Financial Sector (Business Transfer and Group Restructure) Act 1999

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About this compilation

This compilation

This is a compilation of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* that shows the text of the law as amended and in force on 21 October 2016 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for transfers of business between some kinds of financial institutions, and to make provision in relation to internal restructures within some groups of financial institutions

Part 1—Preliminary

1 Short title

This Act may be cited as the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

2 Commencement

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

3 Additional operation of Act

Without prejudice to its effect apart from this section, this Act also has the effect it would have if each reference to a body corporate were, by express provision, confined to a body corporate that is a corporation to which paragraph 51(xx) of the Constitution applies.

4 Definitions

(1) In this Act, the following words and expressions have the meanings set out below:

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

approved netting arrangement has the same meaning as in the *Payment Systems and Netting Act 1998*.

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approved section 20 statement means a statement given to APRA under subsection 20(1) in relation to which an approval under subsection 20(2) is in force.

approved section 30 statement means a statement given to APRA under subsection 30(1) in relation to which an approval under subsection 30(2) is in force.

APRA means the Australian Prudential Regulation Authority.

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

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

asset means property, or a right, of any kind, and includes:

(a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and

(b) any chose in action; and

(c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and

(d) any CGT asset within the meaning of the *Income Tax Assessment Act 1997*.

authorised APRA officer, when used in a particular provision of this Act, means a person authorised under subsection (2) to perform or exercise the functions or powers of an authorised APRA officer under that provision.

business in relation to a body, includes the assets and liabilities of the body.

certificate of transfer:

(a) in relation to a voluntary transfer—means a certificate issued under section 18; and

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(b) in relation to a compulsory transfer—means a certificate issued under section 33.

close-out netting contract has the same meaning as in the *Payment Systems and Netting Act 1998*.

compulsory transfer determination means a determination made under section 25.

established—a body is established in a State or Territory if:

(a) it is registered under the *Corporations Act 2001* and is taken, under section 119A or subsection 1378(4) of that Act, to be registered in that State or Territory; or

(b) it is established by or under a law of that State or Territory.

general insurer has the meaning given by the *Insurance Act 1973*.

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

instrument includes a document and an oral agreement.

interest, in relation to land, includes:

(a) a legal or equitable estate or interest in the land; or

(b) a right, power or privilege over, or in relation to, the land.

internal transfer certificate has the meaning given by section 36L.

liability includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

life insurance company means a body corporate that is registered under section 21 of the *Life Insurance Act 1995*.

market netting contract has the same meaning as in the *Payment Systems and Netting Act 1998*.

NOHC is short for non-operating holding company.

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non-operating holding company, of a body corporate, has the same meaning as in the *Banking Act 1959*.

operating body has the meaning given by section 36B.

partial transfer has the meaning given by subsection 8(2).

receiving body means:

(a) in relation to a transfer of business under Part 3 or 4—a body corporate to which another body corporate is to transfer, or has transferred, business under that Part; or

(b) in relation to an internal transfer certificate (see section 36L)—a body corporate to which another body corporate is to transfer, or has transferred, assets or liabilities under the certificate.

regulated body means a body corporate that is:

(a) an ADI; or

(b) a life insurance company.

regulated business, in relation to a regulated body, means:

(a) for a body that is an ADI—the body's banking business (within the meaning of the *Banking Act 1959*); or

(b) for a body that is a life insurance company—the body's life insurance business (within the meaning of the *Life Insurance Act 1995*).

related—a body corporate is ***related*** to another body corporate if:

(a) the first body is a holding company of the other body; or

(b) the first body is a subsidiary of the other body; or

(c) the first body is a subsidiary of a holding company of the other body.

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restructure approval has the meaning given by section 36B.

restructure arrangement has the meaning given by section 36B.

restructure instrument has the meaning given by section 36G.

statement of detail, in relation to a partial transfer, means a statement that satisfies the requirements of section 19.

subsidiary, of a body corporate, means a body corporate that is a subsidiary of the first body by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*.

total transfer has the meaning given by subsection 8(3).

transferred asset, in relation to a receiving body, means an asset that has become, under this Act, an asset of the receiving body.

transferred liability, in relation to a receiving body, means a liability that has become, under this Act, a liability of the receiving body.

transferring body means:

(a) in relation to a transfer of business under Part 3 or 4—a body corporate that is to transfer, or that has transferred, business under that Part; or

(b) in relation to an internal transfer certificate (see section 36L)—a body corporate that is to transfer, or that has transferred, assets or liabilities under the certificate.

transfer rules means rules in force under section 46.

voluntary transfer approval means an instrument of approval under section 11.

(2) APRA may, in writing, authorise a person who is an APRA member, or an APRA staff member, to perform or exercise the functions or powers of an authorised APRA officer under a particular provision of this Act.

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5 Act binds the Crown

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

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

6 External Territories

This Act extends to every external Territory.

7 Application of *Criminal Code*

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

7A Application of sections 8 and 8A of the APRA Act

To avoid doubt, sections 8 and 8A of the *Australian Prudential Regulation Authority Act 1998* (which deal with APRA's objectives and trans-Tasman cooperation respectively) apply to the performance of functions and the exercise of powers by APRA under this Act.

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Part 2—Overview of Act

8 Overview of Act

(1) This Act provides for 2 kinds of transfers of business of regulated bodies or bodies corporate related to regulated bodies:

(a) ***voluntary transfers*** (these are transfers under Part 3); and

(b) ***compulsory transfers*** (these are transfers under Part 4).

Either kind of transfer may be a partial transfer or a total transfer.

(2) A transfer of business of a regulated body, or of a body corporate related to a regulated body, is a ***partial transfer*** if it relates to some, but not all, of the transferring body's business (including any business that is not regulated business).

(3) A transfer of business of a regulated body, or of a body corporate related to a regulated body, is a ***total transfer*** if it relates to all of the transferring body's business (including any business that is not regulated business).

(4) For a voluntary transfer of business to take effect, APRA must:

(a) receive an application for the transfer from the regulated bodies concerned (the ***transferring body*** and the ***receiving body***); and

(b) approve the application in writing (the ***voluntary transfer approval***); and

(c) issue a certificate (the ***certificate of transfer***) stating that the transfer is to take effect.

The transfer of business takes effect when the certificate of transfer comes into force.

(5) For a compulsory transfer of business to take effect, APRA must:

(a) make a determination (the ***compulsory transfer determination***) that there is to be a transfer of business between the bodies concerned (the ***transferring body*** and the ***receiving body***); and

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(b) issue a certificate (the ***certificate of transfer***) stating that the transfer is to take effect.

The transfer of business takes effect when the certificate of transfer comes into force.

(6) Business of regulated bodies may also be transferred otherwise than under this Act, for example in accordance with section 63 of the *Banking Act 1959* or Part 9 of the *Life Insurance Act 1995*.

(7) Part 4A deals with proposals by ADI, general insurer or life insurance company groups to restructure the group (under Part 5.1 of the *Corporations Act 2001*).

Note: For an overview of Part 4A, see section 36A.

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Part 3—Voluntary transfers

Division 1—Outline of Part

9 Outline of Part

(1) For a voluntary transfer of business to take effect, APRA must:

(a) receive an application for the transfer from the regulated bodies concerned (the ***transferring body*** and the ***receiving body***) (see section 10); and

(b) approve the application in writing (the ***voluntary transfer approval***) (see section 11); and

(c) issue a certificate (the ***certificate of transfer***) stating that the transfer is to take effect (see section 18).

(2) APRA must make the voluntary transfer approval if specified criteria are met (see section 11).

(3) The voluntary transfer approval may impose conditions to be complied with by the transferring body or the receiving body either before or after the certificate of transfer is issued (see section 16).

(4) APRA may only issue the certificate of transfer if specified criteria are met. The certificate must specify when it comes into force (see section 18).

(5) The transfer of business takes effect when the certificate of transfer comes into force (see section 22).

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Division 2—Approval of voluntary transfers

10 Application for approval of voluntary transfer

(1) 2 regulated bodies of the same kind may apply in writing to APRA for approval of a transfer of business from one of the bodies to the other body. The transfer cannot relate only to business of the transferring body that is not regulated business.

(2) The application must be in the form prescribed by the transfer rules and must contain or be accompanied by the information required by the transfer rules.

