



# **Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999**

**No. 44, 1999**



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**An Act to amend laws, and to deal with transitional  
matters, in connection with the reform of the  
financial sector, and for other purposes**

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# **Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999**

**No. 44, 1999**

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**An Act to amend laws, and to deal with transitional matters, in connection with the reform of the financial sector, and for other purposes**

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

## **2 Definitions**

In this Act:

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***Corporations Law*** means the Corporations Law set out in section 82 of the *Corporations Act 1989*.

***transfer date*** means the date that is, under subsection 3(16), specified as the transfer date for the purposes of this Act.

### **3 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) The following provisions commence on the transfer date:
  - (a) item 4 of Schedule 1 (the commencement of the rest of the items in this Schedule is covered by subsection (1));
  - (b) subject to subsections (3), (4) and (5), Schedule 3, other than items 1, 33, 34, 45, 46 and 63 (the commencement of those items is covered by subsection (1));
  - (c) Schedule 4;
  - (d) item 26 of Schedule 6;
  - (e) subject to subsections (12), (14) and (15), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).
- (3) If item 1 of Schedule 3 commences before the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*, item 60 of Schedule 3 commences on the transfer date and item 61 of Schedule 3 commences immediately after the commencement of Schedule 1 to that Act.
- (4) If item 1 of Schedule 3 commences on the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*, item 60 of Schedule 3 does not commence and item 61 of Schedule 3 commences immediately after the commencement of Schedule 1 to that Act.
- (5) If item 1 of Schedule 3 commences after the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*, item 60 of Schedule 3 does not commence and item 61 of Schedule 3 commences on the transfer date.
- (6) Item 3 of Schedule 6 commences on a day to be fixed by Proclamation.



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- (7) Item 6 of Schedule 6 is taken to have commenced on the commencement of Schedule 12 to the *Financial Laws Amendment Act 1997*.
- (8) Item 10 of Schedule 6 is taken to have commenced immediately before the commencement of Part 1 of Schedule 13 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*.
- (9) Items 18 and 19 of Schedule 6 are taken to have commenced immediately before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (10) Items 43 and 44 of Schedule 7 commence on the later of:
- (a) the day fixed for the commencement of the section amended by those items, immediately after the commencement of that section; and
  - (b) the transfer date.
- (11) Item 118 of Schedule 7 commences on the later of:
- (a) immediately after the commencement of section 17 of the *Life Insurance (Conduct and Disclosure) Act 1999*; and
  - (b) the transfer date.
- (12) If item 7 of Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999* commences on or before the transfer date, item 206 of Schedule 7 to this Act does not commence.
- (13) Items 205 and 207 of Schedule 7 commence on the later of:
- (a) immediately after the commencement of item 7 of Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999*;
  - (b) the transfer date.
- (14) If Schedule 2 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 1999* commences on or before the transfer date, items 214 and 215 of Schedule 7 to this Act do not commence.
- (15) If Schedule 4 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act 1999* commences on or before the transfer date, items 216 and 217 of Schedule 7 to this Act do not commence.
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- (16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.

#### **4 Schedule(s)**

Subject to section 3, the Corporations Law and each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Australian Prudential Regulation Authority Act 1998**

### **1 Subsection 3(1)**

Insert:

*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.

### **2 Section 9**

Repeal the section, substitute:

### **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;
- (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 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 a person holding or performing the duties of a Senior Executive Service office in the Department.

### **3 After subsection 51(1)**

Insert:

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

### **4 Subsection 56(1) (after paragraph (c) of the definition of Act covered by this section)**

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Insert:

(ca) the *Financial Sector (Transfers of Business) Act 1999*;

**5 Paragraph 56(5)(a)**

Omit “or any other agency (including foreign agencies) specified in the regulations”, substitute “, or any other agency (including foreign agencies) specified in the regulations,”.

**6 Paragraph 56(5)(b)**

Omit “if the disclosure”.

**7 Subsections 57(1) and (2)**

Omit “or an agent or other person carrying on any business of APRA”, substitute “or an agent of APRA, a Board member or an APRA staff member,”.

**8 Subsection 57(3)**

After “subsection”, insert “(1) or”.

**9 Section 58**

Repeal the section, substitute:

**58 Protection from liability**

- (1) Subject to subsection (2), APRA, a Board member, an APRA staff member, or an agent of APRA, a Board 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, the Board, a Board 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).

## Schedule 2—Amendment of the Banking Act 1959

## 1 Subsection 5(1) (definition of *bank*)

Repeal the definition.

## 2 Subsection 5(1) (definition of *industry liquidity contract*)

Repeal the definition.

### 3 Subsection 5(1)

Insert:

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

#### 4 After section 6A

Insert in Part I:

## 6B Application of *Criminal Code*

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

## 5 Sections 7 and 8

Repeal the sections, substitute:

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

- (1) A person is guilty of an offence if:
  - (a) the person carries on any banking business in Australia; and
  - (b) the person is not a body corporate; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 200 penalty units.

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

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

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

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

- (1) A body corporate is guilty of an offence if:
  - (a) the body corporate carries on any banking business in Australia; and
  - (b) the body corporate is not the Reserve Bank; and
  - (c) the body corporate is not an ADI; and
  - (d) there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 200 penalty units.

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

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

- (2) An offence against subsection (1) is an indictable offence.
  - (3) If a body corporate carries on banking business in circumstances that give rise to the body corporate committing an offence against subsection (1), the body corporate is guilty of an offence against that subsection in respect of:
    - (a) the first day on which the offence is committed; and
    - (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence
-



continue (including the day of conviction for any such offence or any later day).

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

## **6 Subsection 9(6)**

Repeal the subsection, substitute:

(6) An ADI is guilty of an offence if:

- (a) it does, or fails to do, an act; and
- (b) doing, or failing to do, the act results in a contravention of a condition of the ADI's authority; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

(6A) An offence against subsection (6) is an indictable offence.

(6B) If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (6), the ADI is guilty of an offence against that subsection in respect of:

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

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

## **7 Subsection 10(3)**

Repeal the subsection, substitute:

(3) An ADI is guilty of an offence if:

- (a) an alteration is made to the Act, charter, deed of settlement, memorandum of association, articles of association,

constitution or other document by which the ADI was constituted as a body corporate; and

- (b) the ADI does not, within 3 months of the making of the alteration, give to APRA a written statement:
  - (i) that sets out particulars of the alteration; and
  - (ii) that is verified by a statutory declaration made by a senior officer of the ADI; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

## 8 Subsection 11(1)

Omit “or specified provisions”, substitute “provisions (other than section 63) or specified provisions (other than section 63)”.

## 9 Subsection 11(3)

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
  - (a) the person does, or fails to do, an act; and
  - (b) doing, or failing to do, the act results in a contravention of a condition to which an order under this section is subject (being an order that is in force and that applies to the person).

Maximum penalty: 200 penalty units.

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

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

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

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

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

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

## **10 Subsection 11AA(5)**

Repeal the subsection, substitute:

- (5) The body corporate is guilty of an offence if:
  - (a) it does, or fails to do, an act; and
  - (b) doing, or failing to do, the act results in a contravention of a condition of the authority; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 200 penalty units.

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

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

- (5A) An offence against subsection (5) is an indictable offence.
- (5B) If the body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (5), the body corporate is guilty of an offence against that subsection in respect of:
  - (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

## **11 Subsection 11AF(1)**

Omit all the words from and including “by”, substitute:

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by:

- (a) all ADIs; or
- (b) all authorised NOHCs; or
- (c) a specified class of ADIs or authorised NOHCs; or
- (d) one or more specified ADIs or authorised NOHCs.

**12 After subsection 11AF(1)**

Insert:

- (1A) A standard may impose different requirements to be complied with in different situations or in respect of different activities.

**13 Subsection 11AF(4)**

Omit “If APRA determines or varies a standard”, substitute “Subject to subsection (6A), if APRA determines or varies a standard referred to in paragraph (1)(a), (b) or (c)”.

**14 After subsection 11AF(4)**

Insert:

- (4A) If APRA determines or varies a standard referred to in paragraph (1)(d) it must, as soon as practicable, give a copy of the standard, or of the variation, to the ADI or authorised NOHC, or to each ADI or authorised NOHC, to which the standard applies. Whenever APRA gives a copy of a standard, or of a variation, to an ADI or authorised NOHC, it must also provide a copy to the Treasurer.

**15 Subsection 11AF(5)**

After “revokes a standard”, insert “referred to in paragraph (1)(a), (b) or (c)”.

**16 After subsection 11AF(5)**

Insert:

- (5A) If APRA revokes a standard referred to in paragraph (1)(d) it must, as soon as practicable, give notice of the revocation to the ADI or authorised NOHC, or to each ADI or authorised NOHC, to which the standard applied. Whenever APRA gives a notice of revocation to an ADI or authorised NOHC, it must also provide a copy to the Treasurer.

## 17 Subsection 11AF(6)

Before “APRA”, insert “Subject to subsection (6A),”.

**18 After subsection 11AF(6)**

Insert:

(6A) If APRA considers that a standard, or a variation of a standard, contains commercially sensitive information:

- (a) APRA is not required to include that information in a notice published under subsection (4) or in the version of the standard that is available under subsection (6); but
- (b) APRA may include some or all of that information in either or both of those things if APRA considers it appropriate to do so.

## 19 Subsection 11AF(7)

Omit “, (5) or (6)”, substitute “, (4A), (5), (5A) or (6)”.

**20 Subdivision A of Division 1BA of Part II (heading)**

Repeal the heading, substitute:

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

**21 After subsection 11CA(2)**

Insert:

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

- (a) deal with some only of the matters referred to in that paragraph; or
- (b) deal with a particular class or particular classes of those matters; or
- (c) make different provision with respect to different matters or different classes of matters.

## 22 Subdivision B of Division 1BA of Part II (heading)

Repeal the heading, substitute:

## **Subdivision B—Directions to enforce certified industry support contracts**

### **23 Section 11CB**

Omit “liquidity”, substitute “support”.

Note: The heading to section 11CB is altered by omitting “**liquidity**” and substituting “**support**”.

### **24 Subsections 11CC(1), (4) and (6)**

Omit “liquidity”, substitute “support”.

Note: The heading to section 11CC is altered by omitting “**liquidity**” and substituting “**support**”.

### **25 Subsections 11CG(1) and (2)**

Repeal the subsections, substitute:

- (1) An ADI or an authorised NOHC is guilty of an offence if:
- (a) it does, or fails to do, an act; and
  - (b) doing, or failing to do, the act results in a contravention of a direction given to it under Subdivision A or Subdivision B; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI or authorised NOHC.

Maximum penalty: 50 penalty units.

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

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

- (1A) If an ADI or an authorised NOHC does or fails to do an act in circumstances that give rise to the ADI or NOHC committing an offence against subsection (1), the ADI or NOHC is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI or NOHC committing the offence continue (including the day of conviction for any such offence or any later day).

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

- (2) An officer of an ADI or an authorised NOHC is guilty of an offence if:
- (a) the officer fails to take reasonable steps to ensure that the ADI or NOHC complies with a direction given to it under Subdivision A or Subdivision B; and
  - (b) the officer's duties include ensuring that the ADI or NOHC complies with the direction, or with a class of directions that includes the direction; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the officer.

Maximum penalty: 50 penalty units.

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

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

- (2A) If an officer of an ADI or an authorised NOHC fails to take reasonable steps to ensure that the ADI or NOHC complies with a direction given to it under Subdivision A or Subdivision B in circumstances that give rise to the officer committing an offence against subsection (2), the officer is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

## **26 Subsection 11CG(3)**

Repeal the subsection, substitute:

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

## **27 Subsection 11E(2)**

Repeal the subsection, substitute:

- (2) A foreign ADI is guilty of an offence if:
- (a) it accepts a deposit from a person in Australia; and
  - (b) before accepting the deposit, the foreign ADI did not inform the person, in a manner approved by APRA, of the requirements of this Act to which the foreign ADI is not subject because of subsection (1); and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the foreign ADI.

Maximum penalty: 50 penalty units.

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

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

## 28 Subsection 13(3)

Repeal the subsection, substitute:

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

- (3) An ADI is guilty of an offence if:
- (a) the ADI considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment; and
  - (b) the ADI does not immediately inform APRA of the situation; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

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

## 29 Subsection 13A(4)

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Repeal the subsection, substitute:

- (4) An ADI is guilty of an offence if:
- (a) it does not hold assets (excluding goodwill) in Australia of a value that is equal to or greater than the total amount of its deposit liabilities in Australia; and
  - (b) APRA has not authorised the ADI to hold assets of a lesser value; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

- (5) An offence against subsection (4) is an indictable offence.
- (6) If the circumstances relating to the asset holdings of an ADI are such that give rise to the ADI committing an offence against subsection (4), the ADI is guilty of an offence against that subsection in respect of:
  - (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

### 30 Subsection 13B(1)

Repeal the subsection, substitute:

- (1) A person appointed by APRA to investigate the affairs of an ADI under section 13 or 13A is entitled to have access to the books, accounts and documents of the ADI, and to require the ADI to give the person information or facilities to conduct the investigation.
- (1A) An ADI is guilty of an offence if:

- (a) APRA has appointed a person to investigate the affairs of the ADI under section 13 or 13A; and
- (b) the ADI:
  - (i) does not give the person access to its books, accounts and documents; or
  - (ii) fails to comply with a requirement made under subsection (1) for the provision of information or facilities; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

- (1B) If the ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (1A), the ADI is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

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

### **31 Subsection 14A(2) (second sentence and penalty)**

Repeal the sentence and the penalty.

### **32 After subsection 14A(2)**

Insert:

- (2A) A person who is or has been an officer of an ADI is guilty of an offence if:
- (a) there is an ADI statutory manager in relation to the ADI; and
  - (b) under subsection (2), the ADI statutory manager requires the person to give the ADI statutory manager information; and
  - (c) the person fails to comply with the requirement; and

- (d) there is no order in force under section 11 determining that this subsection does not apply to the person.

**Maximum penalty:** Imprisonment for 12 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

### **33 Subsection 16B(1) (second sentence and penalty)**

Repeal the sentence and the penalty.

### **34 After subsection 16B(1)**

Insert:

- (1A) A person who is or has been an auditor of an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, is guilty of an offence if:

- (a) under subsection (1), APRA requires the person to provide information; and
- (b) the person fails to comply with the requirement; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

**Maximum penalty:** Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

### **35 Subsections 16B(2), (3) and (4)**

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Repeal the subsections, substitute:

*Additional duty to give information about ADIs*

- (2) A person who is or has been an auditor of an ADI is guilty of an offence if:
- (a) the person has reasonable grounds for believing that:
    - (i) the ADI is insolvent, or there is a significant risk that the ADI will become insolvent; or
    - (ii) the ADI has failed to comply with a prudential standard, a requirement under this Act or the regulations, a direction under Division 1BA of Part II or a condition of its section 9 authority; or
    - (iii) an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI; and
  - (b) the person does not inform APRA of the matter; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

*Additional duty to give information about authorised NOHCs*

- (3) A person who is or has been an auditor of an authorised NOHC is guilty of an offence if:
- (a) the person has reasonable grounds for believing that:
    - (i) the NOHC is insolvent, or there is a significant risk that the NOHC will become insolvent; or
    - (ii) the NOHC has failed to comply with a prudential standard, a requirement under this Act or the regulations, a direction under Division 1BA of Part II or a condition of its NOHC authority; or

- (iii) an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC; and
- (b) the person does not inform APRA of the matter; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

*Additional duty to give information about subsidiaries of ADIs or authorised NOHCs*

- (4) A person who is or has been an auditor of a subsidiary of an ADI or an authorised NOHC (other than a subsidiary that itself is an ADI or an authorised NOHC) is guilty of an offence if:
  - (a) the person has reasonable grounds for believing that:
    - (i) the subsidiary is insolvent, or there is a significant risk that the subsidiary will become insolvent; or
    - (ii) the subsidiary has failed to comply with a requirement under this Act or the regulations; or
    - (iii) if the subsidiary is a subsidiary of an ADI—an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI; or
    - (iv) if the subsidiary is a subsidiary of an authorised NOHC—an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC; and
  - (b) the person does not inform APRA of the matter; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.
- Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

### 36 Subsection 23(1)

Repeal the subsection, substitute:

- (1) An ADI is guilty of an offence if:
- (a) it fails to comply with section 22 on any day; and
  - (b) that day is not a day to which subsection (2) applies; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

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

- (1A) If an ADI is convicted of an offence against subsection (1), it is liable to a fixed penalty equal to the amount worked out using the formula:

$$\frac{\text{Amount of shortfall}}{365} \times \frac{20}{100}$$

### 37 Subsection 33(4)

Repeal the subsection, substitute:

- (4) An ADI is guilty of an offence if:
- (a) the ADI receives a notice under subsection (1); and
  - (b) the ADI does not comply with the notice within:
    - (i) 7 days after receiving the notice; or
    - (ii) if a longer period for compliance is specified by the Reserve Bank—the period so specified; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

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

(4B) If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (4), the ADI is guilty of an offence against that subsection in respect of:

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

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

### 38 Subsection 36(1)

Omit all the words after “ADIs”.

**39 After subsection 36(1)**

Insert:

(1A) An ADI is guilty of an offence if:

- (a) the Reserve Bank has made a determination under subsection (1) of a policy that applies to the ADI; and
- (b) the ADI fails to follow the policy; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

#### 40 Subsection 36(2)

Omit all the words after “ADIs”.

#### **41 After subsection 36(2)**

Insert:

(2A) An ADI is guilty of an offence if:

- (a) the Reserve Bank has given a direction under subsection (2) that applies to the ADI; and
- (b) the ADI fails to comply with the directions; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

(2B) An offence against subsection (2A) is an indictable offence.

Note: The heading to section 38A is altered by omitting “bank” and substituting “ADI”.

#### **42 At the end of section 41**

Add:

(2) A person is guilty of an offence if:

- (a) the person contravenes subsection (1); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
- (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

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

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

#### **43 After subsection 42(1)**

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Insert:

(1A) A person is guilty of an offence if:

- (a) the person fails to comply with subsection (1); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
- (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 50 penalty units.

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

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

**44 At the end of section 42**

Add:

(3) A person is guilty of an offence if:

- (a) the person fails to comply with subsection (2); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
- (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 50 penalty units.

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

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

**45 After subsection 45(1)**

Insert:

(1A) A person is guilty of an offence if:

- (a) the person fails to comply with subsection (1); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
- (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

#### 46 At the end of section 45

Add:

- (4) A person is guilty of an offence if:
- (a) the person fails to comply with subsection (3); and
  - (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
  - (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

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

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

#### 47 At the end of section 46

Add:

- (2) A person is guilty of an offence if:
- (a) the person fails to comply with subsection (1); and
  - (b) there is no order in force under section 11 determining that subsection (1) does not apply to the person; and
  - (c) there is no instrument in force under section 48 exempting the person from the application of subsection (1).

Maximum penalty: 200 penalty units.

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

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

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

## 48 Part VI (heading)

Repeal the heading, substitute:

## Part VI—Collection and publication of information about ADIs, authorised NOHCs and their subsidiaries

**49 After subsection 61(2)**

Insert:

(2A) A body corporate is guilty of an offence if:

- (a) under subsection (1), APRA has appointed a person to investigate and report on prudential matters in relation to the body corporate; and
- (b) the body corporate:
  - (i) does not give the person access to its books, accounts and documents; or
  - (ii) fails to comply with a requirement made under subsection (2) for the provision of information or facilities; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 50 penalty units.

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

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

(2B) If a body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (2A), the body corporate is guilty of an offence against that subsection in respect of:

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

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

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

## 50 Subsection 62(1) (second sentence)

Repeal the sentence.

## 51 After subsection 62(1)

Insert:

- (1A) A person is guilty of an offence if:
  - (a) under subsection (1), APRA requires the person to provide information; and
  - (b) the person fails to comply with the requirement; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 200 penalty units.

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

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

- (1B) An offence against subsection (1A) is an indictable offence.
- (1C) If a person fails to comply with a requirement under subsection (1) in circumstances that give rise to the person committing an offence against subsection (1A), the person is guilty of an offence against subsection (1A) in respect of:
  - (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

## 52 Subsection 63(1)

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Repeal the subsection, substitute:

- (1) An ADI, other than a foreign ADI, is guilty of an offence if:
- (a) the ADI:
    - (i) enters into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or
    - (ii) effects a reconstruction of the ADI; and
  - (b) the Treasurer did not give prior consent in writing to the ADI entering into the arrangement or agreement or effecting the reconstruction.

Maximum penalty: 200 penalty units.

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

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

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

### **53 Subsection 63(4)**

Repeal the subsection, substitute:

- (4) A foreign ADI is guilty of an offence if:
- (a) there is a proposal that involves the ADI:
    - (i) entering into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or
    - (ii) effecting a reconstruction of the ADI; and
  - (b) the ADI does not give the Treasurer reasonable notice, in writing, of the proposal.

Maximum penalty: 200 penalty units.

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

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

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

## 54 Subsections 66(1) and (1A)

Repeal the subsections, substitute:

- (1) A person is guilty of an offence if:
- (a) the person carries on a financial business, whether or not in Australia; and
  - (b) the person assumes or uses, in Australia, a restricted word or expression in relation to that financial business; and
  - (c) neither subsection (1AB) nor subsection (1AC) allows that assumption or use of that word or expression; and
  - (d) APRA did not consent to that assumption or use of that word or expression; and
  - (e) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

Note 1: For the meanings of *restricted word or expression*, *assume or use* and *financial business*, see subsection (4).

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

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

(1AA) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:

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

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

(1AB) It is not an offence against subsection (1) for the Reserve Bank to assume or use the words **bank**, **banker** or **banking** in relation to its financial business.

(1AC) It is not an offence against subsection (1) for an ADI to assume or use the word **banking** in referring to the fact that it has been granted an authority under this Act.

Note: For example, an ADI may, in its letterhead, refer to itself as being authorised under the *Banking Act 1959* to carry on banking business.

## **55 After subsection 66(2A)**

Insert:

(2B) If APRA:

- (a) grants a consent; or
- (b) takes action under subsection (2) in relation to a consent;

APRA must give ASIC notice of the granting of the consent or the taking of the action.

## **56 Subsection 66(3)**

Repeal the subsection, substitute:

(3) A person is guilty of an offence if:

- (a) the person has been given a consent under this section; and
- (b) the person contravenes a condition to which the consent is subject; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

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

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

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

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

## 57 Subsection 66A(1)

Repeal the subsection, substitute:

- (1) A person, other than an ADI, is guilty of an offence if:
- (a) the person carries on a financial business, whether or not in Australia; and
  - (b) the person assumes or uses, in Australia, the expression ***authorised deposit-taking institution***, or ***ADI***, in relation to that financial business; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

Note 1: For the meanings of ***assume or use*** and ***financial business***, see subsection (2).

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

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

- (1A) If a person assumes or uses an expression in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

## 58 Subsection 67(1)

Repeal the subsection, substitute:

- (1) A person, other than an ADI, is guilty of an offence if:
- (a) the person carries on banking business in a foreign country but does not carry on banking business in Australia; and



- (b) the person establishes or maintains an office in Australia wholly or partly in connection with the carrying on of that banking business in that foreign country; and
- (c) APRA did not consent, in writing, to the establishment or maintenance of that office; and
- (d) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

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

- (1A) If a person establishes or maintains an office in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:

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

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

## **59 Subsection 67(3)**

Repeal the subsection, substitute:

- (3) A person is guilty of an offence if:
- (a) the person has been given a consent under this section; and
  - (b) the person contravenes a condition to which the consent is subject; and
  - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

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

- (4) If a person does or fails to do an Act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

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

## **60 Subsection 68(2)**

Omit “A bank”, substitute “An ADI”.

## **61 Subsection 68(2)**

Omit “the bank”, substitute “the ADI”.

## **62 Subsection 68(4)**

Repeal the subsection, substitute:

- (4) In this section:

*ADI* includes the Reserve Bank.

## **63 Subsections 69(1), (2), (6), (7), (11) and (11A)**

Omit “a bank”, substitute “an ADI”.

## **64 Subsection 69(3)**

Omit “A bank”, substitute “An ADI”.

## **65 Subsection 69(3)**

After “statement”, insert “, complying with subsection (4) and any regulations under subsection (3),”.

## **66 After subsection 69(3)**

Insert:

(3AA) The ADI is guilty of an offence if:

- (a) it does not give the Treasurer a statement as required by subsection (3); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

## 67 Subsections 69(4), (5) and (7)

Omit “the bank” (wherever occurring), substitute “the ADI”.

