protected information or the production of a protected document is made:

(a) by an officer of an agency to which the information or document has been disclosed or produced under paragraph (5)(a); and

(b) for the same purpose as the information or document was so disclosed or produced to that agency.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AA) (see subsection 13.3(3) of the *Criminal Code*).

(5A) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Australian Statistician for the purposes of the *Census and Statistics Act 1905*.

Note: A defendant bears an evidential burden in relation to matters in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

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(5AB) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purpose of APRA complying with any of the following:

(a) section 55B (ASIC requests);

(b) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AB) (see subsection 13.3(3) of the *Criminal Code*).

(5AC) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by ASIC, for the purposes of the performance of ASIC's functions, or the exercise of ASIC's powers; and

(b) the protected information was disclosed previously to ASIC, or the protected document was produced previously to ASIC, for the purpose of APRA complying with any of the following:

(i) section 55B (ASIC requests);

(ii) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AC) (see subsection 13.3(3) of the *Criminal Code*).

(5B) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to:

(a) the Reserve Bank of Australia; or

(b) another prescribed authority.

Note: A defendant bears an evidential burden in relation to matters in subsection (5B) (see subsection 13.3(3) of the *Criminal Code*).

(5C) If:

(a) a document is a reporting document given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*; and

(b) either:

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(i) a determination has been made under section 57 that the document does not, or documents of that kind do not, contain confidential information; or

(ii) a determination has been made under section 57 that a specified part of the document, or of documents of that kind, does not contain confidential information;

it is not an offence to disclose the document or that part of the document, or any information contained in the document or that part of the document, to any person (including by making the document, the part of the document or the information available on APRA's website).

(5D) It is not an offence if the production by a person of a document that was given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Commissioner of Taxation for the purposes of the *Major Bank Levy Act 2017* (including the administration of that Act).

Note: A defendant bears an evidential burden in relation to matters in subsection (5D) (see subsection 13.3(3) of the *Criminal Code*).

(6) It is not an offence if the disclosure of protected information or the production of a protected document is to:

(a) an APRA member; or

(b) an APRA staff member;

for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or a Territory.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

(6AA) It is not an offence if the disclosure of protected information or the production of a protected document is to a Financial Regulator Assessment Authority official for the purposes of the performance of the Financial Regulator Assessment Authority's functions or the exercise of the Financial Regulator Assessment Authority's powers.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6AA) (see subsection 13.3(3) of the *Criminal Code*).

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(6AB) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by a person who is or has been a Financial Regulator Assessment Authority official; and

(b) the person acquired the information or accessed the document in the course of the person's duties in relation to the Financial Regulator Assessment Authority.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (6AB) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Division 3 of Part 4 of the *Financial Regulator Assessment Authority Act 2021* deals with disclosure of information by Financial Regulator Assessment Authority officials.

(6A) It is not an offence if the disclosure of protected information or the production of a protected document is to:

(a) an auditor who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC; or

(b) an actuary who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC;

and the disclosure is for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or Territory.

(7) It is not an offence if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

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

(7A) It is not an offence if the information, or the information contained in the document, as the case may be, is all or any of the following:

(a) the names of bodies that are regulated by APRA;

(b) the addresses at which bodies referred to in paragraph (a) conduct business;

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(c) any other information that is reasonably necessary to enable members of the public to contact persons who perform functions in relation to bodies referred to in paragraph (a).

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

(7B) It is not an offence if the information, or the information contained in the document, as the case may be, is:

(a) a statement of APRA's opinion as to whether or not a body regulated by APRA is complying, or was complying at a particular time, with a particular provision of a prudential regulation framework law; or

(b) a description of:

(i) court proceedings in relation to a breach or suspected breach by a person of a provision of a prudential regulation framework law; or

(ii) activity engaged in, or proposed to be engaged in, by APRA in relation to such a breach or suspected breach; or

(c) a description of action under a prudential regulation framework law that APRA has taken or is proposing to take in relation to:

(i) a body regulated by APRA; or

(ii) an individual who holds or has held a position with or in relation to such a body.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7B) (see subsection 13.3(3) of the *Criminal Code*).