Note: APRA may impose a charge in respect of the application—see section 51 of the *Australian Prudential Regulation Authority Act 1998*.

(3) For the purposes of this section, 2 regulated bodies are of the same kind if:

(a) they are both ADIs; or

(b) they are both life insurance companies.

11 Approval of applications

(1) Subject to subsection (2), APRA must, in writing (the ***voluntary transfer approval***), approve a transfer of business if APRA considers that:

(a) application for approval of the transfer has been made in accordance with section 10; and

(b) the transfer has been adequately adopted (see section 13) by:

(i) the transferring body; and

(ii) the receiving body; and

(c) the transfer should be approved, having regard to:

(i) the interests of the depositors or policy owners of the transferring body when viewed as a group; and

(ii) the interests of the depositors or policy owners of the receiving body when viewed as a group; and

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(iii) the interests of the financial sector as a whole; and
(iv) any other matters that APRA considers relevant; and

(d) legislation to facilitate the transfer that satisfies the requirements of section 14 has been enacted in the State or Territory in which the transferring body is established and the State or Territory in which the receiving body is established; and

(e) either:
(i) the Minister has consented to the transfer; or
(ii) the Minister's consent to the transfer is not required (see section 15).

(2) APRA must not approve the transfer of business if it considers that the transfer should not be approved, having regard to provisions of another Act:
(a) that are prescribed for the purposes of subsection 43(4); or
(b) referred to in subsection 43(5), (6), (7) or (8).

(3) The voluntary transfer approval must be signed by an authorised APRA officer.

12 Consultation about approving the application

(1) In deciding whether to approve the transfer of business, APRA may consult with any or all of the following:
(a) officers or employees of the States and Territories;
(b) the Reserve Bank of Australia;
(c) any other person or body that APRA considers should be consulted.

(2) Subject to subsections (3) and (4), in deciding whether to approve the transfer of business, APRA must consult with:
(a) the Australian Competition and Consumer Commission; and
(b) the Australian Securities and Investments Commission; and
(c) the Commissioner of Taxation.

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(3) APRA does not have to consult with the Australian Competition and Consumer Commission in relation to the transfer of business if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
  (a) the transfer; or
  (b) a class of transfers that includes the transfer.

(4) APRA does not have to consult with the Australian Securities and Investments Commission in relation to the transfer of business if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
  (a) the transfer; or
  (b) a class of transfers that includes the transfer.

(5) APRA does not have to consult with the Commissioner of Taxation in relation to the transfer of business if the Commissioner has notified APRA, in writing, that he or she does not wish to be consulted about:
  (a) the transfer; or
  (b) a class of transfers that includes the transfer.

13 Adequate adoption

For the purposes of paragraph 11(1)(b), the transfer of business has been ***adequately adopted*** by a body if:
  (a) the transfer has been adopted by or on behalf of the body, or by or on behalf of the members or a class of the members of the body, in a way prescribed by the transfer rules; and
  (b) APRA considers that adoption of the transfer in that way adequately takes into account the interests of members of the body.

14 Complementary State or Territory legislation

State or Territory legislation referred to in paragraph 11(1)(d) must include provision to ensure that, when a certificate of transfer comes into force under Division 3, the receiving body is taken to

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be the successor in law to the transferring body, to the extent of the transfer. In particular, the legislation must provide that:

(a) assets of the transferring body vest in the receiving body, to the extent of the transfer; and

(b) liabilities of the transferring body become liabilities of the receiving body, to the extent of the transfer; and

(c) the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body, to the extent of the transfer; and

(d) if there is an approved section 20 statement in relation to the transfer that specifies:

(i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with the statement; or

(ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

15 Minister's power to decide that his or her consent is not required

The Minister's consent to the transfer of business (see paragraph 11(1)(e)) is not required if the Minister has, in writing, determined that his or her consent is not required in relation to:

(a) the transfer; or

(b) a class of transfers that includes the transfer.

16 Approval may impose conditions

(1) The voluntary transfer approval may impose conditions of either or both of the following kinds:

(a) conditions to be complied with by the transferring body or the receiving body before a certificate of transfer is issued in relation to the transfer of business;

(b) conditions to be complied with by the transferring body or the receiving body after a certificate of transfer has been

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issued or has come into force in relation to the transfer of business.

Note 1: Failure to comply with a condition referred to in paragraph (a) will mean that a certificate of transfer cannot be issued (see subsection 18(1)).

Note 2: Failure to comply with a condition referred to in paragraph (b) will not prevent the issue of a certificate of transfer, but will be an offence under subsection (4).

(2) The transferring body or the receiving body may apply in writing to APRA to have a condition that applies to it varied or revoked.

(3) APRA may, by notice in writing given to the body that made the application, approve the variation or revocation if it is satisfied that the variation or revocation is appropriate. A variation or revocation that is approved by APRA has effect accordingly.

(4) The transferring body or the receiving body commits an offence if:

(a) a condition of a kind referred to in paragraph (1)(b) applies to that body; and

(b) that body fails to comply with the condition.

Penalty for contravention of this subsection: 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.

17 Notice of decision

(1) If APRA approves the transfer of business, APRA must give a copy of the voluntary transfer approval to the transferring body and the receiving body.

(2) If APRA refuses to approve the transfer of business, APRA must give written notice of the refusal to the transferring body and the receiving body. The notice must include a statement of the reasons why the approval was refused.

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Division 3—Process by which voluntary transfers take effect

18 Certificate of transfer

(1) If APRA:

(a) has made a voluntary transfer approval; and

(b) considers that all conditions of a kind referred to in paragraph 16(1)(a) that are imposed by the approval have been complied with; and

(c) if the transfer is a partial transfer—has been given a statement of detail in relation to the partial transfer (see section 19); and

(d) is not aware of any reason why the transfer should not go ahead;

APRA must, in writing, issue a certificate (a ***certificate of transfer***) stating that the transfer is to take effect.

(2) The certificate must:

(a) include the names of the transferring body and the receiving body; and

(b) state whether the transfer is a total transfer or a partial transfer; and

(c) if it is a partial transfer—include, or have attached to it:

(i) the statement of detail (see section 19); and

(ii) any approved section 20 statement; and

(d) subject to subsection (3), state when the certificate is to come into force (either by specifying a date as the date it comes into force, or by specifying that the date it comes into force is a date worked out in accordance with provisions of the certificate); and

(e) be signed by an authorised APRA officer.

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(3) APRA must, in deciding when the certificate is to come into force, take into account the wishes of the transferring body and the receiving body.

(4) The certificate comes into force in accordance with the statement included in the certificate as required by paragraph (2)(d).

19 Partial transfer—statement of detail to be provided

If the transfer is a partial transfer, before APRA issues a certificate of transfer in relation to the transfer, APRA must be provided with a written statement:

(a) that lists, in detail, the assets and liabilities of the transferring body that are to be transferred to the receiving body; and

(b) that APRA is satisfied has been agreed to by the transferring body and the receiving body.

20 Agreements about matters connected with the transfer

(1) The transferring body or the receiving body, or both of those bodies, may provide APRA with a written statement specifying, or specifying a mechanism for determining, things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected.

Note: If the transfer is a partial transfer, the statement may be included with the statement of detail under section 19.

(2) APRA may, in writing, approve the statement before issuing the certificate of transfer if APRA is satisfied that:

(a) the statement has been agreed to by the transferring body and the receiving body; and

(b) the matters specified in the statement are appropriate.

21 Notice of decision

(1) If APRA issues the certificate of transfer, APRA must give a copy of the certificate to the transferring body and the receiving body.

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(2) If APRA refuses to issue the certificate of transfer, APRA must give written notice of the refusal to the transferring body and the receiving body. The notice must include a statement of the reasons why the certificate was not issued.

22 Time and effect of voluntary transfer

(1) When the certificate of transfer comes into force, the receiving body becomes the successor in law of the transferring body, to the extent of the transfer. In particular:

(a) if the transfer is a total transfer—all the assets and liabilities of the transferring body, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer, conveyance or assignment; and

(b) if the transfer is a partial transfer—all the assets and liabilities of the transferring body that are included in the list of assets and liabilities specified in the statement of detail, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer conveyance or assignment; and

(c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

(2) If there is an approved section 20 statement in relation to the transfer, then:

(a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with the statement; and

(b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

(3) Subject to subsection (2), if:

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(a) the transfer is a total transfer; and

(b) immediately before the certificate comes into force, proceedings (including arbitration proceedings) to which the transferring body was a party were pending or existing in any court or tribunal;

the receiving body is, on and after the day when the certificate comes into force, substituted for the transferring body as a party to the proceedings and has the same rights in the proceedings as the transferring body had.