**68 After subsection 69(5)**

Insert:

(5A) The ADI is guilty of an offence if:

- (a) it does not pay, at the time of the delivery of the statement, the amount specified in the statement, as required by subsection (5); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

## 69 Subsection 69(7)

Omit “that bank” (wherever occurring), substitute “that ADI”.

## 70 Subsection 69(7)

Omit “first-mentioned bank”, substitute “first-mentioned ADI”.

**71 After subsection 69(7)**

Insert:

(7A) The ADI is guilty of an offence if:

- (a) it does not pay moneys to a person as required by subsection (7); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

## **72 Subsection 69(10)**

Repeal the subsection.

## **73 Section 69A**

Repeal the section.

## **74 Subsections 69C(1) and (2)**

Repeal the subsections.

## **75 Subsection 69C(6)**

Omit “(1) or”.

## **76 Subsection 69C(7)**

Repeal the subsection.

## **77 At the end of section 69C**

Add:

Note: For provisions relating to proof of offences by bodies corporate, see Part 2.5 of the *Criminal Code*.

## **78 Subsection 71(3)**

Omit “banks”, substitute “ADIs or NOHCs”.

## **79 Schedule 1 (heading)**

Repeal the heading, substitute:

## Schedule 1—State and Territory laws relating to ADI mergers

Note: See section 38A.

## Schedule 3—Amendment of the Corporations Law

### Part 1—Transfer of financial institutions and friendly societies

#### 1 At the end of the Corporations Law

Add:

### Schedule 4—Transfer of financial institutions and friendly societies

Note: See section 1465A.

### Part 1—Preliminary

#### 1 Definitions

In this Schedule, except so far as the contrary intention appears:

***AFIC Code of this jurisdiction*** means the Australian Financial Institutions Commission Code as set out in the *Australian Financial Institutions Commission Act 1992* of Queensland as in force immediately before the transfer date and as applied as a law of this jurisdiction.

***Financial Institutions Code of this jurisdiction*** means the Financial Institutions Code set out in the *Financial Institutions (Queensland) Act 1992* as in force immediately before the transfer date and as applied as a law of this jurisdiction.

***Friendly Societies Code*** means the Friendly Societies Code set out in Schedule 1 to the **Friendly Societies (Victoria) Act 1996** as in force immediately before the transfer date.

***Friendly Societies Code of this jurisdiction*** means:

- (a) the Friendly Societies Code as applied as a law of this jurisdiction; or

- (b) if this Law is being applied as a law of Western Australia—the Friendly Societies (Western Australia) Code set out in the *Friendly Societies (Western Australia) Act 1999*.

***member of a transferring financial institution*** means a person who, immediately before the transfer date, is a member of the institution under:

- (a) the previous governing Code; or
- (b) the rules of the institution.

***membership share*** has the meaning given in subclause 12(3).

***previous governing Code*** for a transferring financial institution means the Code or law under which the institution is registered immediately before the transfer date.

***State Supervisory Authority (SSA)*** for a transferring financial institution means:

- (a) the SSA for the institution within the meaning of the previous governing Code; or
- (b) in the case of The Cairns Cooperative Weekly Penny Savings Bank Limited—the Queensland Office of Financial Supervision.

***transfer date*** means the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

***transferring financial institution of this jurisdiction*** means:

- (a) a building society of this jurisdiction (that is, a society that is registered under the Financial Institutions Code of this jurisdiction, and authorised to operate as a building society, immediately before the transfer date); or
- (b) a credit union of this jurisdiction (that is, a society that is registered under the Financial Institutions Code of this jurisdiction, and authorised to operate as a credit union, immediately before the transfer date); or
- (c) a friendly society of this jurisdiction (that is, a body that is registered as a friendly society under the Friendly Societies Code of this jurisdiction immediately before the transfer date); or

- (d) a body registered as an association under Part 12 of the Financial Institutions Code of this jurisdiction immediately before the transfer date; or
- (e) a body registered as a Special Services Provider under the AFIC Code of this jurisdiction immediately before the transfer date; or
- (f) a body registered as an association under Part 12 of the Friendly Societies Code of this jurisdiction immediately before the transfer date; or
- (g) The Cairns Cooperative Weekly Penny Savings Bank Limited referred to in section 263 of the *Financial Intermediaries Act 1996* of Queensland if:
  - (i) this definition is being applied as a law of Queensland; and
  - (ii) a determination by APRA under subitem 7(2) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* is in force immediately before the transfer date.

**Note:** If a determination is made, the Bank will be covered by the *Banking Act 1959* from the transfer date. APRA may only make a determination if the Treasurer and the Queensland Minister responsible for the administration of the *Financial Intermediaries Act 1996* of Queensland have agreed that the Bank should be covered by the *Banking Act 1959*.

**transition period** means the period of 18 months starting on the transfer date.

**withdrawable share** means a withdrawable share within the meaning of the Financial Institutions Code of this jurisdiction as in force immediately before the transfer date.

## 2 Objective

The objective of this Schedule is to facilitate the registration of:

- (a) building societies and credit unions currently covered by the Financial Institutions Code of this jurisdiction; and
- (b) friendly societies currently covered by the Friendly Societies Code of this jurisdiction; and
- (c) related bodies and associations;



as Corporations Law companies with as little disturbance to the operations of, and as little conversion costs for, the bodies concerned as possible.

## **Part 2—Transfer to Corporations Law registration**

### **Division 1—The transfer process**

#### **3 Registration of transferring financial institution as company**

##### *Registration as company on transfer date*

- (1) On the transfer date, each transferring financial institution of this jurisdiction is taken to become registered as a company under the Law of this jurisdiction under the name under which the institution was registered under the previous governing Code immediately before the transfer date.
- (2) Subclause (1) applies even if the institution is an externally-administered body corporate immediately before the transfer date.

##### *Type of company*

- (3) The following table sets out the types of company the institution may be registered as under subclause (1):

<b>Type of company that institution may be registered as</b>		
	<b>Type of institution</b>	<b>Type of company</b>
1	building society with shares on issue	* public company limited by shares and by guarantee
		public company limited by shares
2	building society with no shares on issue	* public company limited by guarantee
		public company limited by shares and by guarantee
		public company limited by shares
3	credit union with shares on issue	* public company limited by shares

**Schedule 3** Amendment of the Corporations Law**Part 1** Transfer of financial institutions and friendly societies

<b>Type of company that institution may be registered as</b>		
	<b>Type of institution</b>	<b>Type of company</b>
		public company limited by shares and by guarantee
4	credit union with no shares on issue	* public company limited by guarantee
		public company limited by share and by guarantee
		public company limited by shares
5	friendly society with no shares on issue	* public company limited by guarantee
		public company limited by shares and by guarantee
6	friendly society with shares on issue	* public company limited by shares and by guarantee
		public company limited by shares
7	association registered under the Financial Institutions Code of this jurisdiction	* public company limited by shares
		public company limited by guarantee
		public company limited by shares and by guarantee
		proprietary company limited by shares [see note]
8	Special Services Provider incorporated under the AFIC Code of this jurisdiction	* public company limited by shares
9	friendly society association	* public company limited by guarantee
		public company limited by shares
		public company limited by shares and by guarantee
		proprietary company limited by shares [see note]
10	other	* public company limited by guarantee
		public company limited by shares

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<b>Type of company that institution may be registered as</b>	
<b>Type of institution</b>	<b>Type of company</b>
	public company limited by shares and by guarantee
	proprietary company limited by shares [see note]

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Note: To be registered as a proprietary company, the institution would need to comply with subsection 113(1) (no more than 50 non-employee shareholders). A proprietary company cannot engage in fundraising activities (see subsection 113(3)).

- (4) The institution may elect which particular type of company it is to be registered as under subclause (1). The election:
- (a) must be agreed to by a resolution of the board of the institution; and
  - (b) is to be made by written notice lodged with ASIC at least 7 days before the transfer date.
- The election must be in the prescribed form.
- (5) The institution is taken to be registered under subclause (1) as the following type of company:
- (a) if the institution's board makes an election under subclause (4)—the type specified in the election; or
  - (b) if the institution's board does not make an election under subclause (4):
    - (i) if regulations under this subparagraph are in force for that type of institution on the transfer date—the type of company prescribed by the regulations; or
    - (ii) if no regulations under subparagraph (i) are in force for that type of institution on the transfer date—the type of company that is specified in the table in subclause (3) for that type of institution and is marked with an asterisk.

#### **4 Documents to be lodged with ASIC by SSA**

- (1) The SSA for a transferring financial institution of this jurisdiction must lodge with ASIC:
- (a) a notice that sets out:
    - (i) the institution's name; and
    - (ii) the address of the institution's registered office;

under the previous governing Code immediately before the transfer date; and

- (b) a copy of the institution's rules as in force immediately before the transfer date; and
  - (c) a copy of any entry in its register of charges kept under section 265 of this Law (as applied by the previous governing Code) that relates to the institution; and
  - (d) any document lodged under section 263 or 264 of this Law (as applied by the previous governing Code) that relates to:
    - (i) the institution; and
    - (ii) a charge that is in force immediately before the transfer date.
- (2) If the transferring financial institution is under external administration immediately before the transfer date, the notice referred to in paragraph (1)(a) must also set out:
- (a) the type of external administration; and
  - (b) any other prescribed details.

## **5 Documents to be lodged with ASIC by transferring financial institution**

- (1) Within 1 month after a transferring financial institution of this jurisdiction is registered as a company under clause 3, it must lodge with ASIC a notice that sets out the personal details of each director and secretary of the company as at the transfer date. The notice must be in the prescribed form.

Penalty: 5 penalty units.

- (2) The personal details of a director or secretary are the details that would need to be set out in the notice if it were being given under section 242.

## **6 Company to set up registers and minute books**

### *Setting up registers and minute books*

- (1) A company registered under clause 3 must, within 14 days after the transfer date:

- (a) set up the registers required by sections 168 (registers of members, debenture holders and options holders) and 271 (charges); and
- (b) include in those registers all the information that is required to be in those registers and that is available to the company on registration; and
- (c) set up the minute books required by section 251A.

*Incorporation of prior minute books*

- (2) The minute books set up under paragraph (1)(c) must incorporate any minute books or similar records kept by the company prior to its registration under clause 3.

*Access to registers and minute books*

- (3) During the 14 days, the company need not comply with a person's request to inspect or obtain a copy of:
  - (a) information in a register; or
  - (b) a minute of a general meeting.

However, the period within which the company must comply with the request begins at the end of the 14 days.

## **7 ASIC to complete formalities of registration**

- (1) As soon as practicable after a transferring financial institution of this jurisdiction is registered as a company under clause 3, ASIC must:
  - (a) give the company an ACN; and
  - (b) keep a record of the company's registration; and
  - (c) issue a certificate to the company that states:
    - (i) the company's name; and
    - (ii) the company's ACN; and
    - (iii) the company's type; and
    - (iv) that the company is registered as a company under the Corporations Law of this jurisdiction; and
    - (v) the transfer date as the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

- (2) If:

- (a) the company is registered with a name that does not include “Limited” or “Proprietary Limited” (as the type of company requires), or an acceptable abbreviation; and
- (b) the company is not exempt from the requirement to use that word or those words in its name by or under section 150 or 151;

ASIC may change the company’s name so that it includes the required words by altering the details of the company’s registration to reflect that change.

Note: For acceptable abbreviations see section 149.

- (3) Subsections 1274(2) and (5) apply to the record of the company’s registration referred to in paragraph (1)(b) as if they were a document lodged with ASIC.

## **8 Registration of registered bodies**

- (1) If a registered body becomes registered as a company under clause 3, it ceases to be a registered body. ASIC must remove the body’s name from the appropriate register kept for the purposes of Division 1 or 2 of Part 5B.2.
- (2) ASIC may keep any of the documents relating to the company that were lodged because the company used to be a registered body.

## **Division 2—The consequences of the transfer**

### **Subdivision A—General**

## **9 Effect of registration under clause 3**

### *General effect of registration*

- (1) Registration of a transferring financial institution of this jurisdiction as a company under clause 3 does not:
    - (a) create a new legal entity; or
    - (b) affect the institution’s existing property, rights or obligations (except as against the members in their capacity as members); or
    - (c) render defective any legal proceedings by or against the institution or its members.
-

### *Members, officers, constitution and registered office*

- (2) On registration as a transferring financial institution of this jurisdiction as a company under clause 3:
- (a) each person who is a member of the institution immediately before the transfer date becomes a member of the company; and
  - (b) each person who was a director of the institution immediately before the transfer date becomes a director of the company; and
  - (c) each person who was a secretary of the institution immediately before the transfer date becomes a secretary of the company; and
  - (d) the institution's rules, as in force immediately before the transfer date, become the company's constitution; and
  - (e) the institution's registered office under the previous governing Code immediately before the transfer date becomes the company's registered office for the purposes of this Law.

### Health benefits funds rules

- (3) The institution's rules referred to in paragraph (2)(d) do not include rules within the meaning of the *National Health Act 1953*.

Note: These latter rules relate to the operation of health benefits funds.

### Replaceable rules

- (4) The replaceable rules (as described in section 135) do not apply to a company registered under clause 3, despite section 135, unless the company repeals its constitution.

## 10 Provisions applying to company limited by shares and by guarantee

Section 1416 applies to a company that is taken under clause 3 to be registered as a company limited by shares and by guarantee.

## 11 Transferring financial institution under external administration

- (1) If, immediately before the transfer date, provisions of Chapter 5 applied to:

- (a) a compromise or arrangement between a transferring financial institution of this jurisdiction and its creditors; or
  - (b) a reconstruction of a transferring financial institution of this jurisdiction; or
  - (c) a receiver or other controller of property of a transferring financial institution of this jurisdiction; or
  - (d) the winding-up or dissolution of a transferring financial institution of this jurisdiction;
- because of Part 9 of the Financial Institutions Code, or Part 9 of the Friendly Societies Code, of this jurisdiction, those provisions of Chapter 5 continue to apply to that matter after the transfer date (but without any of the modifications made by the Code or the regulations made under the Code).
- (2) Without limiting the generality of subclause (1), a matter referred to in paragraph (1)(a), (b) or (d) includes an application or other step preliminary to the matter.
  - (3) Subclause (1) does not limit the regulations that may be made under clause 28 or 39.
  - (4) Any act done before the transfer date under or for the purposes of the provisions of Chapter 5 as applied by the Code has effect as if it had been done under or for the purposes of Chapter 5 as it applies after the transfer date.
  - (5) If, before the transfer date, a liquidator of a transferring financial institution had been appointed under:
    - (a) section 341 of the Financial Institutions Code of this jurisdiction; or
    - (b) section 402 of the Friendly Societies Code of this jurisdiction;the institution may be wound up in accordance with the provisions of Chapter 5.
  - (6) For the avoidance of doubt, if, before the transfer date, the SSA for a transferring financial institution of this jurisdiction had given a certificate under:
    - (a) section 341 of the Financial Institutions Code of this jurisdiction; or
    - (b) section 402 of the Friendly Societies Code of this jurisdiction;
-



but had not yet appointed a liquidator of the institution, neither the SSA nor ASIC may appoint a liquidator of the institution on the basis of the certificate.

## Subdivision B—Membership

## 12 Institution becoming a company limited by shares

- (1) If a transferring financial institution of this jurisdiction is taken to be registered as a company limited by shares under clause 3, the following apply:
  - (a) any shares in the institution on issue immediately before the transfer date (other than withdrawable shares) become shares of the company
  - (b) any withdrawable shares of the institution on issue immediately before the transfer date become redeemable preference shares of the company
  - (c) in the case of a building society—each person who was a member of the society immediately before the transfer date, other than by virtue of only holding shares in the society, is taken to have been issued with a membership share on the transfer date
  - (d) in any case other than that of a building society—any person:
    - (i) who was a member of the institution immediately before the transfer date; and
    - (ii) who did not hold any shares in the institution; is taken to have been issued with a membership share on the transfer date.
- (2) If a person who is taken to have been issued with a membership share is a joint member, they hold the membership share jointly with the other member or members of the joint membership. This is so, even if the other member, or another member, held shares in the institution immediately before the transfer date. However, the joint membership does not have any more votes because of the membership share or shares than it had immediately before the transfer date.
- (3) In this Schedule:

***building society*** means a transferring financial institution authorised under the Financial Institutions Code of its jurisdiction

to operate as a building society immediately before the transfer date.

**membership share** means a share in a company that was a transferring financial institution:

- (a) that is taken to have been issued under this clause; and
  - (b) that carries the rights and obligations that were conferred or imposed on the person in a capacity other than that of shareholder, by:
    - (i) the institution's rules (as in force immediately before the transfer date); and
    - (ii) the previous governing Code; and
  - (c) on which no amount is paid; and
  - (d) on which no amount is unpaid; and
  - (e) that is not:
    - (i) transferable or transmissible; or
    - (ii) capable of devolution by will or by operation of law; and
  - (f) that can be cancelled as set out in subclause (4).
- (4) A membership share can be cancelled at the option of the holder or the company in the circumstances (if any):
- (a) set out in the company's constitution; or
  - (b) in which the member who holds the share could have had their membership of the institution cancelled immediately before the transfer date.

Part 2J.1 does not apply to the cancellation of a membership share.

### **13 Institution becoming a company limited by guarantee**

- (1) If a transferring financial institution of this jurisdiction is taken to be registered as a company limited by guarantee under clause 3, the following apply:
- (a) each person who is a member of the institution immediately before the transfer date is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company)
  - (b) each person who becomes a member of the company after the transfer date and before the amount of the relevant guarantee is determined is taken to have given a guarantee (but only for

the purpose of determining whether the person is a member of the company).

- (2) If a person who is taken to have given a guarantee by subclause (1) is a joint member, they are taken to have given the guarantee jointly with the other member or members of the joint membership. However, the joint membership does not have any more votes because of giving the guarantee or guarantees than it had immediately before the transfer date.

#### 14 Institution becoming a company limited by shares and guarantee

- (1) If a transferring financial institution of this jurisdiction is taken to be registered as a company limited by shares and guarantee under clause 3, the following apply:
  - (a) each person who is a member of the institution immediately before the transfer date is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company)
  - (b) each person who becomes a member of the company after the transfer date and before the amount of the relevant guarantee is determined is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company)
  - (c) any shares in the institution on issue immediately before the transfer date (other than withdrawable shares) become shares of the company
  - (d) any withdrawable shares of the institution on issue immediately before the transfer date become redeemable preference shares of the company.
- (2) If a person who is taken to have given a guarantee by subclause (1) is a joint member, they are taken to have given the guarantee jointly with the other member or members of the joint membership. However, the joint membership does not have any more votes because of giving the guarantee or guarantees than it had immediately before the transfer date.

## **15 Redeemable preference shares that were withdrawable shares**

- (1) This Law applies to a redeemable preference share that was a withdrawable share of a transferring financial institution of this jurisdiction immediately before the transfer date, except that:
  - (a) the share is redeemable on the same terms that the withdrawable share was withdrawable under the Financial Institutions Code of this jurisdiction and the institution's rules or constitution; and
  - (b) the holder of the share continues to have the same rights and obligations that they had by holding the withdrawable share.
- (2) The provisions of this Law that apply to redeemable preference shares apply:
  - (a) subject to subclause (1), to redeemable preference shares of a company registered under clause 3; and
  - (b) to redeemable preference shares of a company (other than a company referred to in paragraph (a)) that is permitted to use the expression ***building society***, ***credit union*** or ***credit society*** under section 66 of the *Banking Act 1959*; even if the shares are the only class of shares issued by the company.
- (3) For the purposes of this clause, ***this Law*** includes regulations made for the purposes of this Law.

## **16 Liability of members on winding up**

- (1) If a transferring financial institution of this jurisdiction that is registered under clause 3 is wound up, each person:
  - (a) who was a past member of the institution at the time it became registered; and
  - (b) who did not again become a member; and
  - (c) who had not held shares in the institution;is not liable under Division 2 of Part 5.6 on the winding up.

Note: A person who was a past member at the time of registration and who held shares in the institution may be liable as a past member under Division 2 of Part 5.6.
- (2) If a company that is registered under clause 3 is wound up, a person who is taken to have given a guarantee by subclause 13(1) or 14(1) is not liable under:

- Note: Section 1416 and clause 10 preserve the application of section 518 to transferring financial institutions that are taken to be registered as companies limited by shares and guarantee.

## 17 Share capital

- (1) On registration of a transferring financial institution of this jurisdiction as a company under clause 3:
  - (a) any amount of withdrawable share capital (within the meaning of the Financial Institutions Code of this jurisdiction); and
  - (b) any amount standing to the credit of its share premium account; and
  - (c) any amount standing to the credit of its capital redemption reserve;

*Use of amount standing to credit of share premium account*

- |  |         |
|--|---------|
| <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> | No. 44, |
|  | 1999 55 |

## **18 Application of no par value rule**

- (1) Section 254C applies to shares issued by a transferring financial institution of this jurisdiction before the transfer date as well as shares issued on and after that.
- (2) In relation to a share issued by the institution before the transfer date:
  - (a) the amount paid on the share is the sum of all amounts paid to the institution at any time for the share (but not including any premium); and
  - (b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

## **19 Calls on partly-paid shares**

The liability of a shareholder for calls in respect of money unpaid on shares issued before the transfer date by a transferring financial institution of this jurisdiction (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

## **20 References in contracts and other documents to par value**

- (1) This clause applies for the purpose of interpreting and applying the following after the transfer date:
  - (a) a contract entered into by a transferring financial institution of this jurisdiction before the transfer date (including the institution's constitution)
  - (b) a trust deed or other document executed by or in relation to the institution before the transfer date.
- (2) A reference to the par value of a share issued by a transferring financial institution of this jurisdiction is taken to be a reference to:
  - (a) if the share is issued before the transfer date—the par value of the share immediately before then; or
  - (b) if the share is issued on or after the transfer date but shares of the same class were on issue immediately before then—the par value that the share would have had if it had been issued then; or

- (c) if the share is issued on or after the transfer date and shares of the same class were not on issue immediately before then—the par value determined by the directors.
- A reference to share premium is taken to be a reference to any residual share capital in relation to the share.
- (3) A reference to a right to a return of capital on a share issued by the institution is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.
- (4) A reference to the aggregate par value of the institution's issued share capital is taken to be a reference to that aggregate as it existed immediately before the transfer date and:
- (a) increased to take account of the par value of any shares issued after then; and
  - (b) reduced to take account of the par value of any shares cancelled after then.

### Subdivision D—Charges

## 21 Registration of prior charges

- (1) If, immediately before the transfer date, a charge on property of a transferring financial institution of this jurisdiction was registered under section 265 of this Law (as applied by the previous governing Code), ASIC is taken to have entered in the Australian Register of Company Charges the time, date and particulars entered in the register under the previous governing Code.
- (2) ASIC is taken to have done so at the beginning of the transfer date, and in accordance with subsection 265(2).
- (3) An act or thing done by or in relation to the institution under, or for the purposes of, a provision of sections 262 to 277 of this Law (as applied by the previous governing Code) is taken to have been done under, or for the purposes of, that provision of this Law.

## **Part 3—Terminating the application of the Codes to financial institutions and friendly societies**

### **22 Cancellation of Code registrations**

On the transfer date, the registration of each transferring financial institution of this jurisdiction under the previous governing Code is cancelled.

### **23 No new registrations under the Codes**

On and from the transfer date, there are to be no new registrations under:

- (a) the Financial Institutions Code of this jurisdiction; or
- (b) the AFIC Code of this jurisdiction; or
- (c) the Friendly Societies Code of this jurisdiction.

## **Part 4—The transition period**

### **24 Modifications of constitution**

- (1) A company registered under clause 3 must modify its constitution before the end of the transition period so that the constitution:
  - (a) gives effect to this Schedule; and
  - (b) is consistent with this Law; and
  - (c) sets out the rights and obligations attaching to each class of shares on issue, including shares that are taken to have been issued by a provision of this Schedule.
- (2) A company registered under clause 3 is not prevented from:
  - (a) modifying its constitution to change the rights and obligations attaching to any membership shares on issue; or
  - (b) redeeming any membership shares on issue and not providing for them in the constitution;merely because 1 or more members of the company are deemed to have been issued with membership shares by clause 12.



## 25 ASIC may direct directors of a company to modify its constitution

- (1) If a company registered under clause 3 has not modified its constitution so that it complies with subclause 24(1) by the end of the transition period, ASIC may direct, in writing, the directors of the company to:
  - (a) take the necessary or specified steps to:
    - (i) ensure that the company modifies its constitution so that it does comply; or
    - (ii) ensure that the company makes the modifications to its constitution that ASIC specifies; and
  - (b) take those steps within a specified time (which must be more than 28 days).

A direction may require the directors to take steps that are inconsistent with the company's constitution.