(7C) If information referred to in subsection (7A) or paragraph (7B)(a) that relates to a body that is, or has at any time been, regulated by APRA under the *Superannuation Industry (Supervision) Act 1993* is disclosed to the Registrar of the Australian Business Register established under section 24 of the *A New Tax System (Australian Business Number) Act 1999*, the Registrar may enter the information in that Register.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7C) (see subsection 13.3(3) of the *Criminal Code*).

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(7D) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is to an ADI (within the meaning of the *Banking Act 1959*); and

(b) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 37H of the *Banking Act 1959*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7D) (see subsection 13.3(3) of the *Criminal Code*).

(7E) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is to an individual; and

(b) the information, or the information contained in the document, as the case may be, is only personal information about the individual; and

(c) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 37H of the *Banking Act 1959*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7E) (see subsection 13.3(3) of the *Criminal Code*).

(7F) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by APRA; and

(b) the information, or the information contained in the document, as the case may be, is information that discloses:

(i) whether a person is disqualified under section 37J of the *Banking Act 1959*; or

(ii) a decision made under Subdivision C of Division 6 of Part IIAA of that Act, or the reasons for such a decision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7F) (see subsection 13.3(3) of the *Criminal Code*).

(7G) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is to an accountable entity (within the

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meaning of the *Financial Accountability Regime Act 2023*); and

(b) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 40 of the *Financial Accountability Regime Act 2023*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7G) (see subsection 13.3(3) of the *Criminal Code*).

(7H) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is to an individual; and

(b) the information, or the information contained in the document, as the case may be, is only personal information about the individual; and

(c) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 40 of the *Financial Accountability Regime Act 2023*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7H) (see subsection 13.3(3) of the *Criminal Code*).

(7J) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by APRA; and

(b) the information, or the information contained in the document, as the case may be, is information that discloses:

(i) whether a person is disqualified under section 42 of the *Financial Accountability Regime Act 2023*; or

(ii) a decision made under Division 2 of Part 3 of Chapter 3 of that Act (which is about disqualification of accountable persons), or the reasons for such a decision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7J) (see subsection 13.3(3) of the *Criminal Code)*.

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(7K) It is not an offence if the disclosure of protected information or the production of a protected document by a person is in accordance with section 39 of the *Financial Accountability Regime Act 2023*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7K) (see subsection 13.3(3) of the *Criminal Code*).

(7L) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by ASIC, for the purposes of the performance of ASIC's functions, or the exercise of ASIC's powers; and

(b) the protected information was disclosed previously to ASIC, or the protected document was produced previously to ASIC, in accordance with section 39 of the *Financial Accountability Regime Act 2023*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7L) (see subsection 13.3(3) of the *Criminal Code*).

(8) A person who is, or has been, an officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of a prudential regulation framework law.

(8A) However, subsection (8) does not prevent a person who is, or has been, a Financial Regulator Assessment Authority official from being required to disclose, or produce a document containing, protected information (within the meaning of the *Financial Regulator Assessment Authority Act 2021*) when it is necessary to do so for the purposes of that Act.

(9) If a person discloses information or produces a document under this section to another person, the first person may, at the time of the disclosure, impose conditions to be complied with in relation to the information disclosed or the document produced.

(9A) Subsection (9) does not apply if the information is disclosed, or the document is produced, in accordance with subsection (6AA) or (6AB).

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(9B) Subsection (9) does not apply if the information is disclosed, or the document is produced, in accordance with subsection (5AB) or (5AC).

(10) A person commits an offence if the person fails to comply with a condition imposed under subsection (9).

Penalty: Imprisonment for 2 years.

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

(11) A document that:

(a) is a protected document; or

(b) contains protected information;

is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

Note: For additional rules about personal information, see the *Privacy Act 1988*.

(12) A disclosure of personal information is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 if:

(a) the information is protected information and the disclosure is made in accordance with any of subsections (4), (5), (5AA), (5AB), (5AC), (6), (6AA), (7A), (7B), (7C), (7D), (7E), (7F), (7G), (7H), (7J), (7K) and (7L); or

(b) the information is contained in a protected document and the disclosure is made by the production of the document in accordance with any of those subsections.

57 Determination of confidentiality

(1) This section applies in relation to reporting documents that are required to be given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* by:

(a) a registered entity; or

(b) a body regulated by APRA.

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A reporting document of that kind is referred to in this section as a ***relevant reporting document***.

