



Australian Prudential Regulation Authority Act 1998

No. 50, 1998



Australian Prudential Regulation Authority Act 1998

No. 50, 1998

**An Act to establish the Australian Prudential
Regulation Authority, and for related purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Definitions	2
4 Act binds the Crown	4
5 External Territories	4
6 Application of <i>Criminal Code</i>	4
Part 2—Establishment, functions and powers of APRA	5
7 Establishment of APRA	5
8 Purpose for establishing APRA	5
9 APRA’s functions	5
10 Duty to advise the Treasurer	5
11 APRA’s powers	6
12 Government’s powers in relation to APRA policies	6
13 APRA is a body corporate	7
14 APRA is not the Crown	8
15 Delegation of APRA’s functions or powers by CEO	8
Part 3—APRA’s Board	9
Division 1—Establishment, functions, powers and membership	9
16 Establishment of Board	9
17 Board’s functions	9
18 The Board’s powers	9
19 Membership	9
20 Delegation by the Board	10
Division 2—Meetings and resolutions without meetings	11
21 Times and places of meetings	11
22 Presiding at meetings	11
23 Quorum	11
24 Voting at meetings	11
25 Conduct of meetings	11
26 Board resolutions without meetings	12
Division 3—Terms and conditions of Board members (other than the CEO)	13
27 Appointment and period of appointment	13

28	Remuneration and allowances	13
29	Leave of absence	14
30	Resignation.....	14
31	Termination of appointment	14
32	Other terms and conditions.....	16
33	Acting Board members	16
34	Signpost to other provisions applying to Board members	17
Part 4—The CEO and APRA staff members		18
Division 1—The CEO		18
35	Appointment.....	18
36	Duties	18
37	Remuneration and allowances	18
38	Leave of absence	18
39	Resignation.....	19
40	Termination	19
41	Other terms and conditions.....	20
42	Acting appointments.....	20
43	Delegation by CEO	21
44	Signpost to other provisions applying to the CEO	21
Division 2—Appointment of APRA staff members		22
45	Appointment of permanent, temporary and casual staff	22
46	Staff seconded to APRA.....	22
47	Consultants and other people engaged to perform services	22
48	Appointments of person appointed to perform specific roles	22
Part 5—Financial and taxation matters		23
49	Money of APRA.....	23
50	APRA’s share of levy money	23
51	Charges for APRA’s services etc.	24
52	Application of money held by APRA.....	24
53	Borrowing by APRA	25
54	Signpost to further provisions about financial matters	25
55	Liability to taxation	25
Part 6—Secrecy		27
56	Secrecy—general obligations.....	27
57	Secrecy—documents or information to which section 56 does not apply.....	31

Part 7—Miscellaneous	33
58 Indemnity	33
59 Extra matters to be included in annual report	33
60 Regulations.....	34



Australian Prudential Regulation Authority Act 1998

No. 50, 1998

An Act to establish the Australian Prudential Regulation Authority, and for related purposes

[Assented to 29 June 1998]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

Section 2

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:

APRA means the Australian Prudential Regulation Authority.

APRA staff member means any of the following:

- (a) a person appointed by APRA under section 45; or
- (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 representative member means a member referred to in paragraph 19(1)(d).

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 1989*.

Board means the board of management of APRA.

Board member means a member of the Board, and includes the Chair and the CEO.

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

CEO means the Chief Executive Officer of APRA.

Chair means the Chair of the Board.

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

ordinary member means a Board member other than the CEO or a representative member.

representative member means a Board member referred to in paragraph 19(1)(c) or (d).

Reserve Bank means the Reserve Bank of Australia.

Reserve Bank representative member means a Board member referred to in paragraph 19(1)(c).

- (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 body corporate that is authorised to carry on insurance business under 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 the *Life Insurance Act 1995*;
 - (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.

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

Section 4

- (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.

Part 2—Establishment, functions and powers of APRA

7 Establishment of APRA

The Australian Prudential Regulation Authority is established by this section.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to APRA. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of executive officers.