- (2) ASIC may issue a direction under subclause (1) before the end of the transition period if requested by a majority of directors of the company.
- (3) No civil or criminal liability arises from action taken by a director in good faith and in accordance with a direction issued under subclause (1).
- (4) A person contravenes this subclause if, without reasonable excuse, they contravene a direction under subclause (1).
- (5) A person who intentionally or recklessly contravenes a direction under subclause (1) is guilty of an offence.

**Penalty:** 100 penalty units or imprisonment for 2 years, or both.

## 26 ASIC's power to make exemption and modification orders for the transition period

- (1) ASIC may:
  - (a) exempt a company registered under clause 3 from a provision of this Law; or
  - (b) declare that this Law applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

The exemption or declaration ceases to have effect at the end of the transition period (the 18 months starting on the transfer date), unless ASIC specifies a shorter period in which it ceases to have effect.

- (2) Without limiting subclause (1), the exemption or declaration may relate to:
  - (a) a change of company type; or
  - (b) a change to a company's constitution; or
  - (c) the issue and redemption of shares;that is connected with a requirement of or under this Law, the *Life Insurance Act 1995* or the *Banking Act 1959*.
- (3) The exemption or declaration may:
  - (a) apply to specified provisions of this Law; or
  - (b) apply to a specified company registered under clause 3, a specified class of those companies, or all of those companies; and
  - (c) relate to any other matter generally or as specified.
- (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

## **27 When certain modifications of a company's constitution under an exemption or declaration take effect**

- (1) If the constitution of a company registered under clause 3 is modified under an exemption or declaration made under clause 26, and that modification varies or cancels, or allows the variation or cancellation of:
  - (a) rights attached to shares in a class of shares; or
  - (b) rights of members in a class of members;the following provisions apply, and to the exclusion of section 246D if it would otherwise apply.

- (2) If the company is not required to lodge a copy of the modification with ASIC by or under any other provision of this Law, the company must lodge a copy of the modification with ASIC within 14 days of the modification being made.
- (3) If:
  - (a) members in the class do not all agree (whether by resolution or written consent) to the modification of the company's constitution; or
  - (b) the members in the class did not have an opportunity to vote on or consent to the modification;10% or more of the members in the class may apply to the Court to have the modification set aside.

Note: If a company has only 1 class of shares, all members are members of the class.
- (4) An application may only be made within 1 month after the modification is lodged.
- (5) The modification takes effect:
  - (a) if no application is made to the Court to have it set aside—1 month after the modification is lodged; or
  - (b) if an application is made to the Court to have it set aside—when the application is withdrawn or finally determined.
- (6) The members of the class who want to have the modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.
- (7) The Court may set aside the modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the modification if the Court is not satisfied of unfair prejudice.
- (8) Within 14 days after the Court makes an order, the company must lodge a copy of it with ASIC.

## **28 Modification by regulations for the transition period**

- (1) For the purpose of facilitating the transfer of the registration of transferring financial institutions to this Law, the regulations may modify the operation of this Law (including the provisions applied by clause 36) in relation to:

- (a) a company registered under clause 3; or
  - (b) a specified class of companies registered under clause 3.
- (2) Regulations made for the purposes of this clause may not:
  - (a) create an offence with a penalty greater than 10 penalty units; or
  - (b) increase the penalty for an existing offence; or
  - (c) substitute for an existing offence an offence with a penalty greater than the penalty for the existing offence; or
  - (d) modify an obligation, contravention of which will result in committing an offence, so as to make it more difficult to comply with.
- (3) Regulations made for the purposes of this clause cease to have effect at the end of the transition period (the 18 months starting on the transfer day).

## **Part 5—Demutualisations**

### **29 Disclosure for proposed demutualisation**

- (1) If a modification of the constitution of an unlisted company registered under clause 3 is proposed and the modification would have the effect of:
  - (a) varying or cancelling the rights of members, or a class of members, to the reserves of the company; or
  - (b) varying or cancelling the rights of members, or a class of members, to the assets of the company on a winding up; or
  - (c) varying or cancelling the voting rights of members or a class of members; or
  - (d) otherwise varying or cancelling rights so that Part 2F.2 (Class rights) applies; or
  - (e) allowing 1 of those variations or cancellations of rights;the following rules apply:
  - (f) notice of the meeting of the company's members at which the proposed modification is to be considered must be accompanied by the documents listed in subclause (4);
  - (g) notice of the meeting may not be shortened under subsection 249H(2);

- (h) the company must lodge with ASIC the notice and the documents referred to in paragraphs (4)(a) and (c) within 7 days after notice of the meeting is given.

(2) If:

- (a) an issue of shares by an unlisted company registered under clause 3 would have the effect of varying or cancelling rights so that Part 2F.2 (Class rights) applies; and
- (b) at least 1 of the following is required to approve the share issue, or variation or cancellation of rights:
  - (i) a meeting of the company's members;
  - (ii) a resolution passed at a meeting of the class of members concerned;
  - (iii) written consent of a specified proportion of members in the class concerned;

the following rules apply (in addition to those that apply under Part 2F.2):

- (c) notice of the meeting or consent process must be accompanied by the documents listed in subclause (4);
- (d) the company must lodge with ASIC the notice of the meeting or consent process and the documents referred to in paragraphs (4)(a) and (c) within 7 days after the notice is given;
- (e) notice of the meeting may not be shortened under subsection 249H(2).

Paragraph (c) need not be complied with to the extent that a person has already been given the documents.

(3) ASIC may exempt a company from this Part under clause 30.

(4) The documents that must accompany the notice are:

- (a) a disclosure statement that:
  - (i) satisfies clause 31; and
  - (ii) ASIC has registered under clause 32; and
- (b) in the case of a proposed modification of the constitution of a company—an estimate of the financial benefits (if any) the member will be offered if the proposed modification occurs; and
- (c) a report by an expert that:

- (i) states whether, in the expert's opinion, the proposed modification or share issue is in the best interests of the members of the company as a whole; and
- (ii) gives the expert's reasons for forming that opinion; and
- (iii) complies with subclauses 33(2) and (3).

- (5) If the company contravenes subclause (1) or (2) it is not guilty of an offence.
- (6) A person contravenes this subclause if they are involved in a contravention of subclause (1) or (2).

Note 1: This subclause is a civil penalty provision.

Note 2: Section 79 defines *involved*.

- (7) A person commits an offence if they are involved in a contravention of subclause (1) or (2) and the involvement is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

- (8) In this clause:

**reserves** includes general reserves and retained earnings of the company.

**unlisted company** means a company (registered under clause 3) that does not have voting shares quoted on a stock market of a securities exchange.

### **30 ASIC's exemption power**

- (1) If ASIC is satisfied that a company does not have a mutual structure, it may exempt the company from this Part.
- (2) If ASIC is satisfied that:
  - (a) a proposed modification of the constitution of a company will not result in or allow a modification of the mutual structure of the company; or
  - (b) an issue of shares would not result in or allow a modification of the mutual structure of the company;it may exempt the company from this Part in relation to the proposed modification or share issue.

- (3) In determining whether the company has a mutual structure, ASIC may take into account:
  - (a) the particular structure, circumstances and history of the company; and
  - (b) whether:
    - (i) each customer of the company (for example an account holder, mortgagor or policy holder) is required to be a member of the company; or
    - (ii) each member (or joint membership) has only 1 vote; and
  - (c) any other relevant matter in relation to the company or its members.
- (4) In determining whether the proposed modification or share issue will result in or allow a modification of the mutual structure of the company, ASIC must take into account whether the proposed modification or share issue would have the effect of converting the company into a company run for the purpose of yielding a return to shareholders.
- (5) An exemption under subclause (2) may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (6) The exemption must be in writing and ASIC must publish notice of it in the *Gazette*.
- (7) For the purposes of this clause, the ***provisions of this Part*** include regulations made for the purposes of this Part.

### **31 Coverage of disclosure statement**

The disclosure statement must give all the information that members would reasonably require and expect to be given to make an informed decision about the proposed modification or share issue.

## **32 Registration of disclosure statement**

- (1) ASIC must register the disclosure statement if satisfied that the statement adequately sets out or explains the following (if relevant):
- (a) the variation or cancellation of members' rights
  - (b) that the proposed modification will allow the variation or cancellation of members' rights
  - (c) in relation to a share issue:
    - (i) who will and will not receive shares under the issue; and
    - (ii) the rights and obligations attached to the shares; and
    - (iii) the implications of the share issue for the management and structure of the company
  - (d) what financial benefits (if any) members will be offered if the proposed modification occurs and why the benefits are considered to be appropriate
  - (e) the basis upon which members' entitlement to the financial benefits will be determined, including:
    - (i) any minimum period of membership that a member must satisfy to receive benefits; or
    - (ii) whether members must pay an amount or provide other value to receive benefits
  - (f) any preferential allocation of benefits to members, or a class of members, and how that allocation is to be determined
  - (g) any benefits officers of the company (including retiring officers) may receive (whether directly or indirectly) in connection with the proposed modification or share issue
  - (h) any other proposed changes to the company that are related to the proposed modification or share issue (for example, whether the company proposes to list its securities for quotation on a securities market of a stock exchange or merge with another company)
  - (i) the new name of the company, if the company's name is to be changed in connection with the proposed modification or share issue, or that it is not proposed to change the company's name
  - (j) the procedural steps required to vary or cancel the members' rights
  - (k) the procedural steps required to issue the shares





- (b) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion; and
- (c) any fee, payment or other benefit (whether direct or indirect) that the expert has received or will or may receive in connection with making the report.

### **34 Unconscionable conduct in relation to demutualisations**

- (1) A person must not engage in:
  - (a) conduct that is, in all the circumstances, unconscionable; or
  - (b) conduct that is misleading or deceptive or is likely to mislead or deceive;in relation to:
  - (c) a modification of the constitution of an unlisted company that is a modification to which this Part applies; or
  - (d) anything done in reliance on, in conjunction with or in connection with the modification; or
  - (e) a share issue to which this Part applies.
- (2) In determining whether a person has engaged in conduct that contravenes paragraph (1)(a), have regard to:
  - (a) whether the person, or someone acting for the person, exerted undue influence or pressure on, or used unfair tactics against, members of the company; and
  - (b) whether the person, or someone acting for the person, engaged in conduct that resulted in a member or someone else gaining, or being in a position to gain, a benefit that the members generally did not, or would not be in a position to, gain.

This subclause does not limit subclause (1).

- (3) A person who contravenes subclause (1) is not guilty of an offence.

### **35 Orders the Court may make**

- (1) Without limiting the Court's powers under Part 9.5, if the Court is satisfied that a person has engaged in conduct constituting a contravention of subclause 34(1), the Court may make 1 or more of the following orders:

- (a) an order requiring the person or a person involved in the contravention to disclose to the public, to a particular person or to a particular class of persons, in the manner specified in the order, specified information, or information of a specified kind, (being information that is in the possession of the person to whom the order is directed or to which that person has access)
- (b) an order requiring the person or a person involved in the contravention to publish, at their own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order
- (c) any order that it thinks necessary or desirable:
  - (i) to protect the rights or interests of any person affected by the conduct; or
  - (ii) to ensure, as far as possible, that a proposed modification or share issue proceeds in the manner in which it would have proceeded if the conduct had not been engaged in
- (d) without limiting the generality of paragraph (c):
  - (i) an order prohibiting the exercise of voting or other rights attached to specified shares; or
  - (ii) an order directing a company not to make payment, or to defer making payment, of any amount or amounts due from the company in respect of specified shares; or
  - (iii) an order prohibiting the acquisition or disposal of, or of an interest in, specified shares; or
  - (iv) an order directing the disposal of, or of an interest in, specified shares; or
  - (v) an order directing a company not to register a transfer or transmission of specified shares; or
  - (vi) an order that an exercise of the voting or other rights attached to specified shares be disregarded; or
  - (vii) an order directing a company not to issue shares to a person who holds shares in the company, being shares that were proposed to be issued to the person because the person holds shares in the company or pursuant to an offer or invitation made or issued to the person because the person holds shares in the company.

- (2) Without limiting the Court's powers under Part 9.5, if, in a proceeding, the Court is satisfied that:
- (a) a person has engaged in conduct constituting a contravention of subclause 34(1); and
  - (b) a member of the company has suffered, or is likely to suffer, loss or damage because of that conduct;
- the Court may make the orders that it thinks are appropriate to compensate the member (in whole or in part) or to prevent or reduce the loss or damage, including:
- (c) an order directing the person or a person who was involved in the contravention to refund money or return property to the member
  - (d) an order directing the person or a person who was involved in the contravention to pay to the member the amount of the loss or damage
  - (e) an order listed in paragraph (1)(d).
- (3) An application for an order under this clause may be made by ASIC or a member of the company.

## **Part 6—Continued application of fundraising provisions of the Friendly Societies Code**

### **36 Friendly Societies Code to apply to offers of interests in benefit funds**

- (1) The following apply as a law of this jurisdiction as from the transfer date:
- (a) Divisions 2 and 3 of Part 4B of the Friendly Societies Code
  - (b) Division 2 of Part 1, and Division 1 of Part 4B, of that Code to the extent to which they provide for the interpretation of terms used in the Divisions referred to in paragraph (a)
  - (c) sections 28, 29 and 128 of that Code to the extent to which they apply for the purposes of the Divisions referred to in paragraph (a)
  - (d) the regulations in force immediately before the transfer date under Part 4B of that Code to the extent to which they were made for the purposes of the provisions referred to in paragraphs (a), (b) and (c)
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- (e) standards adopted by that Code for the purposes of the provisions referred to in paragraphs (a), (b) and (c).
- (2) The provisions referred to in subclause (1) apply as if:
- (a) references in the provisions to a society were references to a friendly society within the meaning of the *Life Insurance Act 1996*; and
  - (b) references to a benefit fund were references to an approved benefit fund within the meaning of the *Life Insurance Act 1996*; and
  - (c) references in the provisions to an SSA (whether of this jurisdiction or another jurisdiction) were references to ASIC; and
  - (d) references in the provisions to lodging a document were references to lodging the document with ASIC; and
  - (e) references in the provisions to the Code were references to this Law; and
  - (f) references in the provisions to Part 4B of the Code were references to the provisions applied by this clause; and
  - (g) references to a penalty of \$20,000 were references to a penalty of 200 penalty units; and
  - (h) references to a penalty of \$5,000 were references to a penalty of 50 penalty units; and
  - (i) references to a penalty of \$2,500 were references to a penalty of 25 penalty units; and
  - (j) references to a penalty of \$1,000 were references to a penalty of 10 penalty units; and
  - (k) subsection 135(2) of the Friendly Societies Code were omitted; and
  - (l) paragraph 137(1)(e) of the Friendly Societies Code were omitted and replaced with a provision that requires a disclosure document to contain any other information that ASIC requires to be included in the document; and
  - (m) subsection 137(3) of the Friendly Societies Code were omitted and replaced with a provision that requires each copy of a disclosure document to:
    - (i) state that the document has been lodged with ASIC; and
    - (ii) specify the date of lodgment; and
    - (iii) state that ASIC takes no responsibility as to the contents of the document.

- (3) If there is an inconsistency between:
- (a) the provisions of Division 2 of Part 1, or Division 1 of Part 4B, of the Friendly Societies Code; and
  - (b) the provisions of Chapter 1 of this Law;
- the provisions of the Code prevail for the purposes of interpreting the provisions applied by subclause (1).

## **Part 7—Transitional provisions**

### **37 Unclaimed money**

- (1) On and from the transfer date, section 414 applies to a sum or other property that, immediately before the transfer date, is covered by section 414 as applied by:
- (a) section 337 of the Financial Institutions Code of this jurisdiction; or
  - (b) section 399 of the Friendly Societies Code of this jurisdiction.
- (2) On and from the transfer date, section 544 applies to an amount of money that, immediately before the transfer date, is covered by section 544 as applied by:
- (a) section 342 of the Financial Institutions Code of this jurisdiction; or
  - (b) section 403 of the Friendly Societies Code of this jurisdiction.
- (3) Sections 414 and 544, as applied by this clause, apply as if:
- (a) references to Part 9.7 were references to the unclaimed money law of this jurisdiction; and
  - (b) references to the Commission or ASIC were references to the Minister administering the unclaimed money law of this jurisdiction.
- (4) In this clause:
- unclaimed money law*** means:
- (a) the *Unclaimed Money Act 1995* of New South Wales; or
  - (b) the **Unclaimed Moneys Act 1962** of Victoria; or
  - (c) Part 8 of the *Public Trustee Act 1978* of Queensland; or
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- (d) the *Unclaimed Money Act 1990* of Western Australia; or
- (e) the *Unclaimed Moneys Act 1891* of South Australia; or
- (f) the *Unclaimed Moneys Act 1918* of Tasmania; or
- (g) the *Unclaimed Moneys Act 1950* of the Australian Capital Territory; or
- (h) the *Companies (Unclaimed Assets and Moneys) Act* of the Northern Territory.

### **38 Modification by regulations**

- (1) The regulations may modify the operation of this Law (including the provisions applied by clause 36) in relation to:
  - (a) a company registered under clause 3; or
  - (b) a company that is permitted to use the expression ***building society***, ***credit union*** or ***credit society*** under section 66 of the *Banking Act 1959*; or
  - (c) a company that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
  - (d) a specified class of any of those companies.
- (2) Regulations made for the purposes of this clause may only modify this Law in relation to the following matters:
  - (a) issuing, cancelling or redeeming membership shares or redeemable preference shares
  - (b) inspection of the register of members required by section 169
  - (c) giving notice of a meeting of a company's members
  - (d) members' rights to request the directors to hold a general meeting or to move a resolution at a general meeting
  - (e) issuing share certificates for membership shares or redeemable preference shares, or numbering those shares
  - (f) the publication of the names and addresses of members in the annual return
  - (g) the report to members required by section 314
  - (h) disposing of securities in a company if the whereabouts of the holder of the securities is unknown as described in section 1343
  - (i) the treatment of members who hold shares jointly or who have jointly given a guarantee
  - (j) selective buy-backs.

- (3) Regulations made for the purposes of this clause may not:
  - (a) create an offence with a penalty greater than 10 penalty units; or
  - (b) increase the penalty for an existing offence; or
  - (c) substitute for an existing offence an offence with a penalty greater than the penalty for the existing offence; or
  - (d) modify an obligation, contravention of which will result in committing an offence, so as to make it more difficult to comply with.

### **39 Regulations may deal with transitional, saving or application matters**

- (1) The regulations may deal with matters of a transitional, saving or application nature relating to:
  - (a) the transfer of the registration of transferring financial institutions to this Law by this Schedule; or
  - (b) the amendments made by Schedule 3 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.
- (2) Without limiting subclause (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  - (a) by applying (with or without modifications) to the matter:
    - (i) provisions of a law of the Commonwealth, or of a State or Territory; or
    - (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
    - (iii) a combination of provisions referred to in subparagraphs (i) and (ii)
  - (b) by otherwise specifying rules for dealing with the matter
  - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of this Law.
- (3) Without limiting subclause (1) or (2), the regulations may provide for the continued effect, for the purposes of this Law, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a



provision of a previous governing Code of a transferring financial institution of this jurisdiction. In the case of an instrument, or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.

- (4) Without limiting subclause (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person in a specified class of persons:
  - (a) the identification of a thing done or instrument made, or a class of them, that is to continue to have effect
  - (b) the purpose for which a thing done or instrument made, or a class of them, is to continue to have effect
  - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (5) Without limiting subclause (1) or (2), the regulations may provide for the application of Chapter 5 of this Law or a similar law about external administration (in whole or in part and with or without modification) to a transferring financial institution of this jurisdiction if, immediately before the transfer date:
  - (a) the institution is under external administration (however described); and
  - (b) the provisions of Chapter 5 are not already applied to it, or in relation to it, by a law of this jurisdiction.
- (6) In this clause, a reference to a *law*, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.

#### **40 Court may resolve transitional difficulties**

- (1) If a difficulty arises in applying a provision of this Law to a transferring financial institution of this jurisdiction that is registered as a company under clause 3, the Court may, on the application of an interested person, make such orders as it thinks proper to remove the difficulty.
- (2) An order under this clause has effect despite anything in a provision of this Law.
- (3) This clause has effect subject to the Constitution.

## Part 2—Consequential amendments

### 2 Section 9 (definition of *AFIC Codes*)

Repeal the definition.

### 3 Section 9

Insert:

*APRA* means the Australian Prudential Regulation Authority.

### 4 Section 9 (definition of *building society*)

Repeal the definition.

### 5 Section 9 (definition of *building society special services provider*)

Repeal the definition.

### 6 Section 9 (paragraph (a) of the definition of *constitution*)

Repeal the paragraph, substitute:

- (a) a company's constitution, which (where relevant) includes rules and consequential amendments that are part of the company's constitution because of the *Life Insurance Act 1995*; or

### 7 Section 9 (at the end of the definition of *constitution*)

Add:

Note: The *Life Insurance Act 1995* has rules about how benefit fund rules become part of a company's constitution. They override this Law. See Subdivision 2 of Division 4 of Part 2A of that Act.

### 8 Section 9 (definition of *credit union*)

Repeal the definition.

### 9 Section 9 (definition of *credit union special services provider*)

Repeal the definition.

### 10 Section 9 (definition of *financial institution*)

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Repeal the definition.

**11 Section 9 (definition of *Financial Institutions Codes*)**

Repeal the definition.

**12 Section 9 (paragraph (b) of the definition of *public company*)**

Omit “a financial institution or”.

**13 Section 9 (definition of *registrable Australian body*)**

Omit “a financial institution or”.

**14 Section 9 (definition of *share*)**

Repeal the definition.

**15 Section 9 (definition of *special services provider*)**

Repeal the definition.

**16 Section 9 (definition of *withdrawable share*)**

Repeal the definition.

**17 Subsection 57A(3)**

Repeal the subsection.

**18 Paragraph 66A(1)(c)**

Repeal the paragraph.

**19 Paragraph 66A(2A)(e)**

Repeal the paragraph.

**20 Paragraph 66A(2)(b)**

Repeal the paragraph.

**21 Paragraph 66A(2)(g)**

Repeal the paragraph.

**22 Subsection 66A(3)**

Omit “, other than a financial institution,”.

**23 Paragraph 66A(4)(a)**

Omit “that is not a financial institution”.

**24 Paragraph 66A(6)(a)**

Repeal the paragraph.

**25 Paragraph 66A(7)(a)**

Omit “that is not a financial institution”.

**26 Paragraph 69A(4)(c)**

Repeal the paragraph.

**27 Paragraph 69A(5)(a)**

Omit “that is not a financial institution”.

**28 After subsection 92(2)**

Insert:

(2A) In Parts 7.3 to 7.6 (inclusive):

*securities* includes an interest in a friendly society benefit fund.

**29 Part 1.2B**

Repeal the Part.

**30 Subsection 136(1) (note)**

Omit “Note”, substitute “Note 1”.

**31 At the end of subsection 136(1)**

Add:

Note 2: The *Life Insurance Act 1995* has rules about how benefit fund rules become part of a company’s constitution and about amending those rules. They override this Law. Consequential amendments to the rest of the company’s constitution can be made under that Act or this Law. See Subdivision 2 of Division 4 of Part 2A of that Act.

**32 At the end of subsection 137(1)**

Add:

Note: The *Life Insurance Act 1995* has rules about when approved benefit fund rules (which become part of the company’s constitution), and

amendments to them, take effect. It also has rules about when consequential amendments to the rest of the company's constitution made under that Act take effect. They override this Law.  
See Subdivision 2 of Division 4 of Part 2A of that Act.

### **33 At the end of section 147**

Add:

- (4) The regulations may specify that a particular unacceptable name is available to a company if:
- (a) a specified public authority, or an instrumentality or agency of the Crown in right of the Commonwealth, a State or the Capital Territory has consented to the company using or assuming the name; or
  - (b) the company is otherwise permitted to use or assume the name by or under:
    - (i) an Act of the Commonwealth, a State or the Capital Territory; or
    - (ii) a specified provision of an Act of the Commonwealth, a State or the Capital Territory.

The consent of the authority, instrumentality or agency may be given subject to conditions.

Note: If the consent is withdrawn, the company ceases to be permitted or the company breaches a condition, ASIC may direct it to change its name under section 158.

### **34 At the end of subsection 158(1)**

Add:

- ; or (c) a consent given under subsection 147(4) to use or assume the name has been withdrawn; or
- (d) the company has breached a condition on a consent given under subsection 147(4); or
- (e) the company ceases to be permitted to use or assume the name (as referred to in paragraph 147(4)(b)).