(2) APRA may determine, by legislative instrument, that:

(a) all or a specified part of a relevant reporting document contains, or does not contain, confidential information; or

(b) all or a specified part of relevant reporting documents of a specified kind contains, or do not contain, confidential information.

(3) APRA must not make a determination under subsection (2) unless APRA gives interested parties for the determination a reasonable opportunity to make representations as to whether or not the relevant reporting document contains, or relevant reporting documents of that kind contain, confidential information.

(4) APRA may determine that:

(a) all or a specified part of a relevant reporting document does not contain confidential information; or

(b) all or a specified part of relevant reporting documents of a specified kind do not contain confidential information;

if, taking into account any representations made under subsection (3) in relation to the document or documents of that kind, APRA considers that the benefit to the public from the disclosure of the document or documents, or information contained in the document or documents, outweighs any detriment to commercial interests that the disclosure may cause.

(5) In this section:

interested party, for a determination, means:

(a) if the determination is to relate to all or a specified part of a relevant reporting document—an entity or body that is required to give the document under section 13 of the *Financial Sector (Collection of Data) Act 2001*; or

(b) if the determination is to relate to all or a specified part of a relevant reporting document of a specified kind—an association or other body representing an entity or body, or a

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class of entities or bodies, required to give a document of that kind under section 13 of the *Financial Sector (Collection of Data) Act 2001*.

registered entity means a corporation that is, or has at any time been, a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

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Part 7—Miscellaneous

58 Protection from liability

(1) Subject to subsection (2), APRA, an APRA member, an APRA staff member, or an agent of APRA, an APRA member or an APRA staff member, is not subject to any liability to any person 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 APRA, an APRA member or an APRA staff member by or under:

(a) this Act or another law of the Commonwealth; or

(b) a law of a State or Territory referred to in paragraph 9(b); or

(c) subject to subsection (3), an agreement referred to in paragraph 9(c).

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) Subsection (1), as it applies in relation to powers, functions or duties conferred or imposed by an agreement referred to in paragraph 9(c), has effect subject to provisions of the agreement referred to in subsection 9A(3) (which allows the agreement to deal with liabilities as between the parties).

(4) Subsection (1) does not limit, and is not limited by, any of the following provisions:

(a) section 14C, 70A or 70AA of the *Banking Act 1959*;

(b) section 38A, 38B, 62ZOK, 127B or 127C of the *Insurance Act 1973*;

(c) section 156A, 156B, 179AK, 246A or 246B of the *Life Insurance Act 1995*;

(d) section 101 or 102 of the *Financial Accountability Regime Act 2023*.

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58A Proceedings at examination

(1) This section applies to the following:

(a) an examination under Division 2 of Part VIII of the *Banking Act 1959* by an investigator appointed by APRA;

(b) an examination under subsection 55(1), 62C(1), 62C(2) or 81(2) of the *Insurance Act 1973* by APRA or an inspector appointed by APRA;

(c) an investigation under Division 3 of Part 7 of the *Life Insurance Act 1995* by APRA;

(d) an examination under Division 3 of Part 6 of the *Private Health Insurance (Prudential Supervision) Act 2015* by an inspector appointed by APRA;

(e) an examination under Division 5 of Part 25 of the *Superannuation Industry (Supervision) Act 1993* by APRA or an inspector appointed by APRA;

(f) an examination under Division 4 of Part 10 of the *Retirement Savings Accounts Act 1997* by an inspector appointed by APRA.

(2) For the purposes of paragraph (1)(c), treat references in the following subsections to examination as references to investigation.

(3) APRA, the investigator or the inspector (as applicable) may decide to hold the examination:

(a) at one or more physical venues; or

(b) at one or more physical venues and using virtual enquiry technology; or

(c) using virtual enquiry technology only.

(4) Subsection (5) applies if the examination is held:

(a) at one or more physical venues and using virtual enquiry technology; or

(b) using virtual enquiry technology only.

(5) APRA, the investigator or the inspector (as applicable) must ensure that the use of the virtual enquiry technology is reasonable.

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(6) If the examination is held:

(a) at more than one physical venue; or

(b) at one or more physical venues and using virtual enquiry technology; or

(c) using virtual enquiry technology only;

APRA, the investigator or the inspector (as applicable) may appoint a single place and time at which the examination is taken to have been held.

(7) This section applies to part of an examination in the same way that it applies to all of an examination.