8 Purpose for establishing APRA

- (1) APRA is established for the purpose of regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards, and for developing the policy to be applied in performing that regulatory role.
- (2) In providing this regulation and developing this policy, APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality.

9 APRA's functions

APRA has the functions conferred on it:

- (a) by this Act and any other law of the Commonwealth; and
- (b) by any law of a State or Territory in accordance with an agreement between the Commonwealth and the State or Territory.

10 Duty to advise the Treasurer

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

Section 11

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;
 - (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.

12 Government's powers in relation to APRA policies

- (1) The Board is to regularly inform the Government of APRA's policies.

Note: The Board determines APRA's policies, see section 17.
- (2) If the Government and the Board disagree as to whether one of APRA's policies is directed to the best performance of its functions or exercise of its powers, the Treasurer and the Board are to try to reach agreement.
- (3) If the Treasurer and Board cannot agree, the Board must immediately give the Treasurer a statement about the matter in relation to which the Treasurer and Board have failed to agree.
- (4) The Treasurer may then give the Governor-General a recommendation as to the way the matter should be resolved.
- (5) The Governor-General, acting with the advice of the Federal Executive Council, may, by order, determine the policy to be adopted by APRA.

Section 13

- (6) The Treasurer is to inform the Board:
 - (a) of the policy determined under subsection (5); and
 - (b) that the Government accepts responsibility for the adoption of that policy by APRA and that the Government will take any action within its powers that the Government considers necessary because of the adoption of that policy.
- (7) After the Treasurer has informed the Board of the matters in subsection (6), the Board is to ensure that effect is given to the policy determined by the order in accordance with the order.
- (8) The Treasurer is to cause the following documents to be tabled in each House of the Parliament within 5 sitting days of that House after the Treasurer has informed the Board of the matters in subsection (6):
 - (a) a copy of the order determining the policy; and
 - (b) a statement by the Government in relation to the matter in relation to which the Treasurer and Board have failed to agree; and
 - (c) a copy of the statement that the Board gave to the Treasurer as required under subsection (3).

Note: See section 28 of the *Commonwealth Authorities and Companies Act 1997* for additional information relating to obligations of the Board to follow government policy.

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) APRA's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.
- (3) All courts, judges and persons acting judicially must:

Section 14

- (a) take judicial notice of the imprint of APRA's seal appearing on a document; and
- (b) presume that the document was duly sealed.

14 APRA is not the Crown

APRA is not entitled to any immunity or privilege of the Crown except so far as express provision is made by any law of the Commonwealth, of a State or of a Territory.

15 Delegation of APRA's functions or powers by CEO

- (1) The CEO may, by written instrument, delegate any of APRA's functions or powers under this Act or any other law of the Commonwealth to a Board member or an APRA staff member if a Board resolution allows the delegation.
- (2) The CEO may, by written instrument, delegate any of APRA's functions or powers under this Act or any other law of the Commonwealth:
 - (a) to the Chairperson of ASIC, or to an ASIC staff member, if:
 - (i) a Board resolution allows the delegation; and
 - (ii) the Chairperson of ASIC agrees to the delegation; or
 - (b) to the Governor of the Reserve Bank, or to an officer of the Reserve Bank Service, if:
 - (i) a Board resolution allows the delegation; and
 - (ii) the Governor of the Reserve Bank agrees to the delegation.
- (3) In performing or exercising functions or powers under a delegation, the delegate must comply with any directions of the CEO.

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

Part 3—APRA's Board

Division 1—Establishment, functions, powers and membership

16 Establishment of Board

There is to be a Board of management of APRA.

17 Board's functions

The Board has the following functions:

- (a) to determine APRA's policies (including goals, priorities, strategies and administrative policies); and
- (b) to ensure that APRA performs its functions properly, efficiently and effectively; and
- (c) to ensure that APRA's operations are conducted having regard to its purpose as stated in section 8.

18 The Board's powers

The Board has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.