### **35 Subsection 169(8)**

Repeal the subsection, substitute:

*Joint holders*

- (8) For the purposes of this section:

(a) 2 or more persons who jointly hold shares in the company or interests in the scheme are taken to be a single member of the company or scheme in relation to those shares or interests; and

(b) 2 or more persons who have given a guarantee jointly are taken to be a single member of the company.

They may also be members of the company or scheme because of shares or interests that they hold, or a guarantee that they have given, in their own right or jointly with others.

### **36 After Part 2F.2 (heading)**

Insert:

Note: This Part does not apply to the adoption or amendment of benefit fund rules or to consequential amendments to the rest of the company's constitution made under the *Life Insurance Act 1995*, see Subdivision 2 of Division 4 of Part 2A of that Act.

### **37 Subsection 249A(2)**

Omit "If a share is held jointly, each of the joint members must sign", substitute "Each member of a joint membership must sign".

### **38 Subsection 249J(1)**

Omit "If a share is held jointly, notice need only be given to 1 of the members", substitute "Notice need only be given to 1 member of a joint membership".

### **39 Paragraph 461(1)(j)**

Omit "the Australian Prudential Regulation Authority", substitute "APRA".

### **40 Paragraph 462(2)(h)**

Omit "the Australian Prudential Regulation Authority", substitute "APRA".

### **41 Subsection 462(3)**

Omit "the Australian Prudential Regulation Authority", substitute "APRA".

### **42 Subsection 482(1)**

Omit "on the application of the liquidator or of a creditor or contributory", substitute "on application".

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**43 After subsection 482(1)**

Insert:

- (1A) An application may be made by:
- (a) in any case—the liquidator, or a creditor or contributory, of the company; or
  - (b) in the case of a company registered under the *Life Insurance Act 1995*—APRA.

#### 44 After subsection 511(1)

Insert:

- (1A) APRA may apply to the Court under subsection (1) in relation to a company that is a friendly society within the meaning of the *Life Insurance Act 1995* and which may be wound up voluntarily under subsection 180(2) of that Act.

**45 At the end of section 601DC**

Add:

- (4) The regulations may specify that a particular unacceptable name is available to a registrable Australian body or foreign company if:
- (a) a specified public authority, or an instrumentality or agency of the Crown in right of the Commonwealth, a State or the Capital Territory has consented to the body or company using or assuming the name; or
  - (b) the body or company is otherwise permitted to use or assume the name by or under a specified provision of an Act of the Commonwealth, a State or the Capital Territory.

The consent of the authority, instrumentality or agency may be given subject to conditions.

**Note:** If the consent is withdrawn, the body or company ceases to be permitted or it breaches a condition, ASIC may direct it to change its name under section 601DJ.

**46 At the end of subsection 601DJ(1)**

Add:

- ; or (c) a consent given under subsection 601DC(4) to use or assume the name has been withdrawn; or
- (d) the body or company has breached a condition on a consent given under subsection 601DC(4); or

- (e) the body or company ceases to be permitted to use or assume the name (as referred to in paragraph 601DC(4)(b)).

**47 Paragraph 601KA(5)(a)**

Omit “, building society or other financial institution”.

**48 Division 5 of Part 7.11**

Repeal the Division.

**49 Subsection 1047(2AA)**

Repeal the subsection.

**50 Section 1083A**

Repeal the section.

**51 Subsection 1097(1) (paragraph (aa) of the definition of *eligible body*)**

Repeal the paragraph.

**52 Paragraph 1301(1)(a)**

Omit “or financial institution”.

**53 Paragraph 1301(1)(d)**

Omit “or financial institution”.

**54 Subsection 1301(2)**

Omit “or financial institution”.

**55 Subsection 1301(3)**

Omit “or financial institution”.

**56 Subsection 1301(4)**

Omit “or financial institution” (wherever occurring).

**57 Subsection 1302(7)**

Omit “or a financial institution”.

**58 Subsection 1306(3)**



Omit “or financial institution” (wherever occurring).

**59 Subsection 1306(4)**

Omit “or financial institution” (wherever occurring).

**60 At the end of section 1317DA**

Add:  
; Subclause 29(6) of Schedule 4.

**61 After paragraph 1317E(1)(j)**

Insert:  
(k) subclause 29(6) of Schedule 4.

**62 At the end of Division 11 of Part 11.2**

Add:

**Division 11A—Transfer of financial institutions and  
friendly societies by the Financial Sector Reform  
(Amendments and Transitional Provisions) Act  
(No. 1) 1999**

**1465A Transfer of financial institutions and friendly societies**

Schedule 4 deals with the transfer of the registration of financial institutions and friendly societies to this Law.

## **Part 3—Other minor amendments**

### **63 Paragraph 437D(3)(a)**

Omit “bank”, substitute “ADI”.

Note: The heading to section 3 is altered by omitting “**Object**” and substituting “**Objects**”.

Insert:

- (1A) An additional object of this Act is to protect the interests of persons entitled to other kinds of benefits provided in the course of carrying on life insurance business (including business that is declared to be life insurance business).

Omit “this object”, substitute “these objects”.

Add:

- (3) Generally, this Act achieves these objects by provisions applying to all life companies. However, there are a number of special provisions that apply only to friendly societies (see in particular Part 2A).

Omit “within the meaning of section 67 of the *National Health Act 1953*”.

Add:

**Note:** Declarations under sections 12A and 12B have the effect of extending the kinds of business that are life insurance business for the purposes of this Act.

Omit “friendly society or”.

## **8 At the end of subsection 11(3)**

Add:

Note: This subsection has effect subject to sections 12A and 12B (under which certain business may be declared to be life insurance business for the purposes of this Act).

## **9 Subsection 12(2)**

Repeal the subsection, substitute:

- (2) APRA may, at the request of a life company, declare, in writing, that life insurance business carried on by the life company and included in one class of life insurance business is to be treated, for the purposes of this Act, as if it were included in the other class of life insurance business.

## **10 After section 12**

Insert:

### **12A Declarations that insurance or annuity business is life insurance business**

- (1) APRA may, on the application of a company, declare, in writing, that insurance business (other than health insurance business or business of insurance against loss of, or damage to, property) or business relating to the payment of annuities:
  - (a) that is carried on by the company; or
  - (b) that the company proposes to carry on;is to be treated, for the purposes of this Act, as if it were life insurance business.
- (2) The application must comply with any applicable requirements in Prudential Rules.
- (3) APRA must only make the declaration if it is satisfied that:
  - (a) the company is a life company; or
  - (b) the company is not currently a life company, but the only business it proposes to carry on if the declaration is made is:
    - (i) the business in respect of which the declaration is sought; or
    - (ii) that business and other business that will be, or is likely to be declared to be, life insurance business.

- (4) In deciding whether to make the declaration, APRA may also have regard to the following matters:
  - (a) whether the business in respect of which the declaration is sought is similar in nature to other life insurance business;
  - (b) whether it would be appropriate for the business to be regulated under this Act;
  - (c) whether it would be more appropriate for the business to be regulated under some other law (for example, the *Insurance Act 1973*);
  - (d) the tax treatment of benefits provided in the course of the business;
  - (e) if the company is not registered under this Act—whether the company would be able to be registered under this Act;
  - (f) any other matter that APRA considers is relevant.
- (5) The declaration must also state the class of life insurance business in which the business is to be treated as being included.
- (6) If APRA makes a declaration:
  - (a) this Act has effect accordingly; and
  - (b) APRA must give a copy of the declaration to the company.

## 12B Declarations that other financial business is life insurance business

- (1) This section applies to business consisting of the provision of eligible financial benefits. For this purpose, an ***eligible financial benefit*** is a benefit in relation to which the following conditions are satisfied:
- (a) the benefit is to be provided by a company to a person in accordance with a contract;
  - (b) the person's entitlement to the benefit is conditional on amounts being paid in accordance with the contract;
  - (c) the benefit is an amount of money (and is not, for example, the provision of a service or facility);
  - (d) the benefit is not an excluded benefit under any of the following subparagraphs:
    - (i) the benefit is an excluded benefit if the contract is entered into in the course of banking business, as

defined in section 5 of the *Banking Act 1959*, carried on by the company;

- (ii) the benefit is an excluded benefit if the right to the benefit constitutes an interest in a registered scheme, as defined in section 9 of the Corporations Law;
- (iii) the benefit is an excluded benefit if the right to the benefit constitutes an interest in a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme, as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993*;
- (iv) the benefit is an excluded benefit if it is provided under a contract of insurance entered into in the course of carrying on health insurance business;
- (v) the benefit is an excluded benefit if it is a benefit of a kind specified in regulations for the purposes of this subparagraph.

(2) APRA may, on the application of a company, declare, in writing, that business:

(a) that:

- (i) is carried on by the company; and
- (ii) is business to which this section applies; or

(b) that:

- (i) the company proposes to carry on; and
- (ii) will, when it is carried on, be business to which this section applies;

is to be treated, for the purposes of this Act, as if it were life insurance business.

(3) The application must comply with any applicable requirements in Prudential Rules.

(4) APRA must only make the declaration if it is satisfied that:

- (a) the company is a life company; or
- (b) the company is not currently a life company, but the only business it proposes to carry on if the declaration is made is:
  - (i) the business in respect of which the declaration is sought; or

- (ii) that business and other business that will be, or is likely to be declared to be, life insurance business.
- (5) In deciding whether to make the declaration, APRA may also have regard to the following matters:
  - (a) whether the business in respect of which the declaration is sought is similar in nature to other life insurance business;
  - (b) whether it would be appropriate for the business to be regulated under this Act;
  - (c) whether it would be more appropriate for the business to be regulated under some other law (for example, Chapter 5C of the Corporations Law);
  - (d) the tax treatment of benefits provided in the course of the business;
  - (e) if the company is not registered under this Act—whether the company would be able to be registered under this Act;
  - (f) any other matter that APRA considers is relevant.
- (6) The declaration must also state the class of life insurance business in which the business is to be treated as being included.
- (7) If APRA makes a declaration:
  - (a) this Act has effect accordingly; and
  - (b) APRA must give a copy of the declaration to the company.

## 11 After Part 2

Insert:

## Part 2A—Special provisions relating to life companies that are friendly societies

## Division 1—Preliminary

## 16A Overview

- (1) The concept of a friendly society is defined for the purposes of this Act in section 16C.
- (2) A friendly society will be a life company if it carries on life insurance business in Australia.

- (3) In working out whether a friendly society does carry on life insurance business (within the meaning of section 11), the effect of Division 3 must be taken into account. The effect of any relevant declarations under section 12A or 12B must also be taken into account.
- (4) This Act applies to life companies that are friendly societies subject to:
  - (a) the modified operation of key concepts set out in Division 3; and
  - (b) the modifications relating to statutory funds set out in Division 4; and
  - (c) any other modifications set out in Division 5 or in regulations for the purposes of section 16ZC.
- (5) In addition to the modifications set out in this Part and in regulations for the purposes of section 16ZC, this Act includes some other special provisions in relation to friendly societies. See in particular:
  - (a) various provisions in Division 2 of Part 6 about auditors of friendly societies; and
  - (b) various provisions in Division 2 of Part 8 about winding up of friendly societies.
- (6) Unless a contrary intention appears, a reference in this Act to a particular provision of this Act also includes, if that provision has been modified as mentioned in subsection (4), a reference to that provision as so modified.

Note: So, for example, if a provision to which section 125A or 125B applies has been modified, an exemption order under that section may be made in relation to the provision as so modified.

## 16B Definitions

- (1) For the purposes of this Act:

***adequately adopted***, in relation to benefit fund rules or an amendment of benefit fund rules, has the meaning given by subsection (2).

***approved benefit fund*** means a benefit fund for which there are approved benefit fund rules.



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***approved benefit fund rules*** means rules (as amended from time to time by amendments in force under section 16T) in relation to which the following conditions are satisfied:

- (a) an approval under section 16L is in force in relation to the rules; and
- (b) the rules are in force under section 16N.

***benefit fund*** means a fund:

- (a) that is established to provide benefits in accordance with rules of a friendly society; and
- (b) that is established in the records of the friendly society.

***benefit fund rules***, in relation to a benefit fund, means the rules referred to in paragraph (a) of the definition of ***benefit fund***.

***friendly society*** has the meaning given by section 16C.

***jointly regulated friendly society*** has the meaning given by subsection 16ZB(2).

- (2) For the purposes of this Act, benefit fund rules of a company have, or an amendment of benefit fund rules of a company has, been ***adequately adopted*** if:

- (a) the rules have, or the amendment has, been adopted by or on behalf of the company, or by or on behalf of the members or a class of the members of the company, in a way set out in Prudential Rules for the purposes of this subsection; and
- (b) APRA considers that adoption of the rules or the amendment in that way adequately takes into account the interests of members of the company.

APRA may consult ASIC in considering the matters referred to in paragraph (b).

## **Division 2—Friendly societies and how this Act applies to them**

### **16C What is a friendly society?**

- (1) For the purposes of this Act, a ***friendly society*** is a body:
    - (a) that is registered as a company under the Corporations Law of a State or an internal Territory; and
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- (b) that is either:
  - (i) taken to be registered under this Act because of item 11 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; or
  - (ii) covered by a determination under subsection (2).
- (2) APRA may, in writing, determine that a specified body that is registered as a company under the Corporations Law of a State or an internal Territory is a friendly society for the purposes of this Act.

Note: A company may be specified by name, by inclusion in a specified class or in some other way.
- (3) APRA may, in writing, vary or revoke a determination made under subsection (2).
- (4) APRA must comply with any applicable requirements in Prudential Rules relating to the circumstances in which the powers under subsections (2) and (3) may be exercised.
- (5) If APRA:
  - (a) makes a determination under subsection (2); or
  - (b) varies or revokes a determination under subsection (3);APRA must cause notice of that action to be published in the *Gazette*. If the action relates to a particular company, otherwise than because the company is included in a specified class of companies, APRA must also give the company written notice of the action.
- (6) If APRA:
  - (a) makes a determination under subsection (2); or
  - (b) varies or revokes a determination under subsection (3);APRA must also give notice of that action to ASIC.

## **16D Act applies to friendly societies in accordance with this Part**

This Act applies to a friendly society subject to the provisions of this Part.

Note: As noted in subsection 16A(5), this Act also contains some other special provisions in relation to friendly societies.

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**16E Restriction on use of expression *friendly society***

- (1) A body corporate is guilty of an offence if:
- (a) it assumes or uses, in Australia, the expression *friendly society* in relation to a financial business carried on by the body corporate (whether or not in Australia); and
  - (b) it is not a friendly society; and
  - (c) APRA did not consent to that assumption or use of that expression.

Maximum penalty: 50 penalty units.

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

- (2) If a body corporate assumes or uses the expression *friendly society* in circumstances that give rise to the body corporate committing an offence against subsection (1), the body corporate is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
  - (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

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

- (3) A consent may be expressed to apply to a particular body corporate or to bodies corporate included in a class of bodies corporate.
- (4) APRA may, at any time:
- (a) impose conditions, or additional conditions, on a consent; or
  - (b) vary or revoke conditions imposed on a consent; or
  - (c) revoke a consent.
- (5) The form of the granting of a consent, or the taking of action under subsection (4) in relation to a consent, is to be as follows:
- (a) if the consent applies to a particular body corporate—notice in writing served on the body corporate;
  - (b) if the consent applies to a class of bodies corporate—notice in writing published in the *Gazette*.

(6) If APRA:

(a) grants a consent; or

(b) takes action under subsection (4) in relation to a consent;

APRA must also give ASIC notice of the granting of the consent or the taking of that action.

(7) A body corporate is guilty of an offence if:

(a) it has been given a consent under this section; and

(b) it contravenes a condition to which the consent is subject.

Maximum penalty: 50 penalty units.

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

(8) If a body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (7), the body corporate is guilty of an offence against that subsection in respect of:

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

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

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

(9) In this section:

***financial business*** means a business that:

(a) consists of, or includes, the provision of financial services; or

(b) relates, in whole or in part, to the provision of financial services.

## Division 3—Modified operation of key concepts

### 16F Issue, ownership etc. of policies

*New interests in benefit funds*

(1) A friendly society is taken to issue a policy to a person when it accepts an application by the person for an interest in a benefit

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fund of the friendly society in accordance with the benefit fund rules. However, acceptance of an application for an increase to, or a continuation of, an existing interest in a benefit fund does not constitute the issue of a policy.

*Interests in benefit funds existing as at the transfer date*

- (2) An interest that a person holds in a benefit fund of a friendly society on the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* is taken to be a policy issued to the person by the friendly society.

*Terms etc. of the policy*

- (3) If subsection (1) or (2) applies, then:
- (a) the benefit fund rules are taken to be the terms of the policy referred to in that subsection; and
  - (b) the owner of the policy is taken to be:
    - (i) the person referred to in that subsection; or
    - (ii) if that person's rights to the interest in the benefit fund have been assigned under this Act or transferred by the operation of the benefit fund rules—the person who has those rights; and
  - (c) an amount that is required or permitted, by the benefit fund rules, to be paid in respect of those rights is taken to be a premium in respect of the policy; and
  - (d) the policy is taken to be referable to the benefit fund.

Note 1: Approved benefit fund rules have effect as a contract (see section 16Z).

Note 2: The policy that a friendly society is taken by subsection (1) or (2) to issue or to have issued will, depending on the terms of the benefit fund rules, be:

- (a) a life policy (see section 9); or
- (b) a sinking fund policy (see the definition in the Schedule); or
- (c) a section 12A or 12B policy (see the definition in the Schedule); or
- (d) some other kind of policy.

- (4) Subsections (1), (2) and (3) have effect:
- (a) for the purposes of this Act; and

(b) for the purposes of all other laws of the Commonwealth, subject to the expression of a contrary intention.

(5) In this section:

*policy* is not limited to a life policy, a sinking fund policy or a section 12A or 12B policy.

## **Division 4—Modified operation of provisions relating to statutory funds**

### **Subdivision 1—Modifications**

#### **16G Act generally applies as if references to a statutory fund were references to an approved benefit fund**

(1) Subject to subsection (2), this Act applies to a friendly society as if each reference to a statutory fund were instead a reference to an approved benefit fund.

Note: An *approved benefit fund* is a benefit fund for which there are approved benefit fund rules (see the definition in section 16B). Benefit fund rules are *approved benefit fund rules* if an approval under section 16L is in force in relation to the rules and the rules are in force under section 16N.

(2) Subsection (1) has effect subject to:

- (a) the other provisions of this Subdivision; and
- (b) the expression of a contrary intention in a particular provision; and
- (c) the expression of a contrary intention in a particular provision of regulations for the purposes of section 16ZC.

(3) Other laws of the Commonwealth have effect in relation to friendly societies as if any reference in such a law to a statutory fund of a life company also included a reference to an approved benefit fund of a friendly society, subject to the expression of a contrary intention.

#### **16H Modification of section 34**

Section 34 has effect in relation to a friendly society as if subsections (2), (3) and (4) were omitted and the following subsections were substituted:

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- (2) Assets or investments obtained by the application of assets (other than money) of an approved benefit fund are themselves assets of the fund. If an investment is a joint investment (see subsection (4A)), the asset is an asset of each of the contributing funds in proportion to their respective contributions.
  - (3) Subject to subsections (4) and (4A), a friendly society must keep assets of an approved benefit fund distinct and separate from assets of other approved benefit funds and from all other money, assets or investments of the friendly society.
  - (4) A friendly society may maintain a single bank account for money that constitutes assets of 2 or more approved benefit funds if the account is maintained in accordance with Prudential Rules.
  - (4A) A friendly society may invest assets of 2 or more approved benefit funds in a single investment if:
    - (a) the approved benefit fund rules of each of those funds provide for the assets of the fund to be invested together with the assets of the other fund or funds; and
    - (b) the investment complies with the applicable requirements (if any) in Prudential Rules relating to assets of one fund being invested together with assets of another fund or funds.

The investment is referred to as a *joint investment*, each of the funds is referred to as a *contributing fund* and the assets of a fund that are invested in the investment are referred to as the fund's *contribution*.

#### **16I Modification of section 38**

Section 38 has effect in relation to a friendly society as if the following subsection were added at the end of the section:

- (8) Nothing in this section authorises a friendly society to apply assets of an approved benefit fund, or to mortgage or charge such assets, otherwise than as provided by the approved benefit fund rules.

#### **16J Modification of section 43**

Section 43 has effect in relation to a friendly society as if the following paragraph were inserted after paragraph (3)(b):

- (ba) nothing in this Act authorises a friendly society to make an investment of assets of an approved benefit fund unless:

- (i) the investment is of a kind provided for by the approved benefit fund rules; and
- (ii) the investment complies with the requirements (if any) in Prudential Rules;

### **16K Modification of section 45**

Section 45 has effect in relation to a friendly society as if the following subsection were added at the end of the section:

- (5) In this section as it applies to a company that is a friendly society, a reference to an approved benefit fund includes a reference to the management fund of the society. The *management fund* of the society is the fund of the society that consists of the assets and liabilities of the society that do not form part of an approved benefit fund of the society.

## **Subdivision 2—Approved benefit fund rules**

### **16L Approval of benefit fund rules**

- (1) A body that is registered as a company under the Corporations Law of a State or an internal Territory may apply in writing to APRA for approval of benefit fund rules for a benefit fund operated or to be operated by the company.

Note 1: The application may also include an application for approval of consequential amendments of the company's constitution (see section 16U).

Note 2: Rules of a jointly regulated friendly society relating to its health insurance business are not covered by this Subdivision.

- (2) The application must be accompanied by a copy of the benefit fund rules and must comply with any applicable requirements in Prudential Rules.
- (3) APRA must, in writing, approve the benefit fund rules if:
  - (a) application has been made for approval of the rules in accordance with subsection (2); and
  - (b) APRA is satisfied that:
    - (i) the carrying on of the activities to which the rules relate constitutes the carrying on of life insurance business; and



- (ii) the rules are consistent with this Act; and
- (c) APRA is satisfied that the rules have been adequately adopted.

APRA must give the company written notice of its decision whether to approve the rules.

- (4) The company is guilty of an offence if:
- (a) APRA has approved the benefit fund rules; and
  - (b) Prudential Rules require the company to notify some or all of its members of the rules; and
  - (c) the company does not notify those members of the rules in accordance with that requirement.

Maximum penalty for contravention of this subsection: 50 penalty units.

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

## 16M Lodging of benefit fund rules with ASIC after approval by APRA

- (1) This section applies if, under section 16L, APRA approves benefit fund rules pursuant to an application made by a company.
- (2) The company must lodge a copy of the rules with ASIC in accordance with any requirements determined by ASIC.
- (3) The company is guilty of an offence if it does not comply with subsection (2) within 14 days after the day on which APRA approved the rules.

Maximum penalty for contravention of this subsection: 5 penalty units.

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

## 16N When benefit fund rules approved by APRA come into force

Benefit fund rules approved by APRA under section 16L come into force on the later of the following days:

- (a) the day on which a copy of the rules is lodged with ASIC;

- (b) the day (if any) specified in the rules as the day on which they are to come into force;
- (c) if the company that applied for approval of the rules was not a friendly society on the day on which the application was made—the day on which the company becomes a friendly society.

**16O Benefit fund rules approved by APRA and in force form part of company's constitution**

Benefit fund rules that:

- (a) have been approved by APRA under section 16L; and
- (b) have come into force under section 16N;

are, by force of this section, part of the constitution of the company that applied for approval of the rules.

**16P Amendment of approved benefit fund rules not effective unless approved by APRA**

- (1) An amendment of approved benefit fund rules of a friendly society is effective if, and only if:
  - (a) the amendment has been approved by APRA under subsection 16Q(3) and is in force under section 16T; or
  - (b) the amendment is determined by APRA under subsection 16R(4) and is in force under section 16T.
- (2) Without limiting subsection (1), an amendment of approved benefit fund rules that is in force under section 16T takes effect, by force of this section, as an amendment of the constitution of the friendly society.

**16Q Amendment of approved benefit fund rules on initiative of friendly society**

- (1) A friendly society may apply in writing for approval of a proposed amendment of approved benefit fund rules of the friendly society.

Note: The application may also include an application for approval of consequential amendments of the company's constitution (see section 16U).

- (2) The application must be accompanied by a copy of the amendment and must comply with any applicable requirements in Prudential Rules.
- (3) APRA must, in writing, approve the amendment if:
  - (a) application has been made for approval of the amendment in accordance with subsection (2); and
  - (b) APRA is satisfied that the rules, as proposed to be amended, will satisfy the requirements of paragraph 16L(3)(b); and
  - (c) APRA is satisfied that the amendment has been adequately adopted.

APRA must give the friendly society written notice of its decision whether to approve the amendment.