Note: An alternative way of dealing with substitution of parties (which is available for total or partial transfers) is to deal with the matter in an approved section 20 statement (see subsection (2)).

(4) Subject to subsection (2), if:

(a) the transfer is a total transfer; and

(b) on the day when the certificate comes into force, documentary or other evidence would (disregarding the transfer) have been admissible for or against the interests of the transferring body;

that evidence is admissible, on or at any time after that day, for or against the interests of the receiving body.

Note: An alternative way of dealing with admissibility of evidence (which is available for total or partial transfers) is to deal with the matter in an approved section 20 statement (see subsection (2)).

(5) Subject to subsection (2), if the transfer is a total transfer, on and after the day when the certificate comes into force, each translated instrument continues to have effect, according to its tenor, as if a reference in the instrument to the transferring body were a reference to the receiving body. For this purpose:

translated instrument means an instrument (including an Act or other legislative instrument) subsisting immediately before the day when the certificate comes into force:

(a) to which the transferring body is a party; or

(b) that was given to, by or in favour of, the transferring body; or

(c) that refers to the transferring body; or

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(d) under which money is, or may become, payable, or other property is, or may become, liable to be transferred, to or by the transferring body.

Note: An alternative way of dealing with references in instruments (which is available for total or partial transfers) is to deal with the matter in an approved section 20 statement (see subsection (2)).

(6) Subject to subsection (2), on and after the day when the certificate comes into force, a place that, immediately before that day, was a place of business for the transferring body in relation to business that was transferred to the receiving body is taken to be a place of business for the receiving body.

Note: An alternative way of dealing with places of business is to deal with the matter in an approved section 20 statement (see subsection (2)).

23 Employment unaffected

(1) This section applies to every person who, immediately before the day when the certificate of transfer comes into force, was performing duty in the transferring body.

(2) The terms and conditions of employment (including any accrued entitlement to employment benefits) of each person to whom this section applies are not affected by the operation or effect of this Part or of any State or Territory legislation referred to in paragraph 11(1)(d).

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Part 4—Compulsory transfers

Division 1—Outline of Part

24 Outline of Part

(1) For a compulsory transfer of business to take effect, APRA must:
  (a) make a determination (the ***compulsory transfer determination***) that there is to be a transfer of business between the bodies concerned (the ***transferring body*** and the ***receiving body***) (see section 25); and
  (b) issue a certificate (the ***certificate of transfer***) stating that the transfer is to take effect (see section 33).

(2) APRA may only make the compulsory transfer determination if specified criteria are met (including that APRA is satisfied that the board of directors of the receiving body has consented to the transfer) (see section 25).

(3) The compulsory transfer determination may impose conditions to be complied with by the transferring body or the receiving body either before or after the certificate of transfer is issued (see section 31).

(4) APRA may only issue the certificate of transfer if specified criteria are met. The certificate must specify when it comes into force (see section 33).

(5) The transfer of business takes effect when the certificate of transfer comes into force (see section 35).

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Division 2—Compulsory transfer determinations

25 Compulsory transfer determinations

Transfer from one ADI to another

(1) APRA may make a written determination that there is to be a total transfer or partial transfer of business from one ADI to another ADI. APRA may make the determination only if:

(a) either the Minister has declared under section 25A that a transfer of business should occur from the transferring body to the receiving body or APRA is satisfied that:

(i) the transferring body has contravened a provision of the *Banking Act 1959*, any regulations or other instruments made under that Act or conditions imposed under that Act; or

(ii) the transferring body has informed APRA under subsection 13(3) of the *Banking Act 1959* that it considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment; or

(iii) APRA has appointed a person, under subsection 13A(1) of the *Banking Act 1959*, to investigate the affairs of the transferring body, or to take control of the body's business; or

(iv) APRA has appointed an administrator, under subsection 13A(1) of the *Banking Act 1959*, to take control of the transferring body's business; or

(v) APRA has appointed a person to investigate and report on prudential matters in relation to the transferring body under subsection 61(1) of the *Banking Act 1959*; and

(b) APRA has considered the interests of depositors of the transferring body (when viewed as a group) and considers that, having regard to their interests, it would be appropriate for the transfer to be made; and

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(c) APRA is satisfied that the transfer is appropriate, having regard to the interests of depositors of the receiving body when viewed as a group; and

(d) the conditions in subsection (2) exist.

Transfer from an ADI to a body corporate that is not an ADI

(1A) APRA may make a written determination that there is to be a partial transfer of business from an ADI to a body corporate that is not an ADI. APRA may make the determination only if:

(a) at least one of the following applies:

(i) the condition in paragraph (1)(a) is met (for the ADI as the transferring body and the body corporate that is not an ADI as the receiving body);

(ii) APRA has made a determination relating to the transferring body under subsection (1) for the partial transfer of some or all of its regulated business to another ADI (whether or not the transfer provided for in that determination has occurred); and

(b) APRA has considered the interests of depositors of the transferring body (when viewed as a group) and considers that, having regard to their interests, it would be appropriate for the transfer to be made; and

(c) the conditions in subsection (2) exist.

Transfer from a body corporate related to an ADI to another body

(1B) APRA may make a written determination that there is to be a total transfer or partial transfer of business from a body corporate that is related to an ADI and is not an ADI, general insurer or life insurance company to another body corporate (the ***transferee***). APRA may make the determination only if:

(a) APRA is making, or has made within a reasonable period, a determination under subsection (1) or (1A) relating to the ADI for the total transfer or partial transfer of its business to a body corporate (the ***original receiving body***) (whether or not the transfer provided for in that determination has occurred); and

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(b) the transferee is the original receiving body or is related to the original receiving body.

Transfer from one life insurance company to another

(1C) APRA may make a written determination that there is to be a transfer of business from one life insurance company to another life insurance company, other than a transfer only of business of the transferring body that is not regulated business. APRA may make the determination only if:

(a) APRA is satisfied that:

(i) the transferring body has contravened the *Life Insurance Act 1995*, any regulations or other instruments made under that Act or conditions imposed under that Act; or

(ii) APRA has given the transferring body a written notice under subsection 139(1) of the *Life Insurance Act 1995* stating that APRA proposes to investigate life insurance business of the body; or

(iii) a judicial manager of the transferring body has recommended, under subsection 175(2) of the *Life Insurance Act 1995*, that the business or part of the business of the body be transferred to another company; and

(b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to their interests, it would be appropriate for the transfer to be made; and

(c) APRA is satisfied that the transfer is appropriate, having regard to the interests of policy owners of the receiving body when viewed as a group; and

(d) the conditions in subsection (2) exist.

Transfer of unregulated business from life insurance company

(1D) APRA may make a written determination that there is to be a transfer of only the business that is not regulated business from a life insurance company to a body corporate that is not an insurance company or life insurance company if, and only if:

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(a) APRA is satisfied that:

(i) the transferring body has contravened the *Life Insurance Act 1995*, any regulations or other instruments made under that Act or conditions imposed under that Act; or

(ii) APRA has given the transferring body a written notice under subsection 139(1) of the *Life Insurance Act 1995* stating that APRA proposes to investigate life insurance business of the body; or

(iii) a judicial manager of the transferring body has recommended, under subsection 175(2) of the *Life Insurance Act 1995*, that the business or part of the business of the body be transferred to another company; or

(iv) APRA has made a determination under subsection (1C) for the transfer of some or all of the transferring body's regulated business to another life insurance company (whether or not the transfer has yet happened); and

(b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to those interests, it would be appropriate for the transfer to be made; and

(c) the conditions in subsection (2) exist.