19 Membership

- (1) The Board consists of the following members:
 - (a) a Chair;
 - (b) the CEO;
 - (c) 2 members, each of whom is either the Governor or the Deputy Governor of the Reserve Bank or an officer of the Reserve Bank Service; and
 - (d) 1 member who is also an ASIC member or an ASIC staff member; and
-

Part 3 APRA's Board

Division 1 Establishment, functions, powers and membership

Section 20

(e) 4 other members.

Note 1: Section 18B of the *Acts Interpretation Act 1901* deals with the title of the Chair.

Note 2: The exercise of the Board's powers and performance of its functions is not affected merely because of a vacancy or vacancies in the membership of the body (see subsection 33(2B) of the *Acts Interpretation Act 1901*).

- (2) A person cannot be appointed as a Board member if that person is a director, officer or employee of a body regulated by APRA.

20 Delegation by the Board

- (1) The Board may, by resolution, delegate any of its functions or powers to a Board member or an APRA staff member.
- (2) The delegate must comply with any directions of the Board when exercising powers under the delegation.
- (3) A delegation under this section:
- (a) may be revoked by resolution of the Board (whether or not constituted by the people who constituted the Board when the power was delegated); and
 - (b) continues in force despite any change in the Board's membership.
- (4) A certificate signed by the Chair stating any matter in relation to a delegation under this section is prima facie evidence of the matter.
- (5) A document that appears to be a certificate under subsection (4) is taken to be such a certificate and to have been properly given, unless the contrary is established.

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

Division 2—Meetings and resolutions without meetings

21 Times and places of meetings

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at such times and places as the Board or the Chair determines.

22 Presiding at meetings

- (1) The Chair must preside at all meetings of the Board at which he or she is present.
- (2) If the Chair is not present at a meeting, the Board members present must appoint one of their number to preside.

23 Quorum

Five Board members constitute a quorum at a meeting of the Board.

24 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at a meeting has:
 - (a) a deliberative vote; and
 - (b) if necessary, also a casting vote.

25 Conduct of meetings

The Board may regulate proceedings at its meetings as it considers appropriate. However, proceedings at a meeting must not be inconsistent with this Division.

Section 26

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

Note 2: Requirements relating to disclosure of interests are contained in section 21 of the *Commonwealth Authorities and Companies Act 1997*.

26 Board resolutions without meetings

A resolution is taken to have been passed at a meeting of the Board if:

- (a) the Board 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 Board members indicate agreement with the resolution in accordance with the method determined by the Board; and
- (c) that majority would have constituted a quorum at a meeting of the Board; and
- (d) all Board members were informed of the proposed resolution, or reasonable efforts were made to inform all Board members of the proposed resolution.

Division 3—Terms and conditions of Board members (other than the CEO)

27 Appointment and period of appointment

Ordinary members

- (1) The ordinary members are to be appointed by the Treasurer by written instrument.

Note: The Chair is one of the ordinary members and is appointed by the Treasurer as the Chair.

- (2) The ordinary members hold office on a part-time basis, for the period specified in the instrument of appointment. The period must not exceed 5 years.

Representative members

- (3) The Reserve Bank representative members are to be appointed by the Governor of the Reserve Bank by instrument in writing.

Note: The Governor of the Reserve Bank may appoint himself or herself.

- (4) The ASIC representative member is to be appointed by the Chairperson of ASIC by instrument in writing.

Note: The Chairperson of ASIC may appoint himself or herself.

- (5) The representative members hold office on a part-time basis.

28 Remuneration and allowances

- (1) A Board member (other than the CEO) 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 Board member is to be paid the remuneration that is determined by the Treasurer.

Section 29

- (2) A Board member (other than the CEO) is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

29 Leave of absence

The Board may grant leave of absence to each of the Board members (other than the CEO) on the terms and conditions that the Board determines.

30 Resignation

Ordinary members

- (1) An ordinary member may resign his or her appointment by giving the Treasurer a written resignation.

Reserve Bank representative members

- (2) A Reserve Bank representative member may resign his or her appointment by giving the Governor of the Reserve Bank a written resignation.