- (4) The friendly society is guilty of an offence if:
  - (a) APRA has approved the amendment; and
  - (b) Prudential Rules require the friendly society to notify some or all of its members of the amendment; and
  - (c) the friendly society does not notify those members of the amendment in accordance with that requirement.

Maximum penalty for contravention of this subsection: 50 penalty units.

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

**16R Amendment of approved benefit fund rules as required by APRA**

*When this section applies*

- (1) This section applies if APRA considers that approved benefit fund rules of a friendly society are deficient because they are inconsistent with this Act.

*APRA may give notice requiring amendment*

- (2) APRA may, by written notice given to the friendly society, require the friendly society:
  - (a) to propose an amendment of the approved benefit fund rules, to rectify the deficiency, in accordance with requirements

specified in, or determined in accordance with, the notice;  
and

(b) to submit the amendment for APRA's approval.

The notice must specify a reasonable period for the submission of the amendment.

*Compliance with notice—submission of amendment for approval under section 16Q*

- (3) To submit an amendment for APRA's approval, the friendly society must apply in writing to APRA for approval of the amendment under section 16Q.

*Non-compliance with notice—APRA's power to determine amendment*

- (4) If:

- (a) the friendly society submits an amendment for APRA's approval before the end of the period specified in the notice, but APRA refuses to approve the amendment under section 16Q; or  
(b) the friendly society fails to submit an amendment for APRA's approval before the end of that period;

APRA may, in writing, determine an amendment of the rules to rectify the deficiency.

*Non-compliance with notice—notifying friendly society of amendment determined*

- (5) If APRA determines an amendment of the approved benefit fund rules under subsection (4), APRA must immediately give the friendly society written notice of the amendment.

*Non-compliance with notice—notifying members of amendment*

- (6) The friendly society is guilty of an offence if:

- (a) APRA gives the friendly society notice of an amendment of the benefit fund rules that APRA has determined; and  
(b) Prudential Rules require the friendly society to notify some or all of its members of the amendment; and  
(c) the friendly society does not notify those members of the amendment in accordance with that requirement.
-

Maximum penalty for contravention of this subsection: 50 penalty units.

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

**16S Lodging of amendment of benefit fund rules with ASIC after approval by APRA**

- (1) This section applies if, under section 16Q, APRA approves an amendment of benefit fund rules lodged by a friendly society.
- (2) The friendly society must lodge a copy of the amendment with ASIC in accordance with any requirements determined by ASIC.
- (3) The friendly society is guilty of an offence if it does not comply with subsection (2) within 14 days after the day on which APRA approved the amendment.

Maximum penalty for contravention of this subsection: 5 penalty units.

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

**16T When amendment of benefit fund rules approved or determined by APRA come into force**

An amendment of approved benefit fund rules:

- (a) approved by APRA under section 16Q; or
- (b) determined by APRA under section 16R;

comes into force on the later of the following days:

- (c) the day on which a copy of the amendment is lodged with ASIC;
- (d) the day (if any) specified in the amendment as the day on which it is to come into force.

**16U Approval of consequential amendments of company's constitution**

- (1) An application:

(a) by a company under section 16L for approval of benefit fund rules; or

(b) by a company under section 16Q for approval of a proposed amendment of approved benefit fund rules;

may also include an application for approval of proposed amendments (the *consequential amendments*) of the constitution of the company that are consequential on the proposed benefit fund rules or amendment of benefit fund rules.

Note: This covers applications by friendly societies, all of which are companies.

(2) The application for approval of the consequential amendments must be accompanied by a copy of the consequential amendments and must comply with any applicable requirements in Prudential Rules.

(3) APRA may approve the consequential amendments if APRA is satisfied that the changes proposed to be made by the consequential amendments:

(a) are consequential on the proposed benefit fund rules or amendment of benefit fund rules; and

(b) do not also deal with other matters.

APRA may consult ASIC in considering the matters referred to in paragraphs (a) and (b). APRA must give the company written notice of its decision whether to approve the consequential amendments.

(4) The company is guilty of an offence if:

(a) APRA has approved the consequential amendments; and

(b) Prudential Rules require the company to notify some or all of its members of the consequential amendments; and

(c) the company does not notify those members of the consequential amendments in accordance with that requirement.

Maximum penalty for contravention of this subsection: 50 penalty units.

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

## 16V Consequential amendments of constitution as required by APRA

*When this section applies*

- (1) This section applies if APRA considers that the constitution of a company is deficient because, as a result of the adoption or amendment of approved benefit fund rules of the company, the constitution is inconsistent with those rules.

*APRA may give notice requiring amendments*

- (2) APRA may, by written notice given to the company, require the company:
  - (a) to propose consequential amendments to its constitution, to rectify the deficiency, in accordance with requirements specified in, or determined in accordance with, the notice; and
  - (b) to submit the amendments for APRA's approval.

The notice must specify a reasonable period for the submission of the amendments.

### *Compliance with notice—submission of amendments for approval*

- (3) To submit consequential amendments for APRA's approval, the company must apply in writing to APRA for approval of the amendments under this subsection. The application must be accompanied by a copy of the amendments and must comply with any applicable requirements in Prudential Rules.

### Approval of submitted amendments

- (4) APRA may approve the consequential amendments if APRA is satisfied that:
- (a) an application has been made for approval of the amendments in accordance with subsection (3); and
  - (b) the amendments rectify the deficiency referred to in subsection (1).

APRA must give the company written notice of its decision whether to approve the consequential amendments.

*Non-compliance with notice—APRA's power to determine amendments*

- (5) If:
- (a) the company submits consequential amendments for APRA's approval before the end of the period specified in the notice, but APRA refuses to approve the amendments under subsection (4); or
  - (b) the company fails to submit consequential amendments for APRA's approval before the end of that period;
- APRA may, in writing, determine consequential amendments of the constitution to rectify the deficiency.

*Non-compliance with notice—notifying company of amendments determined*

- (6) If APRA determines consequential amendments of the constitution under subsection (5), APRA must immediately give the company written notice of the amendments.

*Notifying members of amendments*

- (7) The company is guilty of an offence if:
- (a) APRA has either:
    - (i) approved consequential amendments under subsection (4); or
    - (ii) given the company notice of consequential amendments that APRA has determined under subsection (5); and
  - (b) Prudential Rules require the company to notify some or all of its members of the consequential amendments; and
  - (c) the company does not notify those members of the consequential amendments in accordance with that requirement.

Maximum penalty for contravention of this subsection: 50 penalty units.

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



## 16W Lodging of consequential amendments with ASIC after approval by APRA

- (1) This section applies if, under subsection 16U(3) or subsection 16V(4), APRA approves consequential amendments of the constitution of a company pursuant to an application by the company.
- (2) The company must lodge a copy of the consequential amendments with ASIC in accordance with any requirements determined by ASIC.
- (3) The company is guilty of an offence if it does not comply with subsection (2) within 14 days after the day on which APRA approved the consequential amendments.

Maximum penalty for contravention of this subsection: 5 penalty units.

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

**16X When consequential amendments approved or determined by APRA come into force**

Consequential amendments:

- (a) approved by APRA under subsection 16U(3) or subsection 16V(4); or
- (b) determined by APRA under subsection 16V(5);
- come into force on the later of the following days:
- (c) the day on which a copy of the amendments is lodged with ASIC;
- (d) the day (if any) specified in the amendments as the day on which they are to come into force.

**16Y Consequential amendments approved by APRA and in force  
take effect as amendments of company's constitution**

A consequential amendment of a company's constitution that is in force under section 16X takes effect, by force of this section, as an amendment of the constitution of the company.

### **16Z Contractual effect of approved benefit fund rules and policies**

- (1) Approved benefit fund rules of a friendly society have effect as a contract between the friendly society and each person who is, because of section 16F, taken to be the owner of a policy referable to the benefit fund.
- (2) Without limiting the generality of subsection (1), a policy that is, because of section 16F, taken to be issued by a friendly society has effect, and may be enforced, as a contract between:
  - (a) the person who is, because of that section, taken to be the owner of the policy; and
  - (b) either:
    - (i) the friendly society that is taken to have issued the policy; or
    - (ii) if that friendly society's liabilities under the policy have been transferred or assigned to another company—that other company.

### **Division 5—Other modifications**

#### **16ZA Assignment of an interest in a benefit fund that is, because of section 16F, taken to be a policy**

An assignment of an interest in a benefit fund that is, because of section 16F, taken to be a policy is taken to satisfy the requirements of subsection 200(2) if:

- (a) the relevant benefit fund rules set out the requirements for the assignment to take place; and
- (b) the assignment is made in a way that meets those requirements.

#### **16ZB Certain friendly societies may continue to carry on health insurance business—modified operation of this Act**

- (1) A friendly society:
  - (a) that is taken to be registered under this Act because of item 11 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; and

- (b) that was carrying on health insurance business immediately before being taken to be so registered;
- may continue to carry on that health insurance business after being taken to be so registered.
- (2) A reference in this Act to a *jointly regulated friendly society* is a reference to a friendly society that carries on life insurance business and that also carries on health insurance business in accordance with subsection (1).
- Note: The society's life insurance business is regulated under this Act, while its health insurance business is regulated under the *National Health Act 1953*.
- (3) Section 234 has effect subject to subsection (1) of this section.
- (4) Without limiting the matters that may be dealt with in regulations under section 16ZC, regulations under that section may set out modifications of this Act as it applies in relation to jointly regulated friendly societies.

## 16ZC Other modifications

- (1) The regulations may set out modifications of this Act that are to apply in relation to friendly societies (in addition to the modifications set out in the other provisions of this Part).
- (2) Modifications set out in regulations for the purposes of subsection (1) cannot:
  - (a) modify a provision of this Act that creates an offence; or
  - (b) include new provisions that create offences.
- (3) This Act applies to a friendly society subject to any modifications set out in regulations for the purposes of subsection (1).
- (4) In this section:  
*modifications* includes omissions, additions and substitutions.

**12 At the end of section 17**

Add:

- (4) If a declaration is in force under section 12A or 12B in relation to business carried on or proposed to be carried on by a company, the

company must not intentionally carry on that business unless the company is registered under this Act.

Note: The heading to section 17 is replaced by the heading “**When registration is required**”.

### **13 Paragraphs 21(3)(a), (b), (c) and (ca)**

Repeal the paragraphs.

### **14 Paragraph 21(3)(e)**

Repeal the paragraph, substitute:

- (e) that the company is not able, or is unlikely to be able, to comply with the provisions of this Act;

### **15 Subsections 21(4) and (8)**

Repeal the subsections.

### **16 Sections 23 and 24**

Repeal the sections.

### **17 Paragraph 30(e)**

Omit “divided or amalgamated”, substitute “restructured or terminated”.

### **18 At the end of subsection 35(4)**

Add:

Note: If the fund or funds to which a policy is referable is changed in this way, section 55 must be complied with.

### **19 Paragraphs 46(a) and (b)**

Repeal the paragraphs, substitute:

- (a) change the statutory fund or funds to which a policy is referable; or
- (b) terminate a statutory fund;

Note: The heading to section 46 is replaced by the heading “**Restriction on restructure or termination of statutory funds**”.

### **20 Section 46**

Omit “except with the written approval of APRA under Division 3”, substitute:

except in accordance with:

- 21 At the end of section 46**

(2) Subsection (1) does not prevent a liquidator doing anything authorised or required by or under this Act or any other law of the Commonwealth or of a State or Territory.

Repeal the Division, substitute:

## 52 Restructure of statutory funds

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- (i) policies becoming referable to a receiving fund or funds;
    - (ii) policy and other liabilities becoming referable to a receiving fund or funds;
    - (iii) assets of a transferring fund becoming assets of a receiving fund or funds;
    - (iv) the timing of the restructure;
    - (v) if a receiving fund is a proposed new statutory fund—the establishment of that fund;
  - (e) requirements for the company to give APRA information following the restructure.
- (4) APRA cannot approve the application if it considers that:
- (a) the restructure will result in unfairness to the owners of policies referable to a transferring fund or a receiving fund when those owners are viewed as a group; or
  - (b) immediately after the restructure:
    - (i) a transferring fund will not satisfy the solvency standard applicable to it; or
    - (ii) a receiving fund will not satisfy the solvency standard applicable to it; or
  - (c) the company is being wound up when the application is made.

### **53 Termination of statutory funds**

- (1) Prudential Rules may provide that:
- (a) a life company may apply to APRA to terminate one or more of its statutory funds; and
  - (b) if the application is approved, the termination is to take place.
- (2) Without limiting the generality of subsection (1), Prudential Rules may provide for the following:
- (a) requirements for making the application;
  - (b) criteria for approving or refusing to approve the application;
  - (c) requirements to notify interested parties of the outcome of the application;
  - (d) matters connected with how the termination takes place, including the following:
    - (i) distribution or application of assets;
-



After “If”, insert “, because of an endorsement as mentioned in subsection 35(4)”.

**26 Part 5 (heading)**

Repeal the heading, substitute:

**Part 5—Solvency and capital standards**

**27 After subsection 70(1)**

Insert:

- (1A) The capital adequacy standard may be so expressed as to set different standards of capital adequacy:
- (a) for statutory funds of different companies; or
  - (b) for different classes of statutory funds; or
  - (c) to have effect in relation to a statutory fund in circumstances specified in the capital adequacy standard.
- (1B) Without limiting subsections (1) and (1A), the capital adequacy standard may provide that, in specified circumstances, a life company is taken to comply with the capital adequacy standard in respect of a statutory fund if it complies with the solvency standard under Division 1 in respect of the statutory fund.

**28 Subsection 73(1)**

After “owners”, insert “and prospective owners”.

**29 At the end of Part 5**

Add:

**Division 3—Management capital standard**

**73A Purpose of Division**

The purpose of this Division is to make provision for the setting of a management capital standard with which life companies must comply in order to ensure that they are adequately capitalised outside their statutory funds.



### 73B Management capital standard

- (1) The management capital standard consists of provision made by an actuarial standard for the purposes of this Division.
- (2) The management capital standard may be so expressed as to set different standards of management capital:
  - (a) for different classes of companies; or
  - (b) to have effect in relation to a company in circumstances specified in the management capital standard.
- (3) The Board may only make an actuarial standard referred to in subsection (1) with the agreement of APRA.

### 73C Purpose of management capital standard

The purpose of the management capital standard is to ensure, as far as practicable, that:

- (a) the financial position of a life company reflects an appropriate capital commitment, outside the statutory funds of the company, to the life insurance business of the company; and
- (b) a life company will be able to meet its obligations in respect of any business it carries on that is not life insurance business as those obligations fall due.

### 73D Modified application of management capital standard for particular companies

- (1) The Treasurer may make a written declaration that the management capital standard is to have effect, in relation to a particular life company, with the modifications specified in the declaration. The declaration has effect accordingly.
- (2) The Treasurer may only make a declaration under subsection (1) if he or she is satisfied that:
  - (a) in the particular circumstances of the company, compliance with some or all of the management capital standard is unnecessary or is likely to affect adversely the company's ability to carry on its business in accordance with the best interests of owners of policies issued by the company or of shareholders of the company; and

- (b) the making of the declaration is not likely to have an adverse effect on the interests of owners of policies issued by the company.

### **73E Obligation to comply with standard**

Every life company must, at all times, comply with the management capital standard.

### **73F APRA's power to give management capital directions to particular life companies**

- (1) If, having regard to such matters as APRA considers relevant, APRA is satisfied that there are reasonable grounds for believing that the financial position of a life company does not reflect an appropriate capital commitment, outside the statutory funds of the company, to the life insurance business of the company, APRA may, with the Treasurer's agreement, give the company written directions under this subsection.
- (2) If, having regard to:
  - (a) the nature of the obligations of a life company relating to any business it carries on that is not life insurance business; or
  - (b) the nature and extent of the risks undertaken in respect of any business of a life company that is not life insurance business; or
  - (c) the nature or value of the assets of a life company that are not assets of a statutory fund of the life company; or
  - (d) any other matter that APRA considers relevant;APRA is satisfied that there are reasonable grounds for believing that the life company may not be able to meet its obligations in respect of any business it carries on that is not life insurance business as those obligations fall due, APRA may, with the Treasurer's agreement, give the company written directions under this subsection.
- (3) APRA may give a direction to a company under subsection (1) or (2) even if, when the direction is given, the company meets the requirements of the management capital standard and there are reasonable grounds for believing that the company will meet those requirements at all times while the direction is in force.

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- (4) A life company must comply with a direction given to it under subsection (1) or (2).
  - (5) Subject to subsections (6), (7) and (8), a direction remains in force for 12 months commencing on the day on which the direction is given. However, nothing prevents APRA from giving a further direction to the company to take effect immediately after the expiry of a previous direction.
  - (6) If APRA thinks that a particular direction is no longer required or that it should be varied, APRA must, by written notice given to the company, revoke or, with the Treasurer's agreement, vary the direction.
  - (7) If a company to which a direction has been given asks APRA, in writing, to revoke or vary the direction, APRA must:
    - (a) if APRA thinks, and the Treasurer agrees, that the direction is no longer necessary or should be varied—revoke or vary the direction; or
    - (b) in any other case—refuse to revoke or vary the direction.
  - (8) APRA must give the company written notice of a decision made under subsection (7).
  - (9) A direction to a company ceases to have effect if an order is made for the winding-up of the company.
  - (10) In this section:
 

*direction* includes a direction as varied.

### **30 At the end of subsection 84(1)**

Add:

Note: For whether an individual is an approved auditor in relation to a particular life company, see the definition of *approved auditor* in the Schedule.

### **31 Subsection 85(1)**

Repeal the subsection, substitute:

- (1) APRA may, in writing, approve a person as an auditor of life companies of either or both of the following kinds:
  - (a) life companies other than friendly societies;

(b) friendly societies.

### **32 Subsection 85(2)**

After “approve a person”, insert “as an auditor of life companies of a kind referred to in subsection (1)”.

### **33 Paragraph 85(2)(b)**

Omit “a life company”, substitute “life companies of that kind”.

### **34 At the end of Part 6**

Add:

## **Division 8—APRA’s power to make exemption orders**

### **125A APRA’s power to make specific exemption orders**

(1) In this section:

*provision to which this section applies* means:

- (a) section 76;
  - (b) section 82;
  - (c) section 83;
  - (d) section 93;
  - (e) section 113;
  - (f) any other provision of this Part prescribed by the regulations for the purposes of this definition.
- (2) On an application made in accordance with subsection (5) in relation to a life company, APRA may make an order in writing relieving any of the following from a provision to which this section applies:
- (a) the directors of the life company;
  - (b) the life company;
  - (c) the approved auditor of the life company;
  - (d) the appointed actuary of the life company.
- (3) APRA must not make the order unless it considers it is appropriate to do so, having regard to any criteria specified in Prudential Rules for the purposes of this subsection.

- (4) The order may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (5) The application must be:
  - (a) authorised by a resolution of the directors of the life company; and
  - (b) in writing and signed by a director; and
  - (c) lodged with APRA.
- (6) APRA must give the applicant written notice of:
  - (a) the making, revocation or suspension of the order; or
  - (b) its refusal to make the order.
- (7) APRA must give ASIC notice of the making, revocation or suspension of the order.

## 125B APRA's power to make class exemption orders

- (1) In this section:  
*provision to which this section applies* means:
  - (a) section 76;
  - (b) section 82;
  - (c) section 83;
  - (d) section 93;
  - (e) section 113;
  - (f) any other provision of this Part prescribed by the regulations for the purposes of this definition.
- (2) APRA may make an order in writing in respect of a specified class of life companies relieving any of the following from a provision to which this section applies:
  - (a) directors of life companies of that class;
  - (b) life companies of that class;
  - (c) approved auditors of life companies of that class;
  - (d) appointed actuaries of life companies of that class.
- (3) APRA must not make the order unless it considers it is appropriate to do so, having regard to any criteria specified in Prudential Rules for the purposes of this subsection.

- (4) The order may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (5) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.
- (6) APRA must give ASIC notice of the making, revocation or suspension of the order.

### 35 Section 180

Omit “A life company”, substitute “Subject to subsection (2), a life company”.

### 36 At the end of section 180

Add:

- (2) A life company may be wound up voluntarily if:
  - (a) the company is a friendly society; and
  - (b) each person with an interest in a benefit fund of the society is a member of the society; and
  - (c) each member of the society has only one vote on a special resolution to wind up the society (whether the resolution is decided on a show of hands or on a poll).

For this purpose, a *member* of the society is a person who is a member of the society for the purposes of the Corporations Law.

- (3) If a special resolution to wind up a friendly society is passed, the society must lodge a copy of the special resolution with APRA.

Note: Under the Corporations Law, a copy of the resolution must also be lodged with ASIC.

- (4) A friendly society is guilty of an offence if it does not comply with subsection (3) within 7 days after the day on which the special resolution was passed.

Maximum penalty for contravention of this subsection: 30 penalty units.

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

**37 After section 183**

Insert:

**183A Application by liquidator for directions—voluntary winding up of friendly society**

A liquidator may apply to the Court for directions regarding any matter arising under the voluntary winding-up of a friendly society.

Note: The liquidator must give APRA written notice under section 183 that the liquidator intends to make the application.

**38 Subsection 186(2)**

Omit “the directions”, substitute “any directions”.

**39 After subsection 186(2)**

Insert:

- (2A) If the company is a friendly society, the liquidator must take account of the approved benefit fund rules of the society in making determinations under subsection (1), to the extent that those rules are consistent with any directions of the Court.

**40 Paragraph 188(1)(c)**

Repeal the paragraph, substitute:

(c) either:

- (i) the Court orders that the company be wound up; or
- (ii) for a company that is a friendly society referred to in subsection 180(2)—the members of the society have passed a special resolution that the society be wound up;

**41 At the end of section 190**

Add:

- (5) Subsection (1) does not require that a transfer of life insurance business be made under a scheme approved by the Court if the transfer is a transfer of business made under the *Financial Sector (Transfers of Business) Act 1999*.

**42 Paragraph 199(1)(a)**

Repeal the paragraph, substitute:

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- (a) enter into a policy (including a life policy on his or her own life or on another life); or

**43 Paragraph 199(1)(b) and subsection 199(2)**

Omit “life policy”, substitute “policy”.

**44 Subsections 200(1), (6) and (8)**

Omit “life policy”, substitute “policy”.

Note: The heading to section 200 is altered by omitting “life”.

**45 Section 206**

Omit “life policies” (wherever occurring), substitute “policies”.

**46 Subsections 210(1) and (5)**

Omit “life policy”, substitute “policy”.

**47 Subsections 211(1) and (5)**

Omit “life policy”, substitute “policy”.

**48 Subsection 212(1)**

Omit “life policies”, substitute “policies”.

**49 Subsection 212(5)**

Omit “life policy”, substitute “policy”.

**50 After subsection 216(14)**

Insert:

- (14A) It is the intention of the Parliament that a law of a State or Territory has no effect to the extent to which it requires a life company to:
  - (a) pay unclaimed money to, or to an authority of, a State or Territory; or
  - (b) lodge a return relating to unclaimed money with, or with an authority of, a State or Territory.

**51 Subsection 216(15) (paragraph (c) of the definition of *unclaimed money*)**

Omit “life policy”, substitute “policy”.



**52 Subsection 218(1) (definitions of *child's advancement policy* and *full age*)**

Omit “life policy” (wherever occurring), substitute “policy”.

**53 Subsection 218(1) (definition of *vesting age*)**

Omit “whose life is insured by a life policy”, substitute “and a policy”.

**54 Subsection 226(1)**

Omit “life policies”, substitute “policies”.

**55 Subsections 227(1), (2) and (3)**

Omit “life policy”, substitute “policy”.

Note: The heading to section 227 is altered by omitting “**life**”.

**56 Section 230**

Omit “life policy”, substitute “policy”.

**57 After Part 10**

Insert:

**Part 10A—Prudential standards and directions**

**Division 1—Prudential standards**

**230A APRA may make prudential standards for life companies**

- (1) APRA may, in writing, determine standards in relation to prudential matters to be complied with by:
- (a) all life companies; or
  - (b) a specified class of life companies; or
  - (c) one or more specified life companies;
- in order to protect the interests of policy owners or prospective policy owners of the life companies concerned.

Note: A failure to comply with a standard is not an offence, but it may lead to a direction being given under section 230B.

- (2) A standard may impose different requirements to be complied with in different situations or in respect of different activities.