Transfer of business from general insurer

(1E) APRA may make a written determination that there is to be a transfer of business from one general insurer to another general insurer, other than a transfer only of business of the transferring body that is not regulated business, if, and only if:

(a) APRA is satisfied that:

(i) the transferring body has contravened the *Insurance Act 1973*, any regulations or other instruments made under that Act or conditions imposed under that Act; or

(ii) APRA has served on the transferring body a written notice under subsection 52(4) of the *Insurance Act 1973* specifying matters into which an investigation under section 52 of that Act is to be made; or

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(iii) a judicial manager of the transferring body has recommended, under section 62ZI of the *Insurance Act 1973*, that the body's business be transferred to another general insurer; and

(b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers that, having regard to those interests, it would be appropriate for the transfer to be made; and

(c) APRA is satisfied that the transfer is appropriate, having regard to the interests of policy owners of the receiving body when viewed as a group; and

(d) the conditions in subsection (2) exist.

Transfer of unregulated business from general insurer

(1F) APRA may make a written determination that there is to be a transfer of only the business that is not regulated business from a general insurer to a body corporate that is not an insurance company or life insurance company if, and only if:

(a) APRA is satisfied that:

(i) the transferring body has contravened the *Insurance Act 1973*, any regulations or other instruments made under that Act or conditions imposed under that Act; or

(ii) APRA has served on the transferring body a written notice under subsection 52(4) of the *Insurance Act 1973* specifying matters into which an investigation under section 52 of that Act is to be made; or

(iii) a judicial manager of the transferring body has recommended, under section 62ZI of the *Insurance Act 1973*, that the body's business be transferred to another general insurer; or

(iv) APRA has made a determination under subsection (1E) for the transfer of some or all of the transferring body's regulated business to another general insurer (whether or not the transfer has yet happened); and

(b) APRA has considered the interests of policy owners of the transferring body (when viewed as a group) and considers

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that, having regard to those interests, it would be appropriate for the transfer to be made; and

(c) the conditions in subsection (2) exist.

Common conditions for making a determination under this section

(2) APRA may make a determination under this section only if:

(d) APRA is satisfied that the board of directors of the receiving body has consented to the transfer; and

(e) APRA is satisfied that the transfer is appropriate, having regard to:

(ii) the interests of the financial sector as a whole; and

(iii) any other matters that APRA considers relevant; and

(f) APRA is satisfied that legislation to facilitate the transfer that satisfies the requirements of section 28 has been enacted in the State or Territory in which the transferring body is established and the State or Territory in which the receiving body is established; and

(g) either:

(i) the Minister has consented to the transfer; or

(ii) the Minister's consent to the transfer is not required (see section 29).

Formal requirements for determinations under this section

(3) A determination under this section must include particulars of the transfer, including:

(a) the names of the transferring body and the receiving body; and

(b) whether it will be a total transfer or a partial transfer; and

(c) if it will be a partial transfer—an identification of the part of the transferring body's business that is to be transferred.

(4) A determination under this section must include a statement of the reasons why the determination has been made.

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(5) A determination under this section must be signed by an authorised APRA officer.

Determinations under this section are not legislative instruments

(6) A determination made under this section is not a legislative instrument.

25A Ministerial declaration that transfer should occur from ADI

(1) The Minister may declare in writing given to APRA that a transfer of business should occur from a specified ADI to another specified body corporate.

(2) A declaration made under subsection (1) is not a legislative instrument.

26 Consultation about making the determination

(1) In deciding whether to make the compulsory transfer determination, APRA may consult with any or all of the following:
  (a) officers or employees of the States and Territories;
  (b) the Reserve Bank of Australia;
  (c) any other person or body that APRA considers should be consulted.

(2) Subject to subsections (3) and (4), in deciding whether to make the compulsory transfer determination, APRA must consult with:
  (a) the Australian Competition and Consumer Commission; and
  (b) the Australian Securities and Investments Commission.

(3) APRA does not have to consult with the Australian Competition and Consumer Commission in relation to the making of the compulsory transfer determination if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
  (a) the transfer concerned; or
  (b) a class of transfers that includes that transfer.

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(4) APRA does not have to consult with the Australian Securities and Investments Commission in relation to the making of the compulsory transfer determination if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
  (a) the transfer concerned; or
  (b) a class of transfers that includes that transfer.

27 When consent of receiving body is in force

(1) The consent referred to in paragraph 25(2)(d) remains in force until it is withdrawn by the receiving body's board of directors with the agreement of APRA.

(2) APRA may agree to the consent being withdrawn if APRA considers it appropriate to allow the consent to be withdrawn having regard to:
  (a) circumstances that have arisen since the consent was given; or
  (b) circumstances that were in existence at or before the time when the consent was given but which were not known to the receiving body's board when it gave its consent; or
  (c) any other relevant matter.

28 Complementary State or Territory legislation

State or Territory legislation referred to in paragraph 25(2)(f) must include provision to ensure that, when a certificate of transfer comes into force under Division 3, the receiving body is taken to be the successor in law to the transferring body, to the extent of the transfer. In particular, the legislation must provide that:
  (a) assets of the transferring body vest in the receiving body, to the extent of the transfer; and
  (b) liabilities of the transferring body become liabilities of the receiving body, to the extent of the transfer; and
  (c) the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body, to the extent of the transfer; and

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(d) if the certificate of transfer includes provisions of a kind referred to in subsection 33(3) specifying:
  (i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with those provisions; or
  (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism; and

(e) if there is an approved section 30 statement in relation to the transfer that specifies:
  (i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with the statement; or
  (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

29 Minister's power to decide that his or her consent is not required

The Minister's consent to the transfer of business (see paragraph 25(2)(g)) is not required if the Minister has, in writing, determined that his or her consent is not required in relation to:

(a) the transfer; or

(b) a class of transfers that includes the transfer.

30 Agreements about matters connected with the transfer

(1) The transferring body or the receiving body, or both of those bodies, may provide APRA with a written statement specifying, or specifying a mechanism for determining, things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected.

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(2) APRA may, in writing, approve the statement before issuing the certificate of transfer if APRA is satisfied that:
  (a) the statement has been agreed to by the transferring body and the receiving body; and
  (b) the matters specified in the statement are appropriate.

31 Determination may impose conditions

(1) The compulsory transfer determination may impose conditions of either or both of the following kinds:
  (a) conditions to be complied with by the transferring body or the receiving body before a certificate of transfer is issued in relation to the transfer of business;
  (b) conditions to be complied with by the transferring body or the receiving body after a certificate of transfer has been issued or has come into force in relation to the transfer of business.

  Note: Failure to comply with a condition referred to in paragraph (a) or (b) will not prevent the issue of a certificate of transfer, but will be an offence under subsection (4).

(2) The transferring body or the receiving body may apply in writing to APRA to have a condition of a kind referred to in paragraph (1)(b) that applies to it varied or revoked.

(3) APRA may, by notice in writing given to the body that made the application, approve the variation or revocation if it is satisfied that the variation or revocation is appropriate. A variation or revocation that is approved by APRA has effect accordingly.

(4) The transferring body or the receiving body commits an offence if:
  (a) a condition of a kind referred to in paragraph (1)(a) or (b) applies to that body; and
  (b) that body fails to comply with the condition.

  Penalty for contravention of this subsection: 200 penalty units.

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

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

32 Notice of determination

APRA must give a copy of the compulsory transfer determination to the transferring body and the receiving body.

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Division 3—Process by which compulsory transfers take effect

33 Certificate of transfer

(1) If:

(a) APRA has made a compulsory transfer determination; and

(b) APRA considers that the transfer should go ahead; and

(c) the consent referred to in paragraph 25(2)(d) is still in force (see section 27);

APRA must, in writing, issue a certificate (a ***certificate of transfer***) stating that the transfer is to take effect.

(2) The certificate must:

(a) include the names of the transferring body and the receiving body; and

(b) state whether the transfer is a total transfer or a partial transfer; and

(c) if it is a partial transfer—include, or have attached to it:

(i) a list of the assets and liabilities of the transferring body that are being transferred to the receiving body; and

(ii) any approved section 30 statement; and

(d) state when the certificate is to come into force (either by specifying a date as the date it comes into force, or by specifying that the date it comes into force is a date worked out in accordance with provisions of the certificate); and

(e) be signed by an authorised APRA officer.

(3) The certificate may include provisions specifying, or specifying a mechanism for determining, other things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected, whether the transfer is total or partial.