ASIC representative members

- (3) An ASIC representative member may resign his or her appointment by giving the Chairperson of ASIC a written resignation.

31 Termination of appointment

All members other than the CEO

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

Ordinary members

- (2) The Treasurer may terminate the appointment of an ordinary 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) if the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (d) if the member engages in paid employment that, in the Treasurer's opinion, conflicts with the proper performance of the duties of his or her office; or
 - (e) if the member fails, without reasonable excuse, to comply with section 21 of the *Commonwealth Authorities and Companies Act 1997*.

Reserve Bank representative members

- (3) The Governor of the Reserve Bank may at any time terminate the appointment of a Reserve Bank representative member.
- (4) The appointment of a Reserve Bank representative member is immediately terminated if the member ceases to be any of the following:
- (a) the Governor of the Reserve Bank;
 - (b) the Deputy Governor of the Reserve Bank;
 - (c) an officer of the Reserve Bank Service.

ASIC representative member

- (5) The Chairperson of ASIC may at any time terminate the appointment of an ASIC representative member.
-

Section 32

- (6) The appointment of an ASIC representative member is immediately terminated if the member ceases to be an ASIC member or a member of the staff of ASIC.

32 Other terms and conditions

The ordinary members hold office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Treasurer.

33 Acting Board members

Ordinary members

- (1) The Treasurer may appoint a person to act as an ordinary member:
- (a) during a vacancy in the office of an ordinary member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an ordinary member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

Reserve Bank representative members

- (2) The Governor of the Reserve Bank may appoint a person to act as a Reserve Bank representative member:
- (a) during a vacancy in the office of a Reserve Bank representative member, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Reserve Bank representative member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

ASIC representative members

- (3) The Chairperson of ASIC may appoint a person to act as an ASIC representative member:
-

Section 34

- (a) during a vacancy in the office of an ASIC representative member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when an ASIC representative member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

Validity of acts—ordinary and representative members

- (4) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For further information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Qualifications of acting members

- (5) A person is not eligible to be appointed to act in an office under this section unless the person would be eligible to be appointed to that office under section 19.

34 Signpost to other provisions applying to Board members

For further provisions applying to Board members, see sections 21 to 27 of the *Commonwealth Authorities and Companies Act 1997*.

Part 4—The CEO and APRA staff members

Division 1—The CEO

35 Appointment

- (1) There is to be a Chief Executive Officer of APRA.
- (2) The CEO is to be appointed by the Treasurer by written instrument.
- (3) The CEO is to be appointed on a full-time basis.
- (4) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

36 Duties

The CEO has the duties that the Board determines.

37 Remuneration and allowances

- (1) The CEO 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 CEO is to be paid the remuneration that is determined by the Board.
- (2) The CEO is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

38 Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

Section 39

- (2) The Board may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.
- (3) This section has effect subject to section 87E of the *Public Service Act 1922*.

39 Resignation

The CEO may resign his or her appointment by giving the Treasurer a written resignation.

40 Termination

- (1) The Treasurer may terminate the appointment of the CEO:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the CEO:
 - (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) if the CEO is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (d) if the CEO engages, except with the Board's approval, in paid employment outside the duties of his or her office; or
 - (e) if the CEO fails, without reasonable excuse, to comply with section 21 of the *Commonwealth Authorities and Companies Act 1997*.
- (2) The appointment of the CEO is immediately terminated if the CEO becomes a director, officer or employee of a body regulated by APRA.
- (3) If the CEO is:

Section 41

- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*;
- the Treasurer may, with the consent of the CEO, retire the CEO from office on the ground of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the CEO is taken to have been retired from office on the ground of invalidity if:
 - (a) the CEO's appointment is terminated, or the CEO is retired from office, on the ground of physical or mental incapacity; and
 - (b) the CSS Board gives a certificate under section 54C of the *Superannuation Act 1976*.
- (5) For the purposes of the *Superannuation Act 1990*, the CEO is taken to have been retired from office on the ground of invalidity if:
 - (a) the CEO's appointment is terminated, or the CEO is retired from office, on the ground of physical or mental incapacity; and
 - (b) the PSS Board gives a certificate under section 13 of the *Superannuation Act 1990*.