- (3) A standard is of no effect to the extent that it conflicts with this Act.
- (4) A standard:
  - (a) comes into force:
    - (i) unless subparagraph (ii) applies—on the day on which the determination of the standard is made; or
    - (ii) if that determination specifies a later day as the day on which the standard comes into force—on the day so specified; and
  - (b) continues in force until it is revoked.
- (5) APRA may, in writing, vary or revoke a standard.
- (6) Subject to subsection (11), if APRA determines or varies a standard referred to in paragraph (1)(a) or (b) it must, as soon as practicable, cause a notice advising of the determination of the standard, or of the variation of the standard, and summarising the purpose and effect of the standard or variation, to be published:
  - (a) in the *Gazette*; and
  - (b) in a daily newspaper or daily newspapers circulating generally in each State or Territory.
- (7) If APRA determines or varies a standard referred to in paragraph (1)(c) it must, as soon as practicable, give a copy of the standard, or of the variation, to the life company, or to each life company, to which the standard applies.
- (8) If APRA revokes a standard referred to in paragraph (1)(a) or (b) it must, as soon as practicable, cause a notice of the revocation to be published:
  - (a) in the *Gazette*; and
  - (b) in a daily newspaper or daily newspapers circulating generally in each State or Territory.
- (9) If APRA revokes a standard referred to in paragraph (1)(c) it must, as soon as practicable, give notice of the revocation to the life company, or to each life company, to which the standard applied.
- (10) Subject to subsection (11), APRA must ensure that copies of the current text of the standards are available for inspection and purchase.

- (11) If APRA considers that a standard, or a variation of a standard, contains commercially sensitive information:
  - (a) APRA is not required to include that information in a notice published under subsection (6) or in the version of the standard that is available under subsection (10); but
  - (b) APRA may include some or all of that information in either or both of those things if APRA considers it appropriate to do so.
- (12) A failure to comply with subsection (6), (7), (8), (9) or (10) does not affect the validity of the action concerned.
- (13) In this section:

***Territory*** means an internal Territory, or an external Territory to which this Act extends.

## Division 2—Directions

## 230B APRA may give directions in certain circumstances

- (1) APRA may give a life company a direction of a kind specified in subsection (2) if APRA considers that:
  - (a) the company has contravened this Act or a condition referred to in subsection 22(1) or paragraph 125A(4)(a) or 125B(4)(a); or
  - (b) the direction is necessary in the interests of policy owners or prospective policy owners of the company.The direction is to be by notice in writing given to the company.
- (2) The kinds of direction the life company may be given are as follows:
  - (a) a direction to comply with the whole or a part of this Act or with a condition referred to in paragraph (1)(a);
  - (b) a direction to order an audit of the affairs of the company, at the expense of the company, by an auditor chosen by APRA;
  - (c) a direction to order an actuarial investigation of the affairs of the company, at the expense of the company, by an actuary chosen by APRA;
  - (d) a direction to do all or any of the following:

- (i) remove a director, secretary, executive officer or employee of the company from office;
- (ii) ensure a director, secretary, executive officer or employee of the company does not take part in the management or conduct of the business of the company except as permitted by APRA;
- (iii) appoint a person or persons as a director, secretary, executive officer or employee of the company for such term as APRA directs;
- (e) a direction to remove any auditor of the company from office and appoint another auditor to hold office for such term as APRA directs;
- (f) a direction to terminate the appointment of the appointed actuary of the company and to appoint another actuary to hold office for such term as APRA directs;
- (g) a direction not to give any financial accommodation to any person;
- (h) a direction not to issue any policy or collect any premium;
- (i) a direction not to borrow any amount;
- (j) a direction not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;
- (k) a direction not to repay any amount paid on shares;
- (l) a direction not to pay a dividend on any shares;
- (m) a direction not to discharge any policy or other liability;
- (n) a direction not to transfer any asset of a statutory fund;
- (o) a direction not to pay or transfer any amount to any person, or create an obligation (contingent or otherwise) to do so;
- (p) a direction not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
- (q) any other direction as to the way in which the affairs of the company are to be conducted or not conducted.

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

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

- (a) deal with some only of the matters referred to in the paragraph; or
  - (b) deal with a particular class or particular classes of those matters; or
  - (c) make different provision with respect to different matters or different classes of matters.
- (4) The direction may deal with the time by which, or period during which, it is to be complied with.
- (5) The life company has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (6) APRA may, by notice in writing to the life company, vary the direction if, at the time of the variation, it considers that the variation is necessary or appropriate.
- (7) APRA may, by notice in writing to the life company, revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.
- (8) The direction ceases to have effect if:
  - (a) APRA revokes it under subsection (7); or
  - (b) the Court orders that the company be wound up; or
  - (c) for a company that is a friendly society referred to in subsection 180(2)—the members of the society have passed a special resolution that the society be wound up.
- (9) APRA must not give a direction under this section in relation to any part of the business of a life company if:
  - (a) that part of that business is under the control of a judicial manager; or
  - (b) the Court has ordered that the company be wound up; or
  - (c) for a company that is a friendly society referred to in subsection 180(2)—the members of the society have passed a special resolution that the society be wound up.

### 230C Direction not grounds for denial of obligations

- (1) Subject to subsections (2) and (3), the fact that a life company is subject to a direction by APRA under section 230B is not a ground

for any other party to a contract to which the company is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

- (2) If a life company is prevented from fulfilling its obligations under a contract because of a direction under section 230B, other than a direction under paragraph 230B(2)(m), the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the company under the contract.
- (3) A party to a contract to which subsection (2) applies may apply to the Court for an order relating to the effect on the contract of a direction under section 230B. The order may deal with matters including (but not limited to):
  - (a) requiring a party to the contract to fulfil an obligation under the contract despite subsection (2);
  - (b) obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under section 230B.

#### **230D Supply of information about issue and revocation of directions**

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

- (1) APRA may publish in the *Gazette* notice of any direction made under section 230B. The notice must include the name of the life company given the direction and a summary of the direction.

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

- (2) If APRA publishes notice of a direction made under section 230B and then later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

*Requirement to provide information about direction to Treasurer*

- (3) If the Treasurer requests APRA to provide information about:
- (a) any directions under section 230B in respect of a particular life company; or
  - (b) any directions made during a specified period under section 230B in respect of any life companies;
- APRA must comply with the request.

*Power to inform Treasurer of direction*

- (4) APRA may provide any information that it considers appropriate to the Treasurer about any directions, or revocations of directions, made under section 230B, in respect of any life company, at any time.

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

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

## 230E Secrecy requirements

Information relating to directions and revocations of directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette* under section 230D of this Act.

### 230F Non-compliance with a direction

- (1) A life company is guilty of an offence if:
  - (a) it does, or fails to do, an act; and
  - (b) doing, or failing to do, the act results in a contravention of a direction given to it under section 230B.

Maximum penalty: 50 penalty units.

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

- (2) If a life company does or fails to do an act in circumstances that give rise to the company committing an offence against subsection (1), the company is guilty of an offence against that subsection in respect of:

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

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

- (3) An officer of a life company is guilty of an offence if:

- (a) the officer fails to take reasonable steps to ensure that the company complies with a direction given to it under section 230B; and
- (b) the officer's duties include ensuring that the company complies with the direction, or with a class of directions that includes the direction.

Maximum penalty: 50 penalty units.

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

- (4) If an officer of a life company fails to take reasonable steps to ensure that the company complies with a direction given to it under section 230B in circumstances that give rise to the officer committing an offence against subsection (3), the officer is guilty of an offence against that subsection in respect of:

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

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

- (5) In this section, ***officer*** has the meaning given by section 9 of the Corporations Law.



**58 Subsection 236(1) (after paragraph (a) of the definition of *reviewable decision*)**

Insert:

- (aa) a declaration under subsection 12A(1) or 12B(2);

**59 Subsection 236(1) (after paragraph (c) of the definition of *reviewable decision*)**

Insert:

- (ca) a decision under section 16E;
- (cb) a refusal to give an approval under subsection 16L(3), 16Q(3) or 16U(3);

**60 Subsection 236(1) (paragraph (k) of the definition of *reviewable decision*)**

Omit “subsection 52(4)”, substitute “Prudential Rules referred to in section 52”.

**61 Subsection 236(1) (paragraph (l) of the definition of *reviewable decision*)**

Omit “subsection 53(4)”, substitute “Prudential Rules referred to in section 53”.

**62 Subsection 236(1) (after paragraph (s) of the definition of *reviewable decision*)**

Insert:

- (sa) a direction under subsection 73F(1) or (2);
- (sb) a decision to vary a direction under subsection 73F(6) or (7);
- (sc) a refusal to revoke or vary a direction under subsection 73F(6) or (7);

**63 Subsection 236(1) (after paragraph (zg) of the definition of *reviewable decision*)**

Insert:

- (zga) a decision under subsection 125A(2) or 125B(2);

**64 After paragraph 236(1A)(j)**

Insert:

- (ja) a direction under subsection 73F(1) or (2);

- (jb) a decision to vary a direction under subsection 73F(6) or (7);
- (jc) a refusal to revoke or vary a direction under subsection 73F(6) or (7);

## **65 After section 250**

Insert:

## **251 Compensation for acquisition of property**

(1) If:

- (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the Commonwealth is liable to pay to the person compensation of a reasonable amount as agreed on between the Commonwealth and the person. If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

(2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

(3) In this section:

*acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

## **66 Paragraph 254(7)(a)**

Repeal the paragraph.

## **67 Subsection 254(9)**

Repeal the subsection.

## **68 Section 255**

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**75 Dictionary in the Schedule (definition of *policy document*)**

Omit “or a sinking fund policy”, substitute “, a sinking fund policy or a section 12A or 12B policy”.

**76 Dictionary in the Schedule**

Insert:

*prudential standards* means standards made under Division 1 of Part 10A.

**77 Dictionary in the Schedule**

Insert:

*section 12A or 12B policy* means a policy, other than a life policy or a sinking fund policy, issued, or taken to be issued, in the course of carrying on business covered by a declaration under section 12A or 12B.

**78 Dictionary in the Schedule (definition of *this Act*)**

Repeal the definition, substitute:

*this Act* includes:

- (a) the regulations, actuarial standards, prudential standards and Prudential Rules; and
- (b) the *Life Insurance Act 1995*, and the instruments made under that Act referred to in paragraph (a), as they have effect because of Part 2A of that Act.

## **Schedule 5—Amendment of the Reserve Bank Act 1959**

### **1 After section 6A**

Insert in Part 1:

### **6B Application of *Criminal Code***

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

### **2 At the end of subsection 44(1)**

Add:

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

### **3 Subsection 79A(2) (note)**

Omit “Note:”, substitute “Note 1:”.

### **4 At the end of subsection 79A(2)**

Add:

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

### **5 At the end of subsection 79B(1)**

Add:

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

## Schedule 6—Miscellaneous amendments

### *Australian Securities and Investments Commission Act 1989*

#### 1 After subsection 11(9)

Insert:

- (9A) The Commission may have functions or powers conferred on it by or under a law of a State or Territory if:
- (a) that law provides for, or relates to, the repeal, amendment or termination (however described) of the operation of, any of the replaced legislation within the meaning of item 22 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; and
  - (b) the conferral of the powers or functions is in accordance with:
    - (i) 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
    - (ii) an approval given by the Minister for the purposes of this subsection.

The Commission has the functions and powers so conferred by that law.

Note 1: The heading to section 11 is replaced by the heading “**National scheme functions and powers and other functions and powers conferred by the States and Territories**”.

Note 2: The heading to section 12A is replaced by the heading “**Other functions and powers**”.

#### 2 Subparagraphs 102(2B)(i) and (ii)

Renumber the subparagraphs as paragraphs (a) and (b).

#### 3 Subparagraph 127(4)(aa)(ii)

Repeal the subparagraph.

### *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998*

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**4 Paragraph 8(3)(b)**

Before “where”, insert “except”.

***Authorised Non-operating Holding Companies Supervisory  
Levy Imposition Act 1998***

**5 Paragraph 8(3)(b)**

Before “where”, insert “except”.

***Financial Laws Amendment Act 1997***

**6 Item 9 of Schedule 12**

Repeal the item, substitute:

**9 Subsection 68(1)**

Omit “may give”, substitute “may, with the Treasurer’s agreement, give”.

***Financial Sector Reform (Amendments and Transitional  
Provisions) Act 1998***

**7 Subsection 2(5)**

Repeal the subsection.

**8 Subsection 2(14)**

Omit “*Superannuation Legislation Amendment Act 1998*” (wherever occurring), substitute “*Superannuation Legislation Amendment Act 1999*”.

**9 Subsection 2(15)**

Omit “*Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1998*” (wherever occurring), substitute “*Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1999*”.

**10 Item 11 of Schedule 13**

Repeal the item, substitute:

**11 Subsections 133(2) to (3)**

Omit “The Commissioner” (wherever occurring), substitute “The authorised person”.

**11 Part 7 of Schedule 16 (heading)**

Repeal the heading, substitute:

**Part 7—Amendments to take account of Part 1 of  
Schedule 2 to the Superannuation Legislation  
Amendment Act 1999**

**12 Part 8 of Schedule 16 (heading)**

Repeal the heading, substitute:

**Part 8—Amendments to take account of Schedule 1  
to the Superannuation Legislation Amendment  
(Choice of Superannuation Funds) Act 1999**

**13 Item 236 of Schedule 16**

Repeal the item, substitute:

**236 Section 148F**

Omit “The Commissioner”, substitute “APRA”.

**237 Section 148F**

Omit “the Commissioner”, substitute “APRA”.

**14 Item 5 of Schedule 19**

Repeal the item.

***Financial Sector Reform (Consequential Amendments) Act  
1998***

**15 Subsections 2(3), (6), (8), (9), (10), (11) and (12)**

Repeal the subsections.



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**16 Items 7, 8 and 9 of Schedule 1, and the heading above those items**

Repeal the items and the heading.

**17 Items 39, 40 and 41 of Schedule 1, and the heading above those items.**

Repeal the items and the heading.

**18 Item 76 of Schedule 1**

Omit “23(2)”, substitute “23A(2)”.

**19 Item 23 of Schedule 2**

Omit “laws”, substitute “law”.

***General Insurance Supervisory Levy Imposition Act 1998***

**20 Paragraph 9(3)(b)**

Before “where”, insert “except”.

***High Court of Australia Act 1979***

**21 Subsection 4(1)**

Insert:

**ADI** (authorised deposit-taking institution) means:

- (a) the Reserve Bank of Australia; or
- (b) a body corporate that is an ADI for the purposes of the *Banking Act 1959* and that is approved in writing for the purposes of the provision in which the expression occurs:
  - (i) by the Treasurer; or
  - (ii) by a person authorised in writing by the Treasurer to give the approval; or
- (c) any other bank approved in writing for the purposes of the provision in which the expression occurs:
  - (i) by the Treasurer; or
  - (ii) by a person authorised in writing by the Treasurer to give the approval.

**22 Subsection 4(1) (definition of *approved bank*)**

Repeal the definition.

**23 Paragraph 39(2)(a)**

Omit “approved bank”, substitute “ADI”.

**24 Subsection 41(1)**

Omit “an approved bank or approved banks”, substitute “an ADI or ADIs”.

Note: The heading to section 41 is replaced by the heading “**Accounts with ADIs**”.

***Life Insurance Supervisory Levy Imposition Act 1998***

**25 Paragraph 8(3)(b)**

Before “where”, insert “except”.

***National Health Act 1953***

**26 After section 82Q**

Insert:

**82QAA Special provisions relating to certain registered organizations**

- (1) This section applies to a registered organization that carries on a health insurance business and that is a jointly regulated friendly society within the meaning of section 16ZB of the *Life Insurance Act 1995*.

Note: Jointly regulated friendly societies are permitted to carry on both life insurance business and health insurance business.

- (2) The regulations may set out modifications of this Part that are to apply in relation to registered organizations to which this section applies.
- (3) Modifications set out in regulations for the purposes of subsection (2) cannot:
- (a) modify a provision of this Part that creates an offence; or
  - (b) include new provisions that create offences.

- (5) In this section:

*modifications* includes omissions, additions and substitutions.

***Retirement Savings Account Providers Supervisory Levy  
Imposition Act 1998***

## 27 Paragraph 8(3)(b)

Before “where”, insert “except”.

*Superannuation Supervisory Levy Imposition Act 1998*

## 28 Paragraph 8(3)(b)

Before “where”, insert “except”.

## Schedule 7—Consequential amendment of Acts

### *Bankruptcy Act 1966*

#### **1 Subsection 125(3) (definition of *building society*)**

Repeal the definition.

#### **2 Subsection 125(3) (definition of *co-operative society*)**

Repeal the definition, substitute:

*co-operative society* means:

- (a) a society registered or incorporated as a co-operative housing society under a law of a State or Territory; or
- (b) any other society whose principal business consists of borrowing moneys from its members and lending those moneys to its members and that is registered or incorporated under a law of a State or Territory relating to co-operative societies.

#### **3 Subsection 125(3) (definition of *credit union*)**

Repeal the definition.

#### **4 Subsection 125(3) (definition of *prescribed organization*)**

Omit “, a building society, a co-operative society or a credit union and”, substitute “, a co-operative society or”.

### *Cheques Act 1986*

#### **5 Subsection 3(1) (definition of *FCA institution*)**

Repeal the definition, substitute:

*FCA institution* means a body that is:

- (a) a registered corporation under the *Financial Corporations Act 1974*; and
- (b) prescribed for the purposes of this definition.

#### **6 Subsection 3(1) (definition of *FIC institution*)**

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Repeal the definition.

**7 Subsection 3(1) (paragraph (c) of the definition of *financial institution*)**

Repeal the paragraph.

**8 Subsection 3(1) (paragraph (e) of the definition of *financial institution*)**

Omit “, (c)”.

**9 Subsection 3(1) (definition of *Financial Institutions Codes*)**

Repeal the definition.

**10 Subsections 68(2A) and (3)**

Omit “FIC institution”, substitute “financial institution”.

**11 Paragraph 68(3AA)(a)**

Omit “an FIC institution”, substitute “a financial institution”.

**12 Part VII (heading)**

Repeal the heading, substitute:

**Part VII—Special provisions relating to FCA  
institutions and agency cheques**

**13 Paragraph 100(1)(a)**

Omit “an FIC institution”, substitute “a financial institution”.

**14 Subsection 114(2)**

After “drawn on”, insert “or by”.

***Child Care Payments Act 1997***

**15 Subsections 62(1) and (2), 67(1), 114(1) and 119(1)**

Omit “, credit union account or building society account”.

Note: The headings to sections 62, 67, 114 and 119 are altered by omitting “etc.”.

***Child Support (Registration and Collection) Act 1988***

**16 Subsection 72A(11)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**17 Subsection 72A(13) (definition of *building society*)**

Repeal the definition.

**18 Subsection 72A(13)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Commonwealth Inscribed Stock Act 1911***

**19 Subsection 22A(1)**

Omit “Friendly Society or” (wherever occurring).

**20 Before subsection 22A(1)**

Insert:

- (1A) Despite anything in this Act, stock may, subject to this section, be inscribed in the name of any Friendly Society or any branch of a Friendly Society.

**21 At the end of section 22A**

Add:

- (5) In this section:

***Friendly Society*** means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression *friendly society*; or

- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory.

### ***Debits Tax Administration Act 1982***

#### **22 Subsection 3(1) (definition of *bank*)**

Repeal the definition.

#### **23 Subsection 3(1) (definition of *financial institution*)**

Repeal the definition, substitute:

*financial institution* means a person carrying on banking business that includes the keeping of accounts that may be drawn on by cheque.

#### **24 Subsection 3(1) (definition of *non-bank financial institution*)**

Repeal the definition.

#### **25 Subsection 3(9)**

Omit “a non-bank financial institution”, substitute “a financial institution”.

#### **26 Subsection 57(1)**

Repeal the subsection.

#### **27 Subsections 57(1A) and (1B)**

Omit “non-bank”.

### ***Defence Force Retirement and Death Benefits Act 1973***

#### **28 Paragraph 40(1)(b)**

Omit “, credit union or building society (in this section called the *financial institution*)”.

#### **29 Paragraphs 40(1)(c), (d) and (e)**

Omit “financial institution”, substitute “bank”.

### ***Employment Services Act 1994***

#### **30 Subsection 174(9)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

Note: The heading to subsection 174(9) is altered by omitting “*Building societies*” and substituting “*Co-operative housing societies*”.

#### **31 Subsection 174(10)**

Repeal the subsection, substitute:

##### *Definition*

(10) In this section:

***co-operative housing society*** means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

### ***Farm Household Support Act 1992***

#### **32 Subsection 3(2) (paragraph (b) of the definition of *exempt livestock proceeds*)**

Omit “, building society, credit union”.

#### **33 Subsection 32(2)**

Omit “, credit union account or building society account”.

#### **34 Subsection 55A(4) (definition of *financial institution*)**

Omit “, building society, credit union”.

### ***Financial Corporations Act 1974***

#### **35 Subsection 4(1)**

Insert:

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

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### 36 Subsection 4(1) (definition of *building society*)

Repeal the definition.

### 37 Subsection 4(1)

Insert:

***co-operative housing society*** means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

### 38 Subsection 4(1) (definition of *credit union*)

Repeal the definition.

### 39 Subsection 4(1) (definition of *terminating building society*)

Repeal the definition.

#### 40 Subsection 4(3)

Omit “building society or credit union” (wherever occurring), substitute “co-operative housing society”.

#### 41 Paragraphs 8(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) the corporation is an ADI;

## 42 Paragraph 8(2)(d)

Omit “friendly or” (wherever occurring).

### 43 Subsection 15(3)

Omit “building society”, substitute “co-operative housing society”.

#### 44 Subsection 15(3)

Omit “building societies”, substitute “co-operative housing societies”.

### *Financial Sector (Shareholdings) Act 1998*

## 45 At the end of Part 7

Add:

**48 Transitional—pre-transfer stakes held in bodies transferring to regulation by the Commonwealth**

- (1) This section applies if, immediately before the transfer date:
  - (a) a person held a stake in a particular transferring financial sector company of more than 15%; and
  - (b) the holding of that stake did not, to any extent, involve a contravention of a provision of the replaced legislation.
- (2) The Treasurer is taken, on the transfer date, by written notice under section 14, to have approved the person holding the same percentage stake in the company. The approval is taken to specify the period of 18 months starting on the transfer date as the period during which it remains in force.
- (3) An approval taken by subsection (2) to have been granted by the Treasurer may be dealt with under this Act as if it had actually been granted under section 14. However, subsections 14(2) and (4) do not apply to the approval.
- (4) For the purposes of this section, Part 1 and Schedule 1 are taken to have been applicable to transferring financial sector companies immediately before the transfer date.
- (5) For the purposes of this section, a transferring financial sector company that is, on the transfer date:
  - (a) an authorised deposit-taking institution; or
  - (b) a company registered under the *Life Insurance Act 1995*;is taken to have been a body of that kind immediately before the transfer date.
- (6) In this section:

***replaced legislation*** has the same meaning as it has for the purposes of item 22 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

***transfer date*** means the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

***transferring financial sector company*** means a financial sector company that is a transferring body for the purposes of Part 1 of

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Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

**49 Transitional—stakes held as a result of completion of transfers of engagements or mergers under certain State or Territory laws**

- (1) This section applies if:
  - (a) a transfer of engagements or a merger takes effect on a date (the ***date of effect***) after the transfer date in accordance with a State or Territory transitional law referred to in subitem 19(1) of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; and
  - (b) the transfer or merger results in a person holding a stake in a particular financial sector company of more than 15%; and
  - (c) the holding of that stake would not, to any extent, have involved a contravention of a provision of the replaced legislation if the transfer or merger had taken effect immediately before the transfer date.
- (2) The Treasurer is taken, on the date of effect, by written notice under section 14, to have approved the person holding the same percentage stake in the company. The approval is taken to specify the period of 18 months starting on the date of effect as the period during which it remains in force.
- (3) An approval taken by subsection (2) to have been granted by the Treasurer may be dealt with under this Act as if it had actually been granted under section 14. However, subsections 14(2) and (4) do not apply to the approval.

- (4) In this section:

***replaced legislation*** has the same meaning as it has for the purposes of item 22 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

***transfer date*** means the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

***Financial Transaction Reports Act 1988***

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**46 Subsection 3(1) (definition of *building society*)**

Repeal the definition.

**47 Subsection 3(1)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

**48 Subsection 3(1) (definition of *credit union*)**

Repeal the definition.

**49 Subsection 3(1) (paragraphs (b) and (c) of the definition of *financial institution*)**

Repeal the paragraphs, substitute:

(b) a co-operative housing society.

***Fringe Benefits Tax Assessment Act 1986***

**50 Subsection 99(9)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**51 Subsection 99(12) (definition of *building society*)**

Repeal the definition.