59 Annual reports

(2) The annual report prepared by the Chair and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following:

(a) information on the following matters under the *Banking Act 1959*:

(i) the activities of persons conducting investigations under Division 2 of Part II of the *Banking Act 1959*;

(ii) the activities of persons conducting investigations under section 61 of the *Banking Act 1959*;

(iii) the operation of Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*;

(aaa) information on the following matters:

(i) the activities of Banking Act statutory managers (within the meaning of the *Banking Act 1959*);

(ii) the activities of Insurance Act statutory managers (within the meaning of the *Insurance Act 1973*);

(iii) the activities of Life Insurance Act statutory managers (within the meaning of the *Life Insurance Act 1995*);

(aa) information on the operation of Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973*;

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(b) information on the exercise during the period of APRA's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*;

(ba) a statement of the number of times during the period that APRA determined, under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001*, a reporting standard that is not a legislative instrument;

(bb) information about investigations (including joint investigations) conducted by APRA under Division 1 of Part 4 of Chapter 3 of the *Financial Accountability Regime Act 2023* during the period;

(c) information on any other matters required by the regulations.

(3) Subparagraphs (2)(a)(i) and (ii) do not authorise the inclusion in the annual report of information with respect to the affairs of a particular ADI or authorised NOHC, a particular subsidiary of an ADI or authorised NOHC, or a particular customer of an ADI.

(4) Paragraph (2)(bb) does not authorise the inclusion in the annual report of information with respect to the affairs of a particular person.

(5) In this section:

ADI has the same meaning as in the *Banking Act 1959*.

authorised NOHC has the same meaning as in the *Banking Act 1959*.

60 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, prescribing penalties, not exceeding 10 penalty units, for offences against the regulations.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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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.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Prudential Regulation Authority Act 1998	50, 1998	29 June 1998	1 July 1998 (s 2(1) and gaz 1998, No S316)	
Financial Sector Reform (Amendments and Transitional Provisions) Act 1998	54, 1998	29 June 1998	Sch 18 (items 41, 42): 5 Dec 1999 (s 2(18)(b))	—
as amended by				
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 486, 487): 5 Dec 1999 (s 2(1), (2))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 1 (items 1–3, 5–9) and Sch 8 (item 22): 17 June 1999 (s 3(1)) Sch 1 (item 4): 1 July 1999 (s 3(2)(a), (16) and gaz 1999, No S283)	Sch 8 (item 22)
Superannuation Legislation Amendment Act (No. 3) 1999	121, 1999	8 Oct 1999	Sch 2 (items 1, 2): 8 Oct 1999 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 236): 5 Dec 1999 (s 2(1), (2))	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Sch 10 (items 53, 54): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000	24, 2000	3 Apr 2000	Sch 1 (items 1, 2): 1 July 1998 (s 2(2)) Sch 1 (items 3–13) and Sch 12 (items 1–3): 3 Apr 2000 (s 2(1), (12), (13))	Sch 12 (items 1–3)
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	s 4 and Sch 4 (items 1–1B): 18 Jan 2001 (s 2(1))	s 4
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 63, 64, 66): 15 July 2001 (s 2(1), (3)) Sch 3 (items 65, 67): 1 July 2002 (s 2(4)(b))	s 4–14
General Insurance Reform Act 2001	119, 2001	19 Sept 2001	Sch 3 (items 1, 1A): 1 July 2002 (s 2(2))	—
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	Sch 2 (items 1–10) and Sch 3: 1 July 2002 (s 2(2))	Sch 3
Financial Sector Legislation Amendment Act (No. 1) 2002	37, 2002	26 June 2002	Sch 1: 27 June 2002 (s 2(1) item 2)	Sch 1 (item 2)
Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003	36, 2003	2 May 2003	Sch 1 (item 1): 1 July 2003 (s 2)	—
Australian Prudential Regulation Authority Amendment Act 2003	42, 2003	24 June 2003	Sch 1 and 3: 1 July 2003 (s 2(1) item 2)	Sch 3