(4) The certificate comes into force in accordance with the statement included in the certificate as required by paragraph (2)(d).

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34 Notice of certificate

APRA must give a copy of the certificate of transfer to the transferring body and the receiving body.

35 Time and effect of compulsory transfer

(1) When the certificate of transfer comes into force, the receiving body becomes the successor in law of the transferring body, to the extent of the transfer. In particular:

(a) if the transfer is a total transfer—all the assets and liabilities of the transferring body, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer, conveyance or assignment; and

(b) if the transfer is a partial transfer—all the assets and liabilities of the transferring body that are included in the list referred to in paragraph 33(2)(c), wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer conveyance or assignment; and

(c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

(2) If the certificate includes provisions of a kind referred to in subsection 33(3):

(a) if the provisions specify that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with those provisions; and

(b) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

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(3) If there is an approved section 30 statement in relation to the transfer, then:

(a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with the statement; and

(b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

(4) Subject to subsections (2) and (3), if:

(a) the transfer is a total transfer; and

(b) immediately before the certificate comes into force, proceedings (including arbitration proceedings) to which the transferring body was a party were pending or existing in any court or tribunal;

the receiving body is, on and after the day when the certificate comes into force, substituted for the transferring body as a party to the proceedings and has the same rights in the proceedings as the transferring body had.

Note: Alternative ways of dealing with substitution of parties (which are available for total or partial transfers) are:

(a) to deal with the matter in the certificate of transfer (see subsection (2)); or

(b) to deal with the matter in an approved section 30 statement (see subsection (3)).

(5) Subject to subsections (2) and (3), if:

(a) the transfer is a total transfer; and

(b) on the day when the certificate comes into force, documentary or other evidence would (disregarding the transfer) have been admissible for or against the interests of the transferring body;

that evidence is admissible, on or at any time after that day, for or against the interests of the receiving body.

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Note: Alternative ways of dealing with admissibility of evidence (which are available for total or partial transfers) are:

(a) to deal with the matter in the certificate of transfer (see subsection (2)); or

(b) to deal with the matter in an approved section 30 statement (see subsection (3)).

(6) Subject to subsections (2) and (3), if the transfer is a total transfer, on and after the day when the certificate comes into force, each translated instrument continues to have effect, according to its tenor, as if a reference in the instrument to the transferring body were a reference to the receiving body. For this purpose:

translated instrument means an instrument (including a legislative instrument other than this Act) subsisting immediately before the day when the certificate comes into force:

(a) to which the transferring body is a party; or

(b) that was given to, by or in favour of, the transferring body; or

(c) that refers to the transferring body; or

(d) under which money is, or may become, payable, or other property is, or may become, liable to be transferred, to or by the transferring body.

Note: Alternative ways of dealing with references in instruments (which are available for total or partial transfers) are:

(a) to deal with the matter in the certificate of transfer (see subsection (2)); or

(b) to deal with the matter in an approved section 30 statement (see subsection (3)).

(7) Subject to subsections (2) and (3), on and after the day when the certificate comes into force, a place that, immediately before that day, was a place of business for the transferring body in relation to business that was transferred to the receiving body is taken to be a place of business for the receiving body.

Note: Alternative ways of dealing with places of business are:

(a) to deal with the matter in the certificate of transfer (see subsection (2)); or

(b) to deal with the matter in an approved section 30 statement (see subsection (3)).

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36 Employment unaffected

(1) This section applies to every person who, immediately before the day when the certificate of transfer comes into force, was performing duty in the transferring body.

(2) The terms and conditions of employment (including any accrued entitlement to employment benefits) of each person to whom this section applies are not affected by the operation or effect of this Part or of any State or Territory legislation referred to in paragraph 25(2)(f).

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Division 4—Effect of compulsory transfer on contracts

36AA Compulsory transfer not ground for denying obligation

(1) This section applies if a body corporate that is, or is proposed to become, a transferring body is or was party to a contract, whether the proper law of the contract is Australian law (including the law of a State or Territory) or law of a foreign country (including the law of part of a foreign country).

(2) The fact that an act is done for the purposes of Division 2 or 3, or that a certificate of transfer comes into force under Division 3, in connection with the body does not allow the contract, or any other party to the contract, to do any of the following:

(a) deny any obligations under that contract;

(b) accelerate any debt under that contract;

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

(d) enforce any security under that contract.

36AB Partial transfer of netting contracts void

(1) This section applies if:

(a) a certificate of transfer comes into force in respect of a partial transfer; and

(b) just before the partial transfer, the transferring body is a party to:

(i) a close-out netting contract; or

(ii) a security given over financial property, in respect of an obligation of the transferring body under a close-out netting contract; or

(iii) a market netting contract; or

(iv) a security given over property, in respect of an obligation of the transferring body under a market netting contract; or

(v) an approved netting arrangement; and

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(c) the partial transfer covers some (but not all) of the following assets and liabilities:

(i) the assets and liabilities the body has, under the close-out netting contract, market netting contract or approved netting arrangement, with respect to another party to the contract or arrangement (the ***counterparty***);

(ii) those assets that are property over which security is given in respect of an obligation of the transferring body under the close-out netting contract or the market netting contract.

Note: The *Payment Systems and Netting Act 1998* affects what the assets and liabilities of a party to a close-out netting contract, market netting contract or approved netting arrangement are taken to include.

(2) The partial transfer is void:

(a) to the extent of the assets or liabilities the transferring body has, just before the partial transfer, under the close-out netting contract, market netting contract or approved netting arrangement, with respect to the counterparty; and

(b) if security is given over financial property in respect of an obligation of the transferring body under a close-out netting contract—to the extent that the assets are financial property in the possession or control of one of the following persons just before the partial transfer:

(i) the counterparty;

(ii) another person (who is not the transferring body) on behalf of the counterparty, under the terms of an arrangement evidenced in writing; and

(c) if security is given over property in respect of an obligation of the transferring body under a market netting contract—to the extent that the assets are that property.

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Part 4A—Restructures

Division 1—Outline of Part

36A Outline of Part

(1) This Part deals with proposals by an ADI, general insurer or life insurer (the ***operating body***) for a restructure arrangement (under Part 5.1 of the *Corporations Act 2001*) that would make the operating body a subsidiary of a non-operating holding company (***NOHC***).

(2) The operating body may apply (under section 36B) to the Minister for a restructure approval, including a restructure instrument (see section 36G).

(3) A restructure instrument gives relief to the operating body, the NOHC and related bodies corporate (and some other persons) from certain requirements of the *Corporations Act 2001*, as specified in the instrument (see section 36G).

(4) The Minister must issue the restructure approval if specified criteria are met (see section 36C). The approval may be issued subject to conditions (see section 36E).

(5) After the Minister issues the restructure approval, APRA may issue internal transfer certificates for the purpose of giving effect to the restructure arrangement.

(6) An internal transfer certificate enables the transfer of assets or liabilities (or both) between 2 bodies corporate (the ***transferring body*** and the ***receiving body***) that are part of the company group (see section 36L).

(7) The restructure instrument comes into force when the court order providing for the restructure comes into force, if any applicable conditions of the restructure approval have been satisfied (see sections 36E and 36H).

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(8) Any transfer provided for by an internal transfer certificate comes into force as specified in the certificate (see section 36Q).

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Division 2—Restructure approvals

36B Restructure approvals—application

(1) This section applies if:

(a) any of the following bodies (the ***operating body***) proposes to enter into an arrangement (a ***restructure arrangement***) to be approved by an order of the Court under subsection 411(4) of the *Corporations Act 2001*:

(i) an ADI;

(ii) a life insurance company;

(iii) a general insurer; and

(b) the arrangement would result in the operating body becoming a subsidiary of a NOHC.

(2) The operating body may apply in writing to the Minister for an approval (the ***restructure approval***):

(a) that includes a restructure instrument (see section 36G); and

(b) that authorises APRA to issue one or more internal transfer certificates under section 36M.

(3) The application must be in the form prescribed by the transfer rules, and must contain or be accompanied by the information required by the transfer rules.

(4) The operating body must give a copy of the application to APRA.