**52 Subsection 99(12)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Health Insurance Act 1973***

**53 Subsection 3(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

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

#### **54 Subsection 20(1B)**

Omit “, or with a building society or credit union that is a registered corporation within the meaning of the *Financial Corporations Act 1974*”.

#### **55 Subsection 20A(3B)**

Omit “, or with a building society or credit union that is a registered corporation within the meaning of the *Financial Corporations Act 1974*”.

#### **56 Section 46A (definition of *building society account*)**

Repeal the definition.

#### **57 Section 46A (definition of *credit union account*)**

Repeal the definition.

#### **58 Subsection 46D(2)**

Omit “, credit union account or building society account”.

### ***Income Tax Assessment Act 1936***

#### **59 Subsection 6(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

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

#### 60 Subsection 23G(1)

Repeal the subsection, substitute:

- (1) In this section:

***credit union*** means a company in relation to which the following conditions are satisfied:

- (a) the company is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*;
- (b) the company has a consent under section 66 of that Act that allows it to assume or use the expression ***credit union*** or ***credit society***, or another expression (whether or not in English) that is of like import to either of those expressions.

#### 61 Subsection 27A(1) (at the end of the definition of ***life assurance company***)

Add (but not as part of paragraph (b)):

; but does not include a registered organization.

#### 62 Subsection 27A(1) (paragraph (b) of the definition of ***registered organization***)

Repeal the paragraph, substitute:

- (b) a friendly society; and

#### 63 Section 102M (subparagraph (b)(i) of the definition of ***eligible investment business***)

Omit “, building society”.

**64 Subsection 110(1) (definition of *ordinary life assurance company*)**

Omit all the words after “which is life assurance”, substitute:  
and:

- (a) includes a company that is registered under the *Life Insurance Act 1995* and is carrying on life assurance business; but
- (b) does not include (despite paragraph (a)), a company that is:
  - (i) an SGIO; or
  - (ii) a registered organization (within the meaning of Division 8A).

Note: So a friendly society that is registered under the *Life Insurance Act 1995* that is a registered organization is not an ordinary life assurance company.

**65 Section 116DAA (note)**

Repeal the note, substitute:

Note 1: RSA providers that are registered organizations are covered by Subdivision B of Division 8A.

Note 2: RSA providers that are not life assurance companies or registered organizations are covered by Division 7A of Part IX.

Note: The heading to section 116DAB is replaced by the heading “**Taxable income includes taxable contributions**”.

**66 Before section 116E**

Insert:

**Subdivision A—General provisions****67 Subsection 116E(1) (definition of *annuity*)**

Repeal the definition, substitute:

***annuity*** means:

- (a) an annuity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
- (b) a pension, within the meaning of the *Retirement Savings Accounts Act 1997*.

**68 Subsection 116E(1) (definition of *eligible insurance policy*)**

Omit “or an eligible policy”, substitute “, an eligible policy or an RSA”.

**69 Subsection 116E(1) (definition of *life assurance policy*)**

Repeal the definition, substitute:

*life assurance policy* includes:

- (a) an instrument securing the grant of an annuity, whether or not for a term dependent upon human life; and
- (b) an RSA where the provider is a registered organization.

**70 Subsection 116E(1)**

Insert:

*RSA assessable income*, in relation to a registered organization in relation to a year of income, means so much of the total income of the organization of the year of income as is derived from RSA business of the organization.

**71 Subsection 116E(1)**

Insert:

*RSA asset*, in relation to a registered organization, means an asset of the organization that relates to its RSA business.

**72 Subsection 116E(1)**

Insert:

*RSA business* means business of, or in relation to, the issuing of, or the undertaking of liability under, RSAs.

**73 Subsection 116E(1)**

Insert:

*RSA category A component* means the component of the RSA combined component worked out under subsection 116N(2).

**74 Subsection 116E(1)**

Insert:

*RSA category B component* means the component of the RSA combined component worked out under subsection 116N(3).



## 75 Subsection 116E(1)

Insert:

***RSA combined component*** means the component of the taxable income determined under section 116HE for the RSA class.

## 76 Subsection 116E(1)

Insert:

**taxable contribution** has the same meaning as in Part IX.

**77 After paragraph 116G(1)(b)**

Insert:

(ba) RSA (Retirement Savings Account);

## 78 Subsection 116GA(3)

Omit “or NCS”, substitute “, NCS or RSA”.

**79 Before paragraph 116GB(5)(a)**

Insert:

(aa) RSA;

**80 After subsection 116GD(1)**

Insert:

(1A) The RSA class of assessable income consists of:

(a) any assessable income allocated to that class under section 116GA or 116GB; and

(b) any amounts covered by paragraph 116M(2)(a) or (b); and

(c) any other RSA assessable income.

**81 Subsection 116H(2) (after paragraph (a) of the definition of assessable income)**

Insert:

(aa) includes RSA contributions to which section 116HAB applies that are received by the organization; and

## 82 Subsection 116HAB(1)

After “superannuation premiums”, insert “or RSA contributions”.

Note: The heading to section 116HAB is altered by adding at the end “**or RSA contributions**”.

**83 Subsection 116HAB(2)**

After “superannuation policies” (wherever occurring), insert “or RSAs”.

**84 Subsection 116HAB(2)**

After “superannuation premiums” (wherever occurring), insert “or RSA contributions”.

**85 Subsection 116HAB(3)**

After “superannuation premiums”, insert “and RSA contributions”.

**86 Subsection 116HAC(1) (after paragraph (a) of the definition of *relevant life assurance premiums*)**

Insert:

(aa) RSA contributions; or

**87 Before paragraph 116HD(1)(a)**

Insert:

(aa) RSA;

**88 At the end of Division 8A of Part III**

Add:

**Subdivision B—RSA providers**

**116K Overview**

This Subdivision sets out how to calculate the taxable income of an RSA provider that is a registered organization (so far as its RSA business is concerned) and the components of that taxable income.

Note 1: RSA providers that are life assurance companies are covered by Subdivision AA of Division 8.

Note 2: RSA providers that are not life assurance companies or registered organizations are covered by Division 7A of Part IX.

**116L Assessable income includes taxable contributions**

The assessable income of an RSA provider that is a registered organization includes all taxable contributions made during the year of income to RSAs provided by the RSA provider.

**116M Calculation of RSA category A amount**

- (1) This section sets out how to calculate the RSA category A amount of an RSA provider's RSA combined component.
- (2) The RSA category A amount of an RSA provider is the sum of:
  - (a) all taxable contributions made; and
  - (b) other amounts (other than contributions) credited; during the year of income, to RSAs provided by the RSA provider, reduced by any amounts paid from the RSA other than benefits paid to, or in respect of, the holder of the RSA.
- (3) In calculating the RSA category A amount, any amount of tax paid in respect of an RSA is taken not to have been an amount paid from the RSA.
- (4) In calculating the sum, the amounts set out in subsections (5) and (6) are taken not to have been credited.
- (5) Amounts credited to an RSA where an annuity was paid from the RSA in respect of so much of the year of income as the RSA existed.
- (6) Where an annuity was being paid from an RSA in respect of a part, but not the whole, of so much of the year of income as the RSA existed, amounts worked out using the following formula:

$$\text{Amount credited to RSA} \times \frac{\text{No. of days in part of year in respect of which annuity was paid}}{\text{No. of days in year in which RSA existed}}$$

**116N Components of RSA combined component**

- (1) The RSA combined component of an RSA provider that is a registered organization is divided into the ***RSA category A component*** and the ***RSA category B component***.

- (2) The RSA category A component is equal to the RSA category A amount worked out under section 116M.
- (3) The RSA category B component is the amount (if any) remaining after deducting the RSA category A component from the RSA combined component.

#### **116O Taxable income and amount of components in certain cases**

- (1) This section applies if:
  - (a) an RSA provider has no taxable income; or
  - (b) an RSA provider has no RSA combined component; or
  - (c) the RSA combined component of an RSA provider is less than the RSA category A amount.
- (2) If, apart from this subsection, an RSA provider has no taxable income, or the taxable income is less than the RSA category A amount:
  - (a) the RSA provider is taken to have both a taxable income and a tax loss in relation to the year of income; and
  - (b) the taxable income is taken to equal the RSA category A amount; and
  - (c) the tax loss is taken to be the amount that would have been the RSA provider's tax loss if the RSA category A amount were not income derived; and
  - (d) the RSA combined component and the RSA category A component of that component are taken to be equal to the RSA category A amount; and
  - (e) all other components of taxable income are taken to be nil.
- (3) If, apart from this subsection, the taxable income of an RSA provider is equal to or greater than the RSA category A amount:
  - (a) the RSA combined component and the RSA category A component of that component are taken to be equal to the RSA category A amount; and
  - (b) an amount equal to the difference between the RSA category A amount and the amount that would, apart from this subsection, have been the RSA combined component is to be applied in reducing the other components of taxable income in the following order:
    - (i) EIB;

- (ii) CS/RA;
- (iii) NCS.

#### **116P Deductions from assessable income of RSA providers**

No deduction is allowable in respect of amounts credited to RSAs.

#### **116Q Exempt income of RSA providers**

Any amounts that, but for the operation of subsection 116M(4), would have been taken into account under paragraph 116M(2)(b) in calculating the RSA category A component of the RSA provider's RSA combined component for the year of income are exempt.

#### **89 Paragraph 121AO(4)(b)**

Omit “, building society”.

#### **90 Subsection 159GP(1) (paragraph (b) of the definition of *security*)**

Omit “, building society”.

#### **91 Section 202A (definition of *building society*)**

Repeal the definition.

#### **92 Section 202A**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

#### **93 Section 202A (definition of *credit union*)**

Repeal the definition.

#### **94 Section 202A (paragraphs (b) and (c) of the definition of *financial institution*)**

Repeal the paragraphs, substitute:

or (b) a co-operative housing society.

**95 Subsection 218(6)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**96 Subsection 218(6B) (definition of *building society*)**

Repeal the definition.

**97 Subsection 218(6B)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

**98 Subparagraph 221AL(c)(ii)**

After “NCS component”, insert “, the RSA combined component (if any)”.

**99 Subparagraph 221AZE(2)(c)(ii)**

After “NCS component”, insert “, the RSA combined component (if any)”.

**100 Section 299A**

After “a life assurance company”, insert “or a registered organization”.

**101 Section 299A (note)**

Repeal the note, substitute:

Note 1: RSA providers that are life assurance companies are covered by Subdivision AA of Division 8 of Part III.

Note 2: RSA providers that are registered organizations are covered by Subdivision B of Division 8A of Part III.

**102 Section 299B**

After “other than a life assurance company”, insert “or a registered organization”.

Note: The heading to section 299B is replaced by the heading “**Taxable income includes taxable contributions**”.

**103 Subsection 299D(1)**

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After “other than a life assurance company”, insert “or a registered organization”.

**104 Subsection 303(1) (paragraph (b) of the definition of *security*)**

Omit “, building society”.

***Income Tax Assessment Act 1997***

**105 Subsection 995-1(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

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

***Insurance Act 1973***

**106 Subsection 3(1) (definition of *building society*)**

Repeal the definition.

**107 Subsection 3(1) (definition of *credit union*)**

Repeal the definition.

**108 Subsection 3(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or

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

**109 Subsection 5(4)**

Repeal the subsection, substitute:

- (4) In paragraph (2)(ga):

*building society* means:

- (a) a body corporate in relation to which the following conditions are satisfied:
  - (i) the body corporate is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*;
  - (ii) the body corporate has a consent under section 66 of that Act that allows it to assume or use the expression *building society*, or another expression (whether or not in English) that is of like import to the expression *building society*; or
- (b) a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

**110 Subparagraph 30(1)(d)(ii)**

Omit “, a building society, a credit union”.

**111 Subparagraphs 49B(1)(b)(v) and (vi)**

Repeal the subparagraphs.

**112 Subparagraphs 49B(2)(b)(v) and (vi)**

Repeal the subparagraphs.

**113 Subparagraph 49E(1)(e)(ii)**

Omit “, a building society, a credit union”.



***Insurance (Agents and Brokers) Act 1984***

**114 At the end of section 7**

Add:

- ; or (d) for interests in approved benefit funds (within the meaning of the *Life Insurance Act 1995*) of friendly societies (within the meaning of that Act).

**115 Subsection 26(1A)**

Repeal the subsection.

**116 Subsection 26(11)**

Omit “, building society or credit union”.

***Insurance Contracts Act 1984***

**117 Subsection 11(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

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

***Life Insurance (Conduct and Disclosure) Act 1999***

**118 After section 10**

Insert:

## 10A Exclusion of life companies that are friendly societies

This Act does not apply to a life company that is a friendly society (within the meaning of the *Life Insurance Act 1995*).

## *Military Superannuation and Benefits Act 1991*

### 119 Subsection 48(1)

Insert:

*bank* includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

### 120 Paragraph 48(2)(a)

Omit “, credit union or building society (in this section called the *financial institution*)”.

Note: The heading to section 48 is altered by omitting “**Financial institution**” and substituting “**Bank**”.

### 121 Subsection 48(2)

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 120), substitute “bank”.

## *National Health Act 1953*

### 122 Subsection 4(1)

Insert:

*friendly society* means:

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

was registered or incorporated as a friendly society under a law of a State or Territory.

***Petroleum Resource Rent Tax Assessment Act 1987***

### 123 Subsection 91(9)

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**124 Subsection 91(12) (definition of *building society*)**

Repeal the definition.

## 125 Subsection 91(12)

Insert:

***co-operative housing society*** means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

## Privacy Act 1988

**126 Subsection 6(1) (definition of *building society*)**

Repeal the definition.

**127 Subsection 6(1) (definition of *credit union*)**

Repeal the definition.

## 128 Subparagraphs 11B(1)(b)(i) and (ii)

Repeal the subparagraphs.

## *Proceeds of Crime Act 1987*

**129 Subsection 4(1) (definition of *building society*)**

Repeal the definition.

### 130 Subsection 4(1)

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

**131 Subsection 4(1) (definition of *credit union*)**

Repeal the definition.

**132 Subsection 4(1) (paragraphs (a), (b) and (c) of the definition of *financial institution*)**

Repeal the paragraphs, substitute:

- (a) an ADI; or
- (b) a co-operative housing society; or

***Retirement Savings Accounts Act 1997***

**133 Subsection 11(2)**

Omit “building society, credit union,”.

**134 Section 16 (definition of *AFIC Codes*)**

Repeal the definition.

**135 Section 16 (definition of *building society*)**

Repeal the definition.

**136 Section 16 (definition of *contribution*)**

Before “financial institution”, insert “prescribed”.

**137 Section 16 (definition of *credit union*)**

Repeal the definition.

**138 Section 16 (definition of *financial institution*)**

Repeal the definition.

**139 Section 16**

Insert:

*prescribed financial institution* means a body prescribed by the regulations for the purposes of this definition.

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**140 Subsection 23(1)**

Omit “building society, credit union,”.

**141 Paragraph 33(2)(b)**

Omit “building society, credit union,”.

***Sales Tax Assessment Act 1992***

**142 Subsection 74(9)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**143 Subsection 74(10) (definition of *building society*)**

Repeal the definition.

**144 Subsection 74(10)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Social Security Act 1991***

**145 Section 3 (index)**

Omit:

building society account	23(1)
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**146 Section 3 (index)**

Omit:

credit union account	23(1)
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**147 Subsection 9(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or

- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression *friendly society*; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; or
- (e) a body that had, before 13 December 1987, been approved for the purpose of the definition of *friendly society* in subsection 115(1) of the 1947 Act.

**148 Subsection 9(1) (paragraph (e) of the definition of *income stream*)**

Omit “(within the meaning of the Income Tax Assessment Act)”.

**149 Subsection 19B(1) (paragraph (c) of the definition of *liquid assets*)**

Omit “, building society, credit union”.

**150 Subsection 23(1) (definition of *building society account*)**

Repeal the definition.

**151 Subsection 23(1) (definition of *credit union account*)**

Repeal the definition.

**152 Subsection 23(1) (definition of *financial institution*)**

Omit “, building society, credit union”.

**153 Section 29**

Repeal the section, substitute:

**29 Approval of friendly societies**

The Secretary may determine that:

- (a) a friendly society; or
- (b) a person or body that, in the Secretary’s opinion:
  - (i) is similar in character to a friendly society; and

(ii) provides benefits similar to the benefits provided by a friendly society;

is an *approved friendly society* for the purposes of this Act.

## 154 Subsection 62(2)

Omit “, credit union account or building society account”.

### 155 Paragraph 87(2)(b)

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

## 156 Subsection 87(2)

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 155), substitute “bank”.

### 157 Paragraph 98(1)(h)

Omit “bank, credit union or building society account”, substitute “bank account”.

## 158 Subsection 124(2)

Omit “, credit union account or building society account”.

**159 Paragraph 146L(2)(b)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**160 Subsection 146L(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 159), substitute “bank”.

## 161 Subsection 166(2)

Omit “, credit union account or building society account”.

## 162 Paragraph 192(2)(b)

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

### 163 Subsection 192(2)

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 162), substitute “bank”.

**164 Subsection 216(2)**

Omit “, credit union account or building society account”.

**165 Paragraph 242(2)(b)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**166 Subsection 242(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 165), substitute “bank”.

**167 Subsection 335(2)**

Omit “, credit union account or building society account”.

**168 Subsection 383(2)**

Omit “, credit union account or building society account”.

**169 Subsection 408GF(2)**

Omit “, credit union account or building society account”.

**170 Paragraph 500I(1)(j)**

Omit “bank, credit union or building society account”, substitute “bank account”.

**171 Subsection 504K(2)**

Omit “, credit union account or building society account”.

**172 Paragraph 514F(2)(b)**

Omit “, credit union or building society (the *financial institution*)”.

**173 Subsection 514F(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 172), substitute “bank”.

**174 Subsection 559F(2)**

Omit “, credit union account or building society account”.

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**175 Paragraph 567E(2)(b)**

Omit “, credit union or building society (financial institution)”.

Note: The heading to subsection 567E(2) is altered by omitting “*Financial institution*” and substituting “*Bank*”.

**176 Subsection 567E(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 175), substitute “bank”.

**177 Subsection 584E(2)**

Omit “, credit union account or building society account”.

**178 Paragraph 592E(2)(b)**

Omit “, credit union or building society (financial institution)”.

Note: The heading to subsection 592E(2) is altered by omitting “*Financial Institution*” and substituting “*Bank*”.

**179 Subsection 592E(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 178), substitute “bank”.

**180 Subsection 650(2)**

Omit “, credit union account or building society account”.

**181 Paragraph 660LF(2)(b)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**182 Subsection 660LF(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 181), substitute “bank”.

**183 Subsection 660XGF(2)**

Omit “, credit union account or building society account”.

**184 Paragraph 660XKF(2)(b)**

Omit “, credit union or building society (the *financial institution*)”.

**185 Subsection 660XKF(2)**

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Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 184), substitute “bank”.

**186 Paragraph 660XKN(2)(b)**

Omit “, credit union or building society (the *financial institution*)”.

**187 Subsection 660XKN(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 186), substitute “bank”.

**188 Subsection 660YGF(2)**

Omit “, credit union account or building society account”.

**189 Paragraph 677(1)(m)**

Omit “bank, credit union or building society account”, substitute “bank account”.

**190 Subsection 720(2)**

Omit “, credit union account or building society account”.

**191 Paragraph 728PF(2)(b)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**192 Subsection 728PF(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 191), substitute “bank”.

**193 Subsection 753(2)**

Omit “, credit union account or building society account”.

**194 Paragraph 768F(2)(b)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**195 Subsection 768F(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 194), substitute “bank”.

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**196 Paragraph 771HC(1)(i)**

Omit “, credit union account or building society account”.

**197 Subsection 771KK(2)**

Omit “, credit union account or building society account”.

**198 Paragraph 771NZ(2)(b)**

Omit “, credit union or building society (the *financial institution*)”.

**199 Subsection 771NZ(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 198), substitute “bank”.

**200 Subsection 802(2)**

Omit “, credit union account or building society account”.

**201 Paragraph 827(2)(b)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**202 Subsection 827(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 201), substitute “bank”.

**203 Subsection 866(2)**

Omit “, credit union account or building society account”.

**204 Subsection 900AZG(2)**

Omit “, credit union account or building society account”.

**205 Paragraph 958(1)(d)**

Omit “, credit union account or building society account”.

**206 Subsection 972(2)**

Omit “, credit union account or building society account”.

**207 Subsection 978(2)**

Omit “, credit union account or building society account”.

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**208 Subsection 1015(2)**

Omit “, credit union account or building society account”.

**209 Subsection 1049(2)**

Omit “, credit union account or building society account”.

**210 Subsection 1061EJ(2)**

Omit “, credit union account or building society account”.

**211 Subsection 1061PZL(2)**

Omit “, credit union account or building society account”.

**212 Subsection 1061VB(2)**

Omit “, credit union account or building society account”.

***States Grants (Housing) Act 1971***

**213 Subsection 3(1) (definition of *building society*)**

Repeal the definition, substitute:

*building society* means:

- (a) a body corporate in relation to which the following conditions are satisfied:
  - (i) the body corporate is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*;
  - (ii) the body corporate has a consent under section 66 of that Act that allows it to assume or use the expression ***building society***, or another expression (whether or not in English) that is of like import to the expression ***building society***; or
- (b) a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Superannuation Act 1976***

**214 Paragraph 96A(b)**

Omit “, credit union or building society (in this section called the ***financial institution***)”.

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**215 Paragraphs 96A(c), (d) and (e)**

Omit “financial institution”, substitute “bank”.

***Superannuation Act 1990*****216 Paragraph 44(2)(a)**

Omit “, credit union or building society (in this section called the *financial institution*)”.

Note: The heading to section 44 is altered by omitting “**Financial institution**” and substituting “**Bank**”.

**217 Subsection 44(2)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 216), substitute “bank”.

***Superannuation Contributions Tax (Assessment and Collection) Act 1997*****218 Subsection 40A(9)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**219 Subsection 40A(10) (definition of *building society*)**

Repeal the definition.

**220 Subsection 40A(10)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*****221 Subsection 35(9)**

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Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**222 Subsection 35(10) (definition of *building society*)**

Repeal the definition.

**223 Subsection 35(10)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Superannuation Guarantee (Administration) Act 1992***

**224 Subsection 56(9)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**225 Subsection 56(12) (definition of *building society*)**

Repeal the definition.

**226 Subsection 56(12)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Taxation Administration Act 1953***

**227 Subsection 13L(1)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

**228 Subsection 13L(1) (paragraphs (a) and (b) of the definition of *financial institution*)**

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Repeal the paragraphs, substitute:

- (a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*; and
- (b) a co-operative housing society; and

***Termination Payments Tax (Assessment and Collection) Act 1997***

**229 Subsection 28A(9)**

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**230 Subsection 28A(10) (definition of *building society*)**

Repeal the definition.

**231 Subsection 28A(10)**

Insert:

*co-operative housing society* means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

***Veterans’ Entitlements Act 1986***

**232 Section 5 (index)**

Omit:

building society	5Q(1)
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**233 Section 5 (index)**

Omit:

credit union	5Q(1)
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**234 Subsection 5J(1) (definition of *friendly society*)**

Repeal the definition, substitute:

*friendly society* means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or

- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression *friendly society*; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory; or
- (e) a body that had, before 13 December 1987, been approved for the purpose of the definition of *friendly society* in subsection 115(1) of the *Social Security Act 1947*.

**235 Subsection 5J(1) (paragraph (e) of the definition of *income stream*)**

Omit “(within the meaning of the Income Tax Assessment Act)”.

**236 Subsection 5Q(1) (definition of *building society*)**

Repeal the definition.

**237 Subsection 5Q(1) (definition of *credit union*)**

Repeal the definition.

**238 Subsection 5Q(1) (definition of *financial institution*)**

Omit “, building society, credit union”.

**239 Section 58C (note)**

Omit “, credit union or building society”.

**240 Subsection 58F(1)**

Omit “, credit union or building society”.

**241 Paragraph 98A(5)(a)**

Omit “, credit union or building society (in this subsection called the *financial institution*)”.

**242 Subsection 98A(5)**

Omit “financial institution” (wherever occurring, other than the occurrence omitted by item 241), substitute “bank”.

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### 243 Subsection 122(4) (note)

Omit “, credit union or building society”.

## 244 Subsection 122A(1)

Omit “, credit union or building society”.

***Wool Tax (Administration) Act 1964***

## 245 Subsection 54(3A)

Omit “building society” (wherever occurring), substitute “co-operative housing society”.

**246 Subsection 54(4) (definition of *building society*)**

Repeal the definition.