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	Sch 2 (items 68, 69, 174): 22 Feb 2005 (s 2(1) item 12)	Sch 2 (item 174)
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Sch 2 (item 20) and Sch 6 (items 1, 6–11): 14 Sept 2006 (s 2(1) items 2, 4)	Sch 6 (items 1, 6–11)
Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Act 2006	147, 2006	6 Dec 2006	Sch 1 (items 1–7): 6 Dec 2006 (s 2)	—
Governance Review Implementation (Treasury Portfolio Agencies) Act 2007	74, 2007	5 June 2007	Sch 1 (items 47–66) and Sch 2 (items 1, 11–20): 1 July 2007 (s 2(1) item 2) Sch 3: 5 June 2007 (s 2(1) item 3)	Sch 2 (items 1, 11–20)
Financial Sector Legislation Amendment (Restructures) Act 2007	117, 2007	28 June 2007	Sch 3 (item 1): 28 June 2007 (s 2)	—
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 32–34): 23 June 2008 (s 2(1) item 4)	—
First Home Saver Accounts (Consequential Amendments) Act 2008	45, 2008	25 June 2008	Sch 3 (items 5–9): 26 June 2008 (s 2)	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 1 (item 11): 1 July 2002 (s 2(1) item 9)	—

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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 35–52): 18 Oct 2008 (s 2(1) items 2, 3)	—
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (items 188, 189): 27 Feb 2010 (s 2(1) item 2)	—
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 4 (items 1, 2): 27 July 2010 (s 2(1) item 11)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 234, 235) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 18, 19): 1 July 2011 (s 2(1) item 2)	—
Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011	108, 2011	14 Oct 2011	Sch 1 (items 17–19, 22): 1 Nov 2011 (s 2(1) item 2)	Sch 1 (item 22)
Superannuation Legislation Amendment (Stronger Super) Act 2012	91, 2012	28 June 2012	Sch 2: 29 June 2012 (s 2(1) item 5)	Sch 2 (item 6)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	171, 2012	3 Dec 2012	Sch 3 (items 1–4, 45): 1 July 2013 (s 2(1) items 16, 18)	Sch 3 (item 45)
Corporations Legislation Amendment (Derivative Transactions) Act 2012	178, 2012	6 Dec 2012	Sch 1 (items 44, 45): 3 Jan 2013 (s 2(1) item 2)	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 21) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 6 (items 13, 14, 23): 24 June 2014 (s 2(1) item 9)	Sch 6 (item 23)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 5 (item 109), Sch 6 (items 22, 23), Sch 7 (items 395–411) and Sch 14: 1 July 2014 (s 2(1) items 5, 6, 14)	Sch 14
as amended by				
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