36C Restructure approvals—issued by Minister

(1) The Minister must, in writing, issue a restructure approval if the Minister is satisfied that:

(a) application for the approval has been made by an operating body in accordance with section 36B; and

(b) the restructure arrangement would improve the operating body's ability to meet its prudential requirements; and

(c) the approval should be issued, having regard to:

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(i) the interests of the depositors or policy owners of the operating body; and
(ii) the interests of the financial sector as a whole; and
(iii) any other matters considered relevant.

(2) The approval must include the following:
(a) a statement describing the restructure arrangement;
(b) the restructure instrument;
(c) any conditions imposed under section 36E.

(3) The approval authorises APRA to issue one or more internal transfer certificates under section 36M.

(4) In this section:

prudential requirements, in relation to an operating body, means requirements applying to the body under the following prudential standards determined by APRA:
(a) if the body is an ADI—standards in force under section 11AF of the *Banking Act 1959*;
(b) if the body is a life insurance company—standards in force under section 230A of the *Life Insurance Act 1995*;
(c) if the body is a general insurer—standards in force under section 32 of the *Insurance Act 1973*.

36D Restructure approvals—consultation

In deciding whether to issue a restructure approval, the Minister may consult with any or all of the following:
(a) APRA;
(b) the Australian Securities and Investments Commission;
(c) any other person or body the Minister considers should be consulted.

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36E Restructure approvals—conditions

Imposition of conditions

(1) A restructure approval may impose conditions of any of the following kinds, to be satisfied by the operating body or any related body corporate, or any body corporate that is to be a related body corporate pursuant to the arrangement (for example, the body that is to become the NOHC):

(a) conditions to be satisfied before the restructure instrument comes into force (see section 36H);

(b) conditions to be satisfied before any transfer pursuant to an internal transfer certificate comes into force in respect of any particular asset or liability (see section 36Q).

Amendment or revocation of conditions

(2) The operating body may apply in writing to the Minister to have a condition that applies to it (or any other body corporate) amended or revoked.

(3) The Minister may, by notice in writing given to the operating body, approve the amendment or revocation if it is satisfied that the amendment or revocation is appropriate, having regard to the matters mentioned in paragraphs 36C(1)(b) and (c).

(4) An amendment or revocation that is approved by the Minister has effect in accordance with the notice under subsection (3).

36F Restructure approvals—notice of decision

(1) If the Minister issues a restructure approval, the Minister must give a copy of the approval to the operating body and to APRA.

(2) If the Minister refuses to issue a restructure approval, the Minister must give written notice of the refusal to the operating body and to APRA. The notice must include a statement of the reasons why the approval was refused.

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Division 3—Restructure instruments

36G What is a *restructure instrument*?

(1) A ***restructure instrument*** included in a restructure approval is an instrument in relation to an operating body that gives relief (as mentioned in subsection (2)) to any or all of the following, as specified in the instrument:

(a) the NOHC that is the subject of the restructure approval;

(b) any body corporate related to that NOHC;

(c) if the instrument specifies a requirement in Division 1 of Part 2J.1 of the *Corporations Act 2001*—any other person involved in complying with the requirement.

(2) The Minister may specify in the instrument:

(a) that the bodies and persons specified in the instrument are given relief from specified requirements of Division 1 of Part 2J.1, or Part 2J.2, of the *Corporations Act 2001*, in accordance with the instrument; and

(b) the extent (if any) to which the bodies specified in the instrument are given relief from the requirement in section 254T of that Act.

Note 1: Division 1 of Part 2J.1 of the *Corporations Act 2001* deals with restrictions in share capital. Part 2J.2 of that Act deals with self-acquisition and control of shares.

Note 2: Section 254T of that Act provides that dividends may only be paid if:

(a) the company's assets are sufficiently in excess of its liabilities immediately before the dividend is declared; and

(b) the payment of the dividend is fair and reasonable to the company's shareholders as a whole and does not materially prejudice the company's ability to pay its creditors.

Note 3: For the legal effect of the instrument, see section 36J.

(3) A restructure instrument is not a legislative instrument.

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36H Restructure instruments—coming into force

(1) A restructure instrument comes into force only if:

(a) a court makes an order under subsection 411(4) of the *Corporations Act 2001* approving the restructure arrangement; and

(b) the arrangement (as ordered) is in accordance with the restructure approval; and

(c) any conditions mentioned in paragraph 36E(1)(a) to which the restructure approval is subject have been satisfied by the time the court order comes into force.

(2) A restructure instrument comes into force at the time the court order mentioned in subsection (1) comes into force.

36J Restructure instruments—legal effect

A restructure instrument gives relief, in accordance with the instrument, from the requirements of the *Corporations Act 2001* specified in the instrument.

Note: Section 36G specifies the requirements of the *Corporations Act 2001* that may be covered by the instrument.

36K Restructure instruments—amendment

(1) This section applies if a restructure instrument in relation to an operating body has come into force.

(2) The Minister may, by notice in writing to the operating body, amend the restructure instrument, if the Minister is satisfied that the amendment is necessary or desirable to take into account changes in the requirements of the *Corporations Act 2001* mentioned in the instrument.

(3) The notice must include:

(a) a copy of the amended instrument; and

(b) a statement of the reasons why it is made; and

(c) a statement of when the amendment is to come into force.

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(4) The Minister must give a copy of the notice to APRA.

(5) The amendment comes into force at the time stated in the notice.

(6) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to any amendment or variation of the restructure instrument.

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Division 4—Internal transfer certificates

36L What is an *internal transfer certificate*?

An ***internal transfer certificate*** is a certificate, issued by APRA under section 36M for the purpose of giving effect to a restructure arrangement described in a restructure approval, giving effect to the transfer of specified assets and liabilities between any 2 of the following bodies (including a transfer between any 2 subsidiaries of the NOHC):

(a) the NOHC that is the subject of the restructure arrangement;

(b) the operating body;

(c) any other subsidiary of the NOHC.

Note: The assets or liabilities may be specified by reference to a class or classes of assets or liabilities—see subsection 33(3A) of the *Acts Interpretation Act 1901*.

36M Internal transfer certificates—issue

(1) This section applies if the Minister issues a restructure approval.

(2) APRA may, in writing, issue an internal transfer certificate if it is satisfied that the transfer is, and the terms of the transfer are, appropriate for the purpose of giving effect to the restructure arrangement (as described in the approval), having regard to:

(a) the application for the restructure approval; and

(b) any additional information given by the operating body; and

(c) the matters mentioned in paragraphs 36C(1)(b) and (c) (restructure approvals—issue).

(3) The certificate must:

(a) include the names of the transferring body and the receiving body; and

(b) include a statement of all the assets and liabilities of the transferring body that are to be transferred to the receiving body; and

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(c) if the certificate is to come into force (in any respect) after the restructure instrument comes into force (see section 36H)—state a time or a method for working out when it comes into force in respect of each asset and liability to be transferred; and

(d) be signed by an authorised APRA officer.

(4) APRA must, in deciding when the certificate is to come into force in respect of each asset and liability to be transferred, take into account the wishes of the transferring body and the receiving body.

Note 1: For when the certificate comes into force, see section 36Q.

Note 2: APRA may impose a charge in respect of the issue of the certificate—see section 51 of the *Australian Prudential Regulation Authority Act 1998*.

36N Internal transfer certificates—notice of decision

(1) If APRA issues an internal transfer certificate, it must give a copy of the certificate to each of the following:

(a) the transferring body;

(b) the receiving body;

(c) the operating body (unless the operating body is the transferring body or the receiving body);

(d) the Minister.

(2) If APRA refuses to issue an internal transfer certificate applied for in the application for restructure approval, or decides to issue an internal transfer certificate in terms that are different from those applied for, it must give written notice to each person mentioned in subsection (1). The notice must include a statement of the reasons for the refusal, or for the decision.

36P Internal transfer certificates—amendment

(1) This section applies if:

(a) the Minister has issued a restructure approval to an operating body; and

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(b) APRA has issued an internal transfer certificate for the purpose of giving effect to the restructure arrangement; and

(b) the restructure instrument issued with the approval has not yet come into force (see section 36H).

Application for amendment of certificate

(2) The operating body may apply in writing to APRA for an amendment of the certificate.

(3) An application may be made only for the following amendments:

(a) to change the nature (or amount) of the assets and liabilities to be transferred;

(b) to change the identity of the receiving body;

(c) to change the identity of the transferring body.