## 247 Subsection 54(4)

Insert:

***co-operative housing society*** means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

## **Schedule 8—Transitional, saving and application provisions**

### **Part 1—Transitional provisions relating to transfer from State and Territory regulatory regimes**

#### **Division 1—Interpretation**

##### **1 Definitions**

(1) In this Part:

**AFIC** means the Australian Financial Institutions Commission.

**AFIC Code** means any of the following Codes of a State or Territory:

- (a) the AFIC (NSW) Code of New South Wales;
- (b) the AFIC (Victoria) Code of Victoria;
- (c) the AFIC (Queensland) Code of Queensland;
- (d) the AFIC (Western Australia) Code of Western Australia;
- (e) the AFIC (South Australia) Code of South Australia;
- (f) the AFIC (Tasmania) Code of Tasmania;
- (g) the AFIC (ACT) Code of the Australian Capital Territory;
- (h) the AFIC (NT) Code of the Northern Territory.

**APRA** means the Australian Prudential Regulation Authority.

**APRA Act** means the *Australian Prudential Regulation Authority Act 1998*.

**APRA employee** means a person appointed under section 45 of the APRA Act.

**ASIC** means the Australian Securities and Investments Commission.

**FIC body** means a body that is a society, or a special services provider, as defined in section 3 of any of the Financial Institutions Codes.

***Financial Institutions Code*** means any of the following Codes of a State or Territory:

- (a) the Financial Institutions (NSW) Code of New South Wales;
- (b) the Financial Institutions (Victoria) Code of Victoria;
- (c) the Financial Institutions (Queensland) Code of Queensland;
- (d) the Financial Institutions (Western Australia) Code of Western Australia;
- (e) the Financial Institutions (South Australia) Code of South Australia;
- (f) the Financial Institutions (Tasmania) Code of Tasmania;
- (g) the Financial Institutions (ACT) Code of the Australian Capital Territory;
- (h) the Financial Institutions (NT) Code of the Northern Territory.

***Friendly Societies Code*** means any of the following Codes of a State or Territory:

- (a) the Friendly Societies (NSW) Code of New South Wales;
- (b) the Friendly Societies (Victoria) Code of Victoria;
- (c) the Friendly Societies (Queensland) Code of Queensland;
- (d) the Friendly Societies (Western Australia) Code of Western Australia;
- (e) the Friendly Societies (South Australia) Code of South Australia;
- (f) the Friendly Societies (Tasmania) Code of Tasmania;
- (g) the Friendly Societies (ACT) Code of the Australian Capital Territory;
- (h) the Friendly Societies (NT) Code of the Northern Territory.

***friendly society*** means a body that is a society for the purposes of any of the Friendly Societies Codes.

***SSA*** means any of the following:

- (a) the New South Wales Financial Institutions Commission;
- (b) the Victorian Financial Institutions Commission;
- (c) the Queensland Office of Financial Supervision;
- (d) the Western Australian Financial Institutions Authority;
- (e) the South Australian Office of Financial Supervision;
- (f) the Tasmanian Office of Financial Supervision;

- (g) the Registrar of Financial Institutions of the Australian Capital Territory;
- (h) the Territory Supervisory Authority of the Northern Territory.

***State or Territory employee*** means a person who, immediately before the transfer date, is:

- (a) an officer, employee, or member of the staff of, AFIC or an SSA; or
- (b) the Executive Director of AFIC; or
- (c) the holder of any other statutory office within AFIC or an SSA, other than a statutory office of member (including a Chair or Deputy Chair, however described) of, or of the governing body of, AFIC or an SSA; or
- (d) an officer, employee, or member of the staff of, a State or Territory, or an authority of a State or Territory, whose duties consist of or include assisting AFIC or an SSA in the performance of its functions or the exercise of its powers.

***Territory*** means the Australian Capital Territory or the Northern Territory.

***transfer agreement*** means an agreement entered into:

- (a) by or on behalf of the Treasurer; and
- (b) by or on behalf of a Minister of a State or Territory, or 2 or more such Ministers;

that provides for matters connected with the transfer of staff, assets or liabilities from AFIC or an SSA to APRA or ASIC.

***transfer date*** has the meaning given by section 2 (which is at the front of this Act).

***transferring body*** means a body that, immediately before the transfer date, was:

- (a) an FIC body; or
- (b) a friendly society.

- (2) In this Part, a reference to a transfer agreement determining or specifying a person, thing or other matter includes a reference to a person or persons determining or specifying that person, thing or matter, as permitted by that transfer agreement.

## **Division 2—Transitional provisions relating to staff**

### **2 Transfer of State or Territory employees to APRA**

- (1) A transfer agreement may determine that specified State or Territory employees become APRA employees on a specified date, not being a date before the transfer date. In this Division, the date so specified is the *agreed date* in relation to the employees concerned.

Note: Employees may be specified by name, by inclusion in a specified class, or in some other way.

- (2) The agreement has effect accordingly, to the extent that it is within the Commonwealth's legislative power to give the agreement that effect.

### **3 Terms and conditions of transferred staff**

- (1) APRA is to determine the terms and conditions applying to a person who becomes an APRA employee as mentioned in item 2 as if the person had actually been appointed under section 45 of the APRA Act. The terms and conditions of employment must not be less favourable than those that applied to the person immediately before the agreed date.
- (2) The person is entitled to retain, as an APRA employee, all the benefits that had accrued to the person in respect of his or her length of State or Territory service up to the agreed date, as if those benefits had accrued in respect of the person's position as an APRA employee. For this purpose, the person's *State or Territory service* is:
- (a) the person's service as a State or Territory employee; and
  - (b) the person's other service (if any) that, immediately before the person becoming an APRA employee, counted as service under the terms of that person's employment as a State or Territory employee.
- (3) The person's service as an APRA employee is taken, for all purposes, to have been continuous with the person's service, immediately before the agreed date, as a State or Territory employee.

### **4 Statement of accrued benefits**

- (1) A transfer agreement may determine that APRA is to be given a statement of the benefits to which a person who becomes an APRA

employee as mentioned in item 2 has an accrued entitlement in respect of his or her position as a State or Territory employee.

- (2) In any proceedings relating to subitem 3(2), the statement is prima facie evidence of the matters set out in the statement.
- (3) Item 2 has effect in relation to the person even if the statement is not given as required.

## **Division 3—Transfer of assets and liabilities**

### **5 Transfer of assets**

- (1) A transfer agreement may determine that all or any of the following things happen on a specified date, not being a date before the transfer date:
  - (a) specified assets vest in APRA, or in ASIC, without any conveyance, transfer or assignment;
  - (b) specified instruments in relation to specified assets continue to have effect after the assets vest in APRA, or in ASIC, as if specified references in the instruments were references to APRA, or to ASIC, as the case requires;
  - (c) APRA or ASIC becomes the previous owner's successor in law in relation to specified assets immediately after the assets vest in APRA, or in ASIC.

Note: Assets or instruments may be specified by description, by inclusion in a specified class or in some other way.

- (2) The agreement has effect accordingly, to the extent that it is within the Commonwealth's legislative power to give the agreement that effect.
- (3) This item does not prevent assets being transferred to APRA or ASIC otherwise than in accordance with a transfer agreement.
- (4) In this item:

*assets* includes records.

### **6 Transfer of liabilities**

- (1) A transfer agreement may determine that all or any of the following things happen on a specified date, not being a date before the transfer date:
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- (a) specified liabilities vest in APRA, or in ASIC;
- (b) specified instruments in relation to specified liabilities continue to have effect after the liabilities vest in APRA, or in ASIC, as if specified references in the instruments were references to APRA, or to ASIC, as the case requires;
- (c) APRA or ASIC becomes the previously liable person's successor in law in relation to specified liabilities immediately after the liabilities vest in APRA, or in ASIC.

Note: Liabilities or instruments may be specified by description, by inclusion in a specified class or in some other way.

- (2) The agreement has effect accordingly, to the extent that it is within the Commonwealth's legislative power to give the agreement that effect.
- (3) This item does not prevent liabilities being transferred to APRA or ASIC otherwise than in accordance with a transfer agreement.

## **Division 4—Transitional provisions relating to operation of the Banking Act 1959**

### **7 Certain bodies taken to have authorities to carry on banking business**

- (1) This item applies to the following bodies:
  - (a) all bodies that were FIC bodies immediately before the transfer date;
  - (b) The Cairns Cooperative Weekly Penny Savings Bank Limited (**CCWPSBL**), but only if a determination under subitem (2) is in force immediately before the transfer date.

Note: The Cairns Cooperative Weekly Penny Savings Bank Limited is a body incorporated under the *Financial Intermediaries Act 1996* of Queensland.

- (2) APRA may, in writing, determine that this item applies to CCWPSBL, but only if the Treasurer and the Queensland Minister responsible for the administration of the *Financial Intermediaries Act 1996* of Queensland have agreed that CCWPSBL should be covered by the *Banking Act 1959* from the transfer date.
- (3) On the transfer date, a body to which this item applies is taken to have been granted an authority under subsection 9(3) of the *Banking Act 1959*.

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- (4) APRA may, in writing, determine conditions to which the authority is subject. The determination has effect accordingly.
  - (5) The authority may be dealt with under the *Banking Act 1959* as if it had actually been granted under subsection 9(3) of that Act.
  - (6) Conditions determined under subitem (4) may be dealt with under the *Banking Act 1959* as if they were imposed under subsection 9(4) of that Act.
  - (7) Subsection 9(7) of the *Banking Act 1959* does not apply to:
    - (a) the grant of an authority that is taken to have occurred under subitem (3); or
    - (b) the imposition of conditions on that authority under subitem (4).
  - (8) APRA must give the body written notice of the following:
    - (a) the fact that the body is taken, by subitem (3), to have been granted an authority under subsection 9(3) of the *Banking Act 1959*; and
    - (b) the determination under subitem (4) of conditions to which the authority is subject.
  - (9) APRA may also give notice of a matter referred to in paragraph (8)(a) or (b) in such other way as APRA considers appropriate.

**8 Bodies taken to have consent for use of certain expressions**

- (1) A body that, immediately before the transfer date:
  - (a) was a society, services corporation or association as defined in section 3 of a Financial Institutions Code; and
  - (b) was trading or carrying on business (within the meaning of section 144 of that Code) under a name or title of which words, abbreviations or symbols covered by paragraph 144(2)(a) of that Code formed part;is taken, on the transfer date, to have been granted a consent under section 66 of the *Banking Act 1959* covering the body trading or carrying on business under that name or title. The consent may be dealt with under that Act as if it had actually been granted under section 66 of that Act.



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- (2) An exemption in force under subsection 144(4) of a Financial Institutions Code immediately before the transfer date continues to have effect from that date, and may be dealt with, as if it were a consent under section 66 of the *Banking Act 1959*. Any conditions to which the exemption was subject immediately before the transfer date are to be taken, from that date, to be, and may be dealt with as if they were, conditions applying under section 66 of the *Banking Act 1959*.

## **9 Unclaimed money**

- (1) This item applies to each body that is taken by subitem 7(3) to have been granted an authority under subsection 9(3) of the *Banking Act 1959*.
- (2) An amount of money in respect of which notification action has been taken before the transfer date by a body to which this item applies under an unclaimed money law is not unclaimed moneys for the purposes of section 69 of the *Banking Act 1959*.
- (3) For the avoidance of doubt, it is declared that, subject to subitem (2), an amount of money that, on the transfer date, satisfies the description of unclaimed moneys in section 69 of the *Banking Act 1959* is unclaimed moneys for the purposes of that section even though, for any reason, the amount was not, immediately before that date, unclaimed money, or unclaimed moneys, within the meaning of an unclaimed money law.
- (4) If, but for this item, a body to which this item applies would be required to deliver a Commonwealth unclaimed money statement on or before the 31 March next following the transfer date, then:
- (a) the body may, but is taken not to be required to, deliver a Commonwealth unclaimed money statement on or before that 31 March; and
  - (b) if the body does not deliver a Commonwealth unclaimed money statement on or before that 31 March—the amounts that would have been included in that statement must (if they are still unclaimed money) be included in the next Commonwealth unclaimed money statement delivered by the body.
- (5) The Treasurer, or an authorized officer (within the meaning of section 69 of the *Banking Act 1959*), may, in relation to a specified body to which this item applies, determine in writing that subsection 69(5) of the *Banking Act 1959* has effect in relation to the first Commonwealth
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unclaimed money statement delivered by the body after the transfer date as if it required the amount shown in the statement to be paid to the Commonwealth:

- (a) on a specified date or at the end of a specified period; or
- (b) in accordance with a specified scheme for payment by instalments.

Note: A body may be specified by name, by inclusion in a specified class or in some other way.

- (6) A person must not, under subitem (5), make a determination that would result in an amount being required to be paid to the Commonwealth more than 5 years after the date on which the amount would otherwise have had to be paid to the Commonwealth.
- (7) A determination under subitem (5) has effect accordingly.
- (8) In this item:

***Commonwealth unclaimed money statement*** means a statement under subsection 69(3) of the *Banking Act 1959*.

***notification action*** means:

- (a) in relation to the unclaimed money law of Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory or the Northern Territory—enter, or enter particulars of, unclaimed money, or unclaimed moneys, (within the meaning of that law) in a register in accordance with that law; or
- (b) in relation to the unclaimed money law of New South Wales—lodge a return with the Chief Commissioner (within the meaning of that law) relating to unclaimed money (within the meaning of that law) in accordance with that law; or
- (c) in relation to the unclaimed money law of Western Australia—notify the Treasurer of particulars of unclaimed money (within the meaning of that law) in accordance with that law.

***unclaimed money law*** means:

- (a) the *Unclaimed Money Act 1995* of New South Wales;
- (b) the **Unclaimed Moneys Act 1962** of Victoria;
- (c) Part 8 of the *Public Trustee Act 1978* of Queensland;
- (d) the *Unclaimed Money Act 1990* of Western Australia;



*transferring friendly society* means a company that is taken, by subitem 11(1), to have been granted registration under section 21 of the amended Act.

## **11 Companies taken to be registered etc.**

- (1) A company (within the meaning of the amended Act) in relation to which all the following conditions are satisfied is taken, on the transfer date, to have been granted registration under section 21 of the amended Act:
- (a) immediately before the transfer date, the company was a friendly society;
  - (b) the company carried on business before the transfer date through one or more eligible benefit funds;
  - (c) the company was not in winding up immediately before the transfer date;
  - (d) the company is specified in regulations for the purposes of this item.

For the purposes of paragraph (c), a company was *in winding up* immediately before the transfer date if, at that time, an appointment of a liquidator of the company was in force in accordance with Part 9 of the Friendly Societies Code of a State or Territory.

Note 1: A company may be specified by name, by inclusion in a specified class or in some other way.

Note 2: If the company was in winding up immediately before the transfer date, the winding up will continue in accordance with Schedule 4 to the Corporations Law (see in particular clause 11 of that Schedule).

- (2) APRA must, as soon as practicable after the transfer date, issue to the company a certificate under subsection 21(5) of the amended Act.
- (3) The registration may be dealt with under the amended Act as if it had actually been granted under section 21 of that Act.
- (4) The regulations may provide for the company to cease to be registered. Regulations for this purpose have effect in addition to the provisions in sections 26 and 27 of the amended Act about cancellation of a company's registration.
- (5) If, immediately before the transfer date, the company carried on business:
- (a) that was:

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- (b) APRA considers that the inconsistency is contrary to the interests of any of the following persons:
  - (i) owners of policies referable to the benefit fund;
  - (ii) prospective owners of policies referable to the benefit fund.

A determination under this subitem can only be made during the period beginning on the day that is 18 months after the transfer date and ending on the day that is 30 months after the transfer date.

- (11) If APRA makes a determination under subitem (10) in relation to an approval, the approval that those rules are taken to have by subitem (8) ceases to have effect on the day the determination is made.
- (12) A reference in section 236 of the amended Act to a reviewable decision includes a reference to a decision to make a determination under subitem (10).
- (13) Subject to subsection 77(6) of the amended Act, for the purposes of the amended Act, the financial year of the company is the period that, immediately before the transfer date, was the financial year of the company for the purposes of the Friendly Societies Code under which the company was then registered.
- (14) APRA may give notice of any of the following matters in such way as APRA considers appropriate:
  - (a) the fact that a company is taken, by subitem (1), to have been granted registration under section 21 of the amended Act;
  - (b) the fact that APRA is taken, by subitem (5), to have made a declaration under section 12A of the amended Act in relation to business carried on by a company;
  - (c) the fact that APRA is taken, by subitem (6), to have made a declaration under section 12B of the amended Act in relation to business carried on by a company;
  - (d) the fact that existing benefit fund rules are taken, by subitem (8), to have been approved under section 16L of the amended Act;
  - (e) that fact that an approval referred to in paragraph (d) ceases to have effect because of subitem (11).

## **12 Transitional provision relating to assignment of interests in benefit funds**

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**Schedule 8** Transitional, saving and application provisions

**Part 1** Transitional provisions relating to transfer from State and Territory regulatory regimes

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- (b) to have been appointed as auditor of the transferring friendly society in accordance with section 84 of the amended Act.

Note: For appointments that are taken to have been made, see in particular subsections 340(6) and (7) of the various Friendly Societies Codes (dealing with appointment of firms).

- (3) At any time while 2 or more persons are taken by subitem (2) to have been appointed as auditors of the same transferring friendly society, the amended Act applies in relation to the transferring friendly society as if any reference to the auditor, or the approved auditor, of a life company were instead a reference to any of the persons so taken to have been appointed.
- (4) An approval or appointment that is taken by subitem (2) to have been granted or made may be dealt with under the amended Act:
  - (a) in the case of an approval—as if it had actually been granted under paragraph 85(1)(b) of the amended Act; or
  - (b) in the case of an appointment—as if it actually were an appointment in accordance with section 84 of the amended Act.
- (5) Subsection 87(1) of the amended Act does not apply to an appointment that is taken by paragraph (2)(b) to have been made.

**16 Transitional provisions relating to actuaries**

- (1) If an appointment of a person as an actuary to a friendly society is in force under any of the Friendly Societies Codes immediately before the transfer date and that friendly society is a transferring friendly society, the person is taken, on the transfer date:
  - (a) to have been granted an approval under subsection 93(6) of the amended Act; and
  - (b) to have been appointed as actuary of the transferring friendly society in accordance with section 93 of the amended Act.
- (2) An approval or appointment that is taken by subitem (1) to have been granted or made may be dealt with under the amended Act:
  - (a) in the case of an approval—as if it had actually been granted under subsection 93(6) of the amended Act; and
  - (b) in the case of an appointment—as if it actually were an appointment in accordance with section 93 of the amended Act.



- ## 17 Unclaimed money

- Note: A transferring friendly society may be specified by name, by inclusion in a specified class or in some other way.

**Schedule 8** Transitional, saving and application provisions

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- (5) ASIC must not, under subitem (4), make a determination that would result in an amount being required to be paid to the Commonwealth more than 5 years after the date on which the amount would otherwise have had to be paid to the Commonwealth.
- (6) A determination under subitem (4) has effect accordingly.
- (7) In this item:

***Commonwealth unclaimed money statement*** means a statement under subsection 216(1) of the amended Act.

***notification action*** means:

- (a) in relation to the unclaimed money law of Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory or the Northern Territory—enter, or enter particulars of, unclaimed money, or unclaimed moneys, (within the meaning of that law) in a register in accordance with that law; or
- (b) in relation to the unclaimed money law of New South Wales—lodge a return with the Chief Commissioner (within the meaning of that law) relating to unclaimed money (within the meaning of that law) in accordance with that law; or
- (c) in relation to the unclaimed money law of Western Australia—notify the Treasurer of particulars of unclaimed money (within the meaning of that law) in accordance with that law.

***unclaimed money law*** means:

- (a) the *Unclaimed Money Act 1995* of New South Wales;
- (b) the **Unclaimed Moneys Act 1962** of Victoria;
- (c) Part 8 of the *Public Trustee Act 1978* of Queensland;
- (d) the *Unclaimed Money Act 1990* of Western Australia
- (e) the *Unclaimed Moneys Act 1891* of South Australia;
- (f) the *Unclaimed Moneys Act 1918* of Tasmania;
- (g) the *Unclaimed Moneys Act 1950* of the Australian Capital Territory;
- (h) the *Companies (Unclaimed Assets and Moneys) Act* of the Northern Territory.



**Schedule 8** Transitional, saving and application provisions

**Part 1** Transitional provisions relating to transfer from State and Territory regulatory regimes

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Note 2: This subitem has effect in addition to section 49 of the *Financial Sector (Shareholdings) Act 1998*.

- (4) For the purposes of this item, a transfer of engagements was commenced before the transfer date if, before that date:
- (a) one of the following conditions was satisfied in relation to each transferring body involved:
    - (i) the transfer was approved by a special resolution of the body, in accordance with the Financial Institutions Code or the Friendly Societies Code of a State or Territory;
    - (ii) the relevant SSA made a determination, under the Financial Institutions Code or the Friendly Societies Code of a State or Territory, that the transfer may be approved by the board of the body; or
  - (b) the relevant SSA gave a direction, under the Financial Institutions Code or the Friendly Societies Code of a State or Territory, requiring the transfer.
- (5) For the purposes of this item, a merger was commenced before the transfer date if, before that date, one of the following conditions was satisfied in relation to each transferring body involved:
- (a) the merger was approved by a special resolution of the body, in accordance with the Financial Institutions Code or the Friendly Societies Code of a State or Territory;
  - (b) the relevant SSA made a determination, under the Financial Institutions Code or the Friendly Societies Code of a State or Territory, that the merger may be approved by the board of the body.

**20 Treatment of determinations under section 29 of the *Social Security Act 1991***

A determination in force immediately before the transfer date for the purposes of section 29 of the *Social Security Act 1991* as then in force is to be taken, on and after the transfer date, to be an approval for the purposes of section 29 of that Act as amended by this Act.

## **Part 2—Transitional provisions relating to other amendments**

### **21 Treatment of approvals of banks and authorisations of persons under subsection 4(1) of the *High Court of Australia Act 1979***

An approval of a bank, or an authorisation of a person, that is in force immediately before the commencement of item 21 of Schedule 6 for the purposes of the definition of ***approved bank*** in subsection 4(1) of the *High Court of Australia Act 1979* as then in force is to be taken, after that commencement, to be an approval of the bank or an authorisation of the person for the purposes of the definition of ***ADI*** in subsection 4(1) of that Act as amended by this Act.

## Part 3—Regulations

### 22 Regulations may deal with transitional, saving or application matters

- (1) The regulations may deal with matters of a transitional, saving or application nature relating to:
  - (a) the transition from the application of provisions of the replaced legislation to the application of provisions of the *Banking Act 1959*, the *Life Insurance Act 1995*, the *Financial Sector (Transfers of Business) Act 1999*, the *Financial Sector (Shareholdings) Act 1998* or the *Australian Prudential Regulation Authority Act 1998*; or
  - (b) the transition, for The Cairns Cooperative Weekly Penny Savings Bank Limited, from the application of provisions of the *Financial Intermediaries Act 1996* of Queensland to the application of provisions of any of the Acts referred to in paragraph (a); or
  - (c) the amendments and repeals made by the Schedules to this Act.
- (2) Without limiting subitem (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  - (a) by applying (with or without modifications) to the matter:
    - (i) provisions of a law of the Commonwealth, or of a State or Territory; or
    - (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
    - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
  - (b) by otherwise specifying rules for dealing with the matter;
  - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (3) Without limiting subitems (1) and (2), the regulations may provide for the continued effect, for the purposes of a provision of a law of the

Commonwealth, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a law of a State or Territory. In the case of an instrument or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.

- (4) Without limiting subitem (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;
  - (b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;
  - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (5) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations for the purposes of this item:
- (a) may be expressed to take effect from a date before the regulations are notified in the *Gazette*; and
  - (b) may provide for a determination of a kind referred to in subitem (4) to take effect from a date before the determination is made (including a date before the regulations are notified in the *Gazette*).
- (6) In this item, a reference to a **law**, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.
- (7) In this item:
- replaced legislation*** means:
- (a) the AFIC Codes; and
  - (b) the Financial Institutions Codes; and
  - (c) the Friendly Societies Codes; and
  - (d) the *Australian Financial Institutions Commission Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or

Territory, of the Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland; and

- (e) the *Financial Institutions (Queensland) Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992* of Queensland; and
- (f) the **Friendly Societies (Victoria) Act 1996** of Victoria, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in the Schedule to the **Friendly Societies (Victoria) Act 1996** of Victoria; and
- (g) the *Friendly Societies (Western Australia) Act 1999*; and
- (h) any other law of a State or Territory prescribed by the regulations for the purposes of this definition.

## **23 Power to make regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed.

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I HEREBY CERTIFY that this Bill originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
17 June 1999

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