41 Other terms and conditions

The CEO holds office on the terms and conditions in relation to matters not covered by this Act that are determined by the Board.

42 Acting appointments

- (1) The Board may appoint a person to act as the CEO:
 - (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

Section 43

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For further information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

43 Delegation by CEO

- (1) The CEO may, by written instrument, delegate any of his or her functions or powers to an APRA staff member if the Board resolves that the CEO may make such a delegation.
- (2) In exercising powers under the delegation, the delegate must comply with any directions of the CEO.

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

44 Signpost to other provisions applying to the CEO

For further provisions applying to the CEO, see sections 21 to 27 of the *Commonwealth Authorities and Companies Act 1997*.

Section 45

Division 2—Appointment of APRA staff members

45 Appointment of permanent, temporary and casual staff

- (1) APRA may appoint such permanent, temporary or casual staff as APRA considers necessary for the performance of its functions.
- (2) The terms and conditions of appointment (including as to remuneration) are to be determined by the Board.

46 Staff seconded to APRA

APRA may be assisted by officers and employees of Departments of the Australian Public Service, and by officers and employees of authorities of the Commonwealth, 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) APRA may engage consultants or other people to provide advice to it or perform services for it.
- (2) The terms and conditions of engagement (including as to remuneration) are to be determined by the Board.

48 Appointments of person appointed to perform specific roles

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*). A person appointed to perform such a role must be:

- (a) a person who has been appointed by APRA under section 45;
or
 - (b) a person who is assisting APRA under section 46; or
 - (c) a person who has been engaged by APRA under section 47.
-

Part 5—Financial and taxation matters

49 Money of APRA

APRA's money is to consist of:

- (a) amounts paid to APRA under section 50; and
- (b) other amounts paid to APRA (for example, charges referred to in section 51).

50 APRA's share of levy money

- (1) After the Commonwealth has, during a financial year, received a total amount of levy money equal to the amount determined under subsection (2) for the financial year, APRA is to be paid amounts equal to the rest of the levy money received by the Commonwealth during the financial year as soon as practicable after each payment of the rest of the levy money is received.
- (2) The Treasurer is to determine, for each financial year, the amount of levy money received during the financial year that is to be available to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions.
- (3) The Consolidated Revenue Fund is appropriated for the purpose of payments under subsection (1).
- (4) A determination under subsection (2) is to be in writing and is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) In this section:

levy money means:

- (a) levy paid under the *Financial Institutions Supervisory Levies Collection Act 1998*, other than levy imposed by the

Section 51

Superannuation (Financial Assistance Funding) Levy Act 1993; and

- (b) *levy paid under the Superannuation (Excluded Funds) Taxation Act 1987.*

51 Charges for APRA's services etc.

- (1) APRA may, by written 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.

- (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.
- (3) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

52 Application of money held by APRA

APRA's money may only be applied:

- (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; and
- (b) in payment of any remuneration or allowances payable to persons appointed or engaged under this Act; and
- (c) in making any other payments which APRA is authorised or required to make under this Act or any other law.

53 Borrowing by APRA

- (1) APRA may borrow money from the Commonwealth or persons other than the Commonwealth.
- (2) The Treasurer may enter into a contract on behalf of the Commonwealth guaranteeing the performance by APRA of obligations incurred by APRA under subsection (1). If the Treasurer enters into such a contract the obligations are so guaranteed.

54 Signpost to further provisions about financial matters

The *Commonwealth Authorities and Companies Act 1997* includes further provisions about financial matters, including:

- (a) estimates (see section 14 of that Act); and
- (b) bank accounts and investments (see section 18 of that Act); and
- (c) accounting records (see section 20 of that Act); and
- (d) annual reports and financial statements, and audits (see Schedule 1 to that Act).