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015	70, 2015	25 June 2015	Sch 1 (items 8–15, 195–205): 1 July 2015 (s 2(1) items 3, 6)	Sch 1 (items 195–205)
Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015	87, 2015	26 June 2015	Sch 1 (items 1–8): 1 July 2015 (s 2(1) item 2) Sch 2 (items 1–43): 27 June 2015 (s 2(1) item 9)	Sch 2 (items 1–43)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 27): 10 Mar 2016 (s 2(1) item 6)	—
Treasury Laws Amendment (Major Bank Levy) Act 2017	64, 2017	23 June 2017	Sch 1 (item 1): 24 June 2017 (s 2(1) item 2)	—
Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018	5, 2018	20 Feb 2018	Sch 1 (items 2–6, 15–17): 1 July 2018 (s 2(1) items 2, 8) Sch 1 (item 18): 20 Feb 2018 (s 2(1) item 1)	Sch 1 (items 15–18)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018	10, 2018	5 Mar 2018	Sch 6: 5 Mar 2018 (s 2(1) item 2)	—
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 1 (items 13, 31): 6 Mar 2018 (s 2(1) item 2)	s 4 and Sch 1 (item 31)
Treasury Laws Amendment (2018 Measures No. 1) Act 2018	23, 2018	29 Mar 2018	Sch 3: 1 Apr 2018 (s 2(1) item 10)	Sch 3 (item 5)
Treasury Laws Amendment (APRA Governance) Act 2018	81, 2018	24 Aug 2018	7 Sept 2018 (s 2(1) item 1)	Sch 1 (item 9)
Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019	40, 2019	5 Apr 2019	Sch 8 (items 1, 2): 6 Apr 2019 (s 2(1) item 4)	—
Treasury Laws Amendment (2019 Measures No. 1) Act 2019	49, 2019	5 Apr 2019	Sch 4 (items 1, 2): 6 Apr 2019 (s 2(1) item 11)	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Prudential Regulation Authority Amendment (APRA Industry Funding) Act 2020	54, 2020	19 June 2020	20 June 2020 (s 2(1) item 1)	Sch 1 (item 3)
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (items 155, 156, 325, 326): 1 Oct 2020 (s 2(1) item 6)	Sch 3 (items 325, 326)
Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020	69, 2020	22 June 2020	Sch 1 (items 99–101, 1465–1467): awaiting commencement (s 2(1) items 2, 5)	Sch 1 (items 1465–1467) and Sch 1 (item 1468)
as amended by				
Treasury Laws Amendment (2021 Measures No. 5) Act 2021	127, 2021	7 Dec 2021	Sch 3 (item 105): 22 June 2020 (s 2(1) item 8)	—
Treasury Laws Amendment (2022 Measures No. 1) Act 2022	35, 2022	9 Aug 2022	Sch 4 (items 6, 7): 21 June 2022 (s 2(1) item 5) Sch 4 (item 15): 10 Aug 2022 (s 2(1) item 6)	—
Financial Sector Reform (Hayne Royal Commission Response) Act 2020	135, 2020	17 Dec 2020	Sch 12 (items 1, 3–8): 1 Jan 2021 (s 2(1) item 12)	Sch 12 (item 8)
Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Act 2021	64, 2021	29 June 2021	Sch 1 (items 1–6, 14–16): 1 July 2021 (s 2(1) item 2)	Sch 1 (items 14, 16)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Accountability Regime (Consequential Amendments) Act 2023	68, 2023	14 Sept 2023	Sch 1 (items 1–14) and Sch 2 (items 1, 29–33): 15 Sept 2023 (s 2(1) items 2, 4) Sch 1 (items 94–98): 15 Mar 2024 (s 2(1) item 3)	Sch 2 (items 1, 29–33)
Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023	69, 2023	14 Sept 2023	Sch 1 (items 61, 62): 15 Sept 2023 (s 2(1) item 2)	—
Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023	76, 2023	20 Sept 2023	Sch 2 (item 625): 20 Oct 2023 (s 2(1) item 2) Sch 6 (items 15–17): 21 Sept 2023 (s 2(1) item 22)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 44, 1999; No 160, 2000; No 55, 2001; No 119, 2001; No 42, 2003; No 147, 2006; No 74, 2007; No 117, 2007; No 45, 2008; No 105, 2008; No 75, 2009; No 58, 2011; No 70, 2015; No 87, 2015; No 10, 2018; No 81, 2018
	ed C41
	am No 68, 2023; No 69, 2023
Part 2	
s 7	am No 42, 2003; No 74, 2007; No 62, 2014
s 8	am No 42, 2003; No 147, 2006; No 105, 2008; No 87, 2015
s 8A	ad No 147, 2006
s 9	rs No 44, 1999
s 9A	ad No 44, 1999
	am No 146, 1999
s 10	rs No 42, 2003
s 10A	ad No 42, 2003
s 10B	ad No 135, 2020
s 11	am No 74, 2007; No 62, 2014
s 11A	ad No 74, 2007
s 12	rs No 42, 2003
	am No 64, 2020
s 12A	ad No 74, 2007
	am No 62, 2014
s 13	am No 42, 2003; No 62, 2014
s 14	rep No 74, 2007
s 15	rs No 42, 2003
Part 3	
Part 3	rs No 42, 2003

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Endnote 4—Amendment history

Provision affected	How affected
Division 1	
s 16	rs No 42, 2003
s 17	rs No 42, 2003
s 18	rs No 42, 2003
	am No 31, 2014
	rs No 81, 2018
s 19	rs No 42, 2003
	am No 46, 2011; No 81, 2018
Division 2	
s 20	rs No 42, 2003
s 21	rs No 42, 2003; No 81, 2018
s 22	rs No 42, 2003
s 23	rs No 42, 2003
s 24	rs No 42, 2003
	am No 81, 2018
s 25	rs No 42, 2003
	am No 26, 2008; No 58, 2011
s 26	rs No 42, 2003
Division 3	
s 27	rs No 42, 2003
s 28	rs No 42, 2003
s 29	rs No 42, 2003
	am No 81, 2018
s 30	rs No 42, 2003
s 31	am No 156, 1999
	rs No 42, 2003
s 32	rs No 42, 2003
s 33	rep No 42, 2003
s 34	rep No 42, 2003
Part 4	
Part 4 heading	rs No 42, 2003