(4) The application must be in the form prescribed by the transfer rules, and must contain or be accompanied by the information required by the transfer rules.

Note: APRA may impose a charge in respect of the application—see section 51 of the *Australian Prudential Regulation Authority Act 1998*.

Decision to amend certificate

(5) APRA may, in writing, amend the certificate if it is satisfied that:

(a) the application has been made in accordance with subsections (2), (3) and (4); and

(b) the amendment is appropriate for the purpose of giving effect to the restructure arrangement, having regard to the matters mentioned in paragraphs 36C(1)(b) and (c) (restructure approvals—issue).

Notice of decision

(6) If APRA amends a certificate under this section, it must give a copy of the amended certificate to each of the following:

(a) the transferring body;

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(b) the receiving body;
(c) if the amendment changes the identity of the receiving body—the former receiving body;
(d) if the amendment changes the identity of the transferring body—the former transferring body;
(e) the operating body (unless the operating body is a body mentioned above);
(f) the Minister.

(7) If APRA refuses to amend a certificate, it must give written notice of the refusal to each person mentioned in subsection (6). The notice must include a statement of the reasons why the amendment was refused.

If certificate previously amended

(8) For the purposes of this section, a reference to a certificate includes a reference to the certificate as amended under a previous application of this section.

36Q Internal transfer certificates—coming into force

Time for coming into force

(1) An internal transfer certificate issued in accordance with a restructure approval comes into force, in respect of each asset and liability to be transferred:
(a) at the time (the ***restructure time***) the restructure instrument included in the approval comes into force (see section 36H); or
(b) if the certificate states that it is to come into force (in any respect) after the restructure time—at the earlier of the following times:
(i) the time stated in (or worked out under) the certificate for the asset or liability; or
(ii) the time that is 12 months after the restructure time; or
(c) at a time approved under this section.

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Satisfaction of restructure approval conditions

(2) However, an internal transfer certificate comes into force, in respect of any particular asset or liability to be transferred, only if any conditions mentioned in paragraph 36E(1)(b) to which the restructure approval is subject have been satisfied in relation to the transfer of that asset or liability before the time mentioned in subsection (1) in relation to that asset or liability.

Approval of a later time

(3) On a written application by the transferring body and the receiving body, APRA may, in writing, approve a time later than the time worked out under subsection (1) for the internal transfer certificate to come into force in respect of any specified asset or liability, if APRA considers the variation appropriate.

(4) APRA cannot approve a time under subsection (3) for the internal transfer certificate to come into force (in any respect) that is later than the time that is 12 months after the restructure time.

(5) APRA must give a copy of the approval under subsection (3) to each of the following:
  (a) the transferring body;
  (b) the receiving body;
  (c) the operating body (unless the operating body is the transferring body or the receiving body);
  (d) the Minister.

(6) If APRA refuses an application under subsection (3), it must give written notice to each person mentioned in subsection (5). The notice must include a statement of the reasons why the application was refused.

36R Internal transfer certificates—legal effect

(1) When an internal transfer certificate comes into force in respect of a particular asset or liability, the receiving body becomes the

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successor in law of the transferring body, to the extent of the transfer.

(2) In particular:

(a) the asset or liability, wherever it is located, becomes an asset or liability (as applicable) of the receiving body without any transfer, conveyance or assignment; and

(b) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

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Division 5—Engagements of employees and contractors

36S Employment and contracts for services unaffected

(1) This section applies to an individual who, immediately before the time when a restructure instrument comes into force in relation to an operating body, was:

(a) employed by a body corporate (the ***original body***) that is the operating body or any related body corporate; or

(b) engaged under a contract for services by a body corporate (the ***original body***) that is the operating body or any related body corporate.

(2) If the individual was employed, the terms and conditions of employment (including any accrued entitlement to employment benefits) are not affected by the operation or effect of this Part.

(3) If the individual was engaged under a contract for services, the terms and conditions of the contract (including any accrued entitlement to benefits under the contract) are not affected by the operation or effect of this Part.

Transfer of employment or contracts for services permitted

(4) Despite subsections (2) and (3), this section is not taken to prevent an arrangement under which the individual would become employed, or engaged under a contract for services, by a body corporate that is related to the original body.

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Part 5—Evidentiary certificates

37 Certificates evidencing operation of Act etc.

(1) An authorised APRA officer may, by signed writing, make a certificate certifying any matter in relation to the operation or effect of this Act and, in particular, may certify that:

(a) a specified matter or thing relevant to a receiving body is an aspect of the operation or effect of this Act; or

(b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Act in relation to that receiving body; or

(c) a specified asset of the transferring body has become a transferred asset of that receiving body; or

(d) a specified liability of the transferring body has become a transferred liability of the receiving body.

(2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except to the extent that the contrary is established.

38 Certificates in relation to land and interests in land

If:

(a) a receiving body becomes, under this Act, the owner of land, or of an interest in land, that is situated in a State or Territory; and

(b) there is lodged with the Registrar of Titles or other appropriate officer of the State or Territory in which the land is situated a certificate that:

(i) is signed by an authorised APRA officer; and

(ii) identifies the land or interest; and

(iii) states that the receiving body has, under this Act, become the owner of that land or interest;

the officer with whom the certificate is lodged may:

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(c) register the matter in the same manner as dealings in land or interests in land of that kind are registered; and

(d) deal with, and give effect to, the certificate.

39 Certificates in relation to other assets

(1) If:

(a) an asset (other than land or an interest in land) becomes, under this Act, an asset of a receiving body; and

(b) there is lodged with the person or authority who has, under a law of the Commonwealth, a State or a Territory, responsibility for keeping a register in respect of assets of that kind a certificate that:

(i) is signed by an authorised APRA officer; and

(ii) identifies the asset; and

(iii) states that the asset has, under this Act, become an asset of the receiving body;

that person or authority may:

(c) register the matter in the same manner as transactions in relation to assets of that kind are registered; and

(d) deal with, and give effect to, the certificate.

(2) This section does not affect the operations of the *Corporations Act 2001*.

40 Documents purporting to be certificates

A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given.

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Part 6—Miscellaneous

41 Information gathering powers

(1) For the purposes of deciding whether or how to perform or exercise functions or powers under this Act in relation to a transfer of business, or a proposed or possible transfer of business, from or to an ADI, or in relation to the restructure, or the possible restructure, of an ADI and one or more related bodies corporate, each of the following provisions:

(a) section 62 of the *Banking Act 1959*;

(b) any other provision of that Act, or of another Act, prescribed by the regulations;

has effect as if this Act were part of the Act that contains the provision.

(2) For the purpose of deciding whether or how to perform or exercise functions or powers under this Act in relation to a transfer of business, or a proposed or possible transfer of business, from or to a life insurance company, or in relation to the restructure, or the possible restructure, of a life insurance company and one or more related bodies corporate, each of the following provisions:

(a) section 131, 132 or 133 of the *Life Insurance Act 1995*;

(b) any other provision of that Act, or of another Act, prescribed by the regulations;

has effect as if this Act were part of the Act that contains the provision.

(3) For the purpose of deciding whether or how to perform or exercise functions or powers under this Act in relation to the restructure, or the possible restructure, of a general insurer and one or more related bodies corporate, each of the following provisions:

(a) section 115 of the *Insurance Act 1973*;

(b) any other provision of that Act, or of another Act, prescribed by the regulations;

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has effect as if this Act were part of the Act that contains the provision.

42 Compulsory transfer—APRA may provide information to receiving body

APRA may, in connection with a compulsory transfer, or a proposed or possible compulsory transfer, provide information (including personal information or confidential commercial information) to the receiving body, or to the possible or proposed receiving body, about the business that is to be, or that may be, transferred.

Note: Subsection 56(9) of the *Australian Prudential Regulation Authority Act 1998* allows an officer of APRA who (on APRA's behalf) provides information to a body under this section to impose conditions to be complied with by the body in relation to that information.

43 Relationship of Act with other laws etc.

(1) Subject to subsections (4), (5), (6), (7), (8), (9), (9A) and (10), this Act has effect in spite of anything in any law of the Commonwealth or of a State or Territory, or in any contract, deed, undertaking, agreement or other instrument.

Note: For the effect of a certificate of transfer, see sections 22 and 35.