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.
- (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 paragraph 23(d) of the

Section 55

Income Tax Assessment Act 1936 or section 50-25 of the *Income Tax Assessment Act 1997*.

Part 6—Secrecy

56 Secrecy—general obligations

(1) In this section:

Act covered by this section means any of the following Acts:

- (a) the *Banking Act 1959*;
- (b) the *Financial Institutions Supervisory Levies Collection Act 1998*;
- (c) the *Financial Sector (Shareholdings) Act 1998*;
- (d) the *Insurance Act 1973*;
- (e) the *Insurance Acquisitions and Takeovers Act 1991*;
- (f) the *Life Insurance Act 1995*;
- (g) the *Retirement Savings Accounts Act 1997*;
- (h) the *Superannuation Industry (Supervision) Act 1993*;
- (i) the *Superannuation (Excluded Funds) Taxation Act 1987*;
- (j) any Act imposing a levy to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies, or to which the *Superannuation (Excluded Funds) Taxation Act 1987* applies;
- (k) any other prescribed Act.

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

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.

officer means:

- (a) a Board member; or
- (b) an APRA staff member; or

Section 56

- (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.

produce includes permit access to.

protected document means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, this Act or an Act covered by this section and containing information relating to the affairs of:

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

other than information that has already been lawfully made available to the public from other sources.

protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, this Act or an Act covered by this section and relating to the affairs of:

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

other than information that has already been lawfully made available to the public from other sources.

Section 56

- (2) A person who is or has been an officer is guilty of 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), (6) or (7).

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 this Act or an Act covered by this section.
- (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.
- (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
 - (b) if the disclosure is to another person and is approved by the Board by instrument in writing.

Section 56

Note: See subsection (9) for conditions that may be imposed on people making disclosures under this subsection.

- (6) It is not an offence if the disclosure of protected information or the production of a protected document is to:
- (a) a Board 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.
- (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.
- (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 this Act or an Act covered by this section.
- (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.
- (10) A person is guilty of 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*.
-

57 Secrecy—documents or information to which section 56 does not apply

- (1) A person who is a Board member, an APRA staff member, or an agent or other person carrying on any business of APRA is guilty of an offence if:
 - (a) the person permits another person to have access to, or gives another person copies of or extracts from, a document; and
 - (b) the document is not a protected document for the purposes of section 56; and
 - (c) the document belongs to APRA or is in APRA's possession; and
 - (d) subsection (3) does not allow the person to permit the other person to have access to the document, or to give the other person the copies of, or extracts from, the document.

Penalty: Imprisonment for 2 years.

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

- (2) A person who is a Board member, an APRA staff member, or an agent or other person carrying on any business of APRA is guilty of an offence if:
 - (a) the person gives another person information; and
 - (b) the information is not protected information for the purposes of section 56; and
 - (c) the information relates to the business of APRA; and
 - (d) subsection (3) does not allow the person to give the other person that information.

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 against subsection (2) for a person to permit another person to have access to a document, to give another

Section 57

person copies of, or extracts from a document, or to give information to another person, if that act is done:

- (a) by the direction or authority of APRA; or
- (b) under compulsion or obligation of law; or
- (c) at the other person's direction, if the information relates to the other person.

Part 7—Miscellaneous

58 Indemnity

APRA, a Board member, an APRA staff member, or any agent of a Board member or APRA staff member, is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers, functions or duties conferred or imposed on APRA, the Board or a Board member under this Act or any other law of the Commonwealth.

59 Extra matters to be included in annual report

- (1) The annual report on APRA under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include:
 - (a) a report on the following matters under the *Banking Act 1959*:
 - (i) the activities of ADI statutory managers (within the meaning of the *Banking Act 1959*), and 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*; and
 - (b) a report on the exercise during the year 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*; and
 - (c) a report on any other matters required by the regulations.
- (2) Paragraph (1)(a) does not authorise the inclusion in the annual report of a report 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.

Section 60

(3) 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.

[Minister's second reading speech made in—
House of Representatives on 26 March 1998
Senate on 13 May 1998]

(28/98)