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Provision affected	How affected
Division 1	rep No 42, 2003
s 35	rep No 42, 2003
s 36	rep No 42, 2003
s 37	rep No 42, 2003
s 38	am No 54, 1998
	rep No 42, 2003
s 39	rep No 42, 2003
s 40	am No 156, 1999
	rep No 42, 2003
s 41	rep No 42, 2003
s 42	rep No 42, 2003
s 43	rep No 42, 2003
s 44	rep No 42, 2003
Division 2 heading	rep No 42, 2003
s 45	am No 42, 2003; No 74, 2007
s 46	am No 54, 1998 (as am by No 146, 1999); No 147, 2006
s 47	am No 42, 2003; No 74, 2007
s 48	am No 74, 2007; No 10, 2018; No 68, 2023
s 48AA	ad No 74, 2007
s 48AB	ad No 74, 2007
s 48AC	ad No 74, 2007
Part 4A	
Part 4A	ad No 42, 2003
Division 1	
s 48A	ad No 42, 2003
s 48B	ad No 42, 2003
s 48C	ad No 42, 2003
	rep No 74, 2007
Division 2	
s 48D	ad No 42, 2003
	am No 74, 2007

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
Division 3	ad No 62, 2014
s 48E	ad No 62, 2014
Part 5	
Division 1	
Division 1 heading	ad No 105, 2008
s 49	rep No 74, 2007
s 50	rs No 37, 2002
	am No 42, 2003
	rs No 74, 2007
	am No 105, 2008; No 108, 2011; No 91, 2012; No 62, 2014; No 87, 2015; No 23, 2018; No 54, 2020
s 51	am No 44, 1999; No 74, 2007
s 52	rs No 74, 2007
	am No 62, 2014
s 53	am No 8, 2005
	rs No 74, 2007
	am No 105, 2008; No 62, 2014; No 68, 2023
s 54	rs No 74, 2007
	am No 105, 2008; No 62, 2014; No 87, 2015
Division 2	
Division 2	ad No 105, 2008
Subdivision A	
s 54A	ad No 105, 2008
	am No 62, 2014
s 54B	ad No 105, 2008
s 54C	ad No 105, 2008
	am No 62, 2014; No 10, 2018
s 54D	ad No 105, 2008
Subdivision B	
s 54E	ad No 105, 2008

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Provision affected	How affected
	am No 62, 2014
Division 2A	
Division 2A	ad No 87, 2015
s 54F	ad No 87, 2015
s 54G	ad No 87, 2015
s 54H	ad No 87, 2015
Division 3	
Division 3 heading	ad No 105, 2008
s 55	am No 24, 2000; No 101, 2006; No 74, 2007; No 49, 2019
Part 5A	
Part 5A	ad No 135, 2020
s 55A	ad No 135, 2020
s 55B	ad No 135, 2020
	am No 64, 2021
s 55C	ad No 135, 2020
s 55D	ad No 135, 2020
Part 6	
s 56	am No 44, 1999; No 121, 1999; No 24, 2000; No 160, 2000; No 55, 2001; No 119, 2001; No 121, 2001; No 37, 2002; No 36, 2003; No 42, 2003; No 45, 2008; No 73, 2008; No 82, 2010; No 178, 2012; No 171, 2012; No 197, 2012; No 70, 2015; No 4, 2016; No 64, 2017
	ed C36
	am No 5, 2018; No 13, 2018; No 40, 2019; No 49, 2019; No 69, 2020; No 135, 2020
	ed C45
	am No 64, 2021; No 68, 2023 (Sch 1 items 94–98); No 76, 2023
s 57	am No 44, 1999
	rep No 24, 2000
	ad No 121, 2001
	am No 74, 2007
	rs No 171, 2012

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Endnote 4—Amendment history

Provision affected	How affected
Part 7	
s 58	rs No 44, 1999
	am No 42, 2003; No 10, 2018; No 68, 2023; No 76, 2023
s 58A	ad No 69, 2023
s 59	rs No 74, 2007
	am No 105, 2008; No 82, 2010; No 62, 2014; No 10, 2018; No 68, 2023

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