(2) Subject to subsections (4), (5), (6), (7), (8), (9), (9A) and (10), nothing done by or under this Act:

(a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or

(b) places a receiving body, a transferring body or another person in breach of:

(i) any law of the Commonwealth or of a State or Territory; or

(ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or

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(c) releases any surety, wholly or partly, from all or any of the surety's obligations.

(3) Without limiting subsection (1), but subject to subsections (4), (5), (6), (7), (8), (9), (9A) and (10), if, apart from this Act, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given, as the case requires.

(4) The regulations may provide that some or all of the provisions of another Act (not being provisions referred to in subsection (5), (6), (7) or (8)) apply in relation to a transfer of business that takes effect or may take effect under this Act, or in relation to a restructure that takes effect or may take effect under this Act, with the modifications (if any) specified in the regulations. The regulations have effect accordingly. Nothing in this section limits the operation of those provisions (as they have effect subject to any modifications specified in the regulations).

(5) Nothing in this Act limits the operation of any of the provisions of the *Privacy Act 1988*.

(6) Subject to subsection (9A), nothing in this Act limits the operation of any of the provisions of the *Competition and Consumer Act 2010*.

(7) Nothing in this Act limits the operation of any of the provisions of the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

(8) Nothing in this Act limits the operation of section 63 of the *Banking Act 1959*.

(9) For the purposes of section 50 and related provisions of the *Competition and Consumer Act 2010* a transfer of business (whether voluntary or compulsory), or a transfer pursuant to an internal transfer certificate, that takes effect under this Act is taken to be:

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(a) to the extent that the transfer is of shares in the capital of a body corporate—an acquisition of the shares by the receiving body; and

(b) to the extent that the transfer is of other assets—an acquisition of those assets by the receiving body.

(9A) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

(a) a transfer of business under Part 4;

(b) anything done to enable or facilitate a transfer of business under Part 4 (including an agreement referred to in section 30).

(10) The provisions of this Act and the provisions:

(a) prescribed for the purposes of subsection (4); or

(b) referred to in subsection (5), (6), (7) or (8);

operate independently of each other. In particular, a decision under one of those provisions has effect only for the purpose of that provision, unless express provision is made to the contrary.

44 Compensation for acquisition of property

(1) If the operation of this Act, except Parts 3 and 4A, would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(1A) If the Commonwealth and the person do not agree on the amount of the compensation under subsection (1), the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(1B) If the operation of Part 3 or 4A would result in an acquisition of property from a person otherwise than on just terms, the receiving body is liable to pay a reasonable amount of compensation to the person.

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(1C) If the receiving body and the person do not agree on the amount of the compensation under subsection (1B), the person may institute proceedings in the Federal Court of Australia for the recovery from the receiving body 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.

45 Review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of any of the following decisions:

(a) a decision under section 11 to refuse to approve an application;

(b) a decision under subsection 16(1) to impose conditions;

(c) a decision under subsection 16(3) to refuse to vary or revoke conditions;

(d) a decision under section 18 to refuse to issue a certificate of transfer;

(e) a decision under subsection 20(2) to refuse to approve a statement provided under subsection 20(1);

(f) a decision under subsection 27(2) to refuse to agree to a consent being withdrawn;

(g) a decision under subsection 31(3) to refuse to vary or revoke conditions;

(h) a decision under section 33 to refuse to issue a certificate of transfer;

(i) a decision under section 36M:

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(i) to refuse to issue an internal transfer certificate applied for in an application for a restructure approval; or

(ii) to issue an internal transfer certificate in terms that are different from those applied for in an application for a restructure approval;

(j) a decision under section 36P to refuse to amend an internal transfer certificate;

(k) a decision under subsection 36Q(3) to refuse to approve a later time for an internal transfer certificate to come into force.

46 Transfer rules

APRA may, by legislative instrument, make rules prescribing all matters required or permitted by this Act to be prescribed by transfer rules.

47 Regulations

The Governor-General may make regulations prescribing matters:

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

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

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

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

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

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

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

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

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

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

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

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

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

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

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

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

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

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector (Transfers of Business) Act 1999	45, 1999	17 June 1999	1 July 1999 (s 2)	
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 192–194): 15 July 2001 (s 2(1), (3))	s 4–14
Financial Sector Legislation Amendment Act (No. 1) 2002	37, 2002	26 June 2002	Sch 3: 27 June 2002 (s 2(1) item 2)	—
Australian Prudential Regulation Authority Amendment Act 2003	42, 2003	24 June 2003	Sch 2 (items 8–10): 1 July 2003 (s 2(1) item 2)	—
Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006	101, 2006	14 Sept 2006	Sch 2 (item 80) and Sch 6 (items 1, 6–11): 14 Sept 2006 (s 2(1) items 2, 4)	Sch 6 (items 1, 6–11)
Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Act 2006	147, 2006	6 Dec 2006	Sch 1 (item 24): 6 Dec 2006 (s 2)	—
Financial Sector Legislation Amendment (Restructures) Act 2007	117, 2007	28 June 2007	Sch 1 and Sch 3 (items 2–9): 28 June 2007 (s 2)	—
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Sch 4 (items 35, 36): 24 Sept 2007 (s 2(1) item 7)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008	105, 2008	17 Oct 2008	Sch 5: 18 Oct 2008 (s 2(1) item 3)	Sch 5 (item 19)
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 18 (item 4): 1 July 2009 (s 2(1) item 41)	—
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 202): 27 Feb 2010 (s 2(1) item 2)	—
Corporations Amendment (Corporate Reporting Reform) Act 2010	66, 2010	28 June 2010	Sch 1 (item 55): 28 June 2010 (s 2(1) item 5)	—
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 4 (item 4): 30 June 2010 (s 2(1) item 12) Sch 4 (items 5, 6): 27 July 2010 (s 2(1) item 13)	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 61): 1 Jan 2011 (s 2(1) items 3, 5)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 168): 10 Mar 2016 (s 2(1) item 6)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial System Legislation Amendment (Resilience and Collateral Protection) Act 2016	43, 2016	4 May 2016	Sch 1 (items 40–42, 48): 1 June 2016 (s 2(1) item 2)	Sch 1 (item 48)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (item 44): 21 Oct 2016 (s 2(1) item 1)	—

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Endnote 4—Amendment history

Provision affected	How affected
Title	am No 117, 2007
Part 1	
s 1	rs No 117, 2007
s 4	am No 55, 2001; No 42, 2003; No 101, 2006; No 117, 2007; No 105, 2008; No 75, 2009; No 43, 2016
s 7A	ad No 147, 2006
Part 2	
s 8	am No 117, 2007; No 105, 2008
Part 3	
Division 2	
s 12	am No 37, 2002
s 16	am No 4, 2016; No 61, 2016
Part 4	
Division 1	
s 24	am No 105, 2008
Division 2	
s 25	am No 105, 2008; No 82, 2010
s 25A	ad No 105, 2008
s 31	am No 4, 2016; No 61, 2016
Division 4	
Division 4	ad No 105, 2008
s 36AA	ad No 105, 2008
	am No 43, 2016
s 36AB	ad No 43, 2016
Part 4A	
Part 4A	ad No 117, 2007
Division 1	
s 36A	ad No 117, 2007

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Provision affected	How affected
Division 2	
s 36B	ad No 117, 2007
s 36C	ad No 117, 2007
	am No 82, 2010
s 36D	ad No 117, 2007
s 36E	ad No 117, 2007
s 36F	ad No 117, 2007
Division 3	
s 36G	ad No 117, 2007
	am No 66, 2010
s 36H	ad No 117, 2007
s 36J	ad No 117, 2007
s 36K	ad No 117, 2007
Division 4	
s 36L	ad No 117, 2007
s 36M	ad No 117, 2007
s 36N	ad No 117, 2007
s 36P	ad No 117, 2007
s 36Q	ad No 117, 2007
s 36R	ad No 117, 2007
Division 5	
s 36S	ad No 117, 2007
Part 5	
s 39	am No 55, 2001
Part 6	
s 41	am No 117, 2007
s 43	am No 117, 2007; No 105, 2008; No 54, 2009; No 103, 2010
s 44	am No 105, 2008
s 45	am No 117, 2007
s 46	am No 154, 2007

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