



# **Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000**

**No. 24, 2000**



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

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

*[Assented to 3 April 2000]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Financial Sector Reform  
(Amendments and Transitional Provisions) Act (No. 1) 2000*.

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## 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 1 and 2 of Schedule 1 are taken to have commenced immediately after the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (3) Items 1 and 3 of Schedule 4 are taken to have commenced on 1 July 1998, immediately after the commencement of items 51 and 58 of Schedule 1 to the *Financial Sector Reform (Consequential Amendments) Act 1998*.
- (4) Items 2, 4, 5, 6, 8, 9, 10 and 11 of Schedule 4 are taken to have commenced on 22 December 1998.
- (5) Items 2 and 4 of Schedule 5 are taken to have commenced on 30 June 1997, immediately after the commencement of section 2 of the *Financial Laws Amendment Act 1997*.
- (6) Item 1 of Schedule 6 commences, or is taken to have commenced, immediately after the commencement of item 11 of Schedule 4 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.
- (7) Subject to subsection (8), the items of Schedule 10, other than items 1, 2, 4, 6, 7, 9 and 10, commence on a day to be fixed by Proclamation.
- (8) If the items covered by subsection (7) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
- (9) Items 1, 2 and 3 of Schedule 11 are taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent.
- (10) Item 4 of Schedule 11 is taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* received the Royal Assent.
- (11) Item 5 of Schedule 11 commences at the same time as item 5 of Schedule 10.

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- (12) Part 1 of Schedule 12 commences:
- (a) after all of the Acts listed in subsection (13) have received the Royal Assent; and
  - (b) on the day that is the last day on which any of those Acts received the Royal Assent.
- (13) These are the relevant Acts for the purposes of paragraph (12)(a):
- (a) this Act;
  - (b) each of the Acts referred to in the definition of ***Validation Act*** in item 1 of Schedule 12 to this Act.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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

### 1 After subsection 55(1)

Insert:

(1A) Subject to subsection (2), sales tax is not payable by APRA, or by any other person, on goods that are for use by APRA.

### 2 Subsection 55(2)

After “subsection (1)”, insert “or subsection (1A)”.

### 3 Subsection 56(1)

Insert:

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

### 4 Subsection 56(2)

Omit “(6) or (7)”, substitute “(6), (7), (7A) or (7B)”.

### 5 At the end of subsection 56(3)

Add:

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

### 6 At the end of subsection 56(4)

Add:

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

### 7 Subsection 56(5) (note)

Omit “Note:”, substitute “Note 1:”.

### 8 At the end of subsection 56(5)

Add:



Note 2: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

## **9 At the end of subsection 56(6)**

Add:

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

## **10 At the end of subsection 56(7)**

Add:

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

## **11 After subsection 56(7)**

Insert:

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

- (a) the names of bodies that are regulated by APRA;
- (b) the addresses at which bodies referred to in paragraph (a) conduct business;
- (c) any other information that is reasonably necessary to enable members of the public to contact persons who perform functions in relation to bodies referred to in paragraph (a).

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

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

- (a) a statement of APRA's opinion as to whether or not a body regulated by APRA is complying, or was complying at a particular time, with a particular provision of an Act covered by this section; or
- (b) a description of:
  - (i) court proceedings in relation to a breach or suspected breach by a person of a provision of an Act covered by this section; or
  - (ii) activity engaged in, or proposed to be engaged in, by APRA in relation to such a breach or suspected breach.

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

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**12 At the end of subsection 56(11)**

Add:

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

**13 Section 57**

Repeal the section.

## **Schedule 2—Amendment of the Banking Act 1959**

### **1 Subsection 5(1)**

Insert:

*ASIC* means the Australian Securities and Investments Commission.

### **2 After paragraph 63(5)(a)**

Insert:

(aa) ASIC, a member of ASIC or a staff member (as defined in subsection 5(1) of the *Australian Securities and Investments Commission Act 1989*) only in the case of a demutualisation of an ADI; or

### **3 At the end of section 63**

Add:

- (6) A reference in this section to a reconstruction of an ADI includes a reference to a demutualisation of an ADI.
- (7) The regulations may define the meaning of *demutualisation* for the purposes of this section. If the regulations do so, *demutualisation* has, in this section, the meaning given by the regulations.
- (8) The Treasurer may, in writing, determine guidelines as to acceptable standards of disclosure of information by an ADI (other than a foreign ADI) to its members in respect of a proposed demutualisation of the ADI.
- (9) The Treasurer must consider whether an ADI has complied with the guidelines (if any) in deciding whether to give a consent, for the purposes of paragraph (1)(b), to the ADI effecting a demutualisation.
- (10) In making a determination under subsection (8), the Treasurer must consult with APRA and ASIC.

- (11) A determination under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (12) Subsections (6) to (11) do not limit the generality of the rest of this section. In particular, those subsections do not limit the matters that the Treasurer may take into account in deciding whether to give a consent, for the purposes of paragraph (1)(b), to an ADI effecting a demutualisation.

## **Schedule 3—Amendment of the Financial Corporations Act 1974**

### **1 Section 3**

Repeal the section, substitute:

### **3 Object of Act**

The object of this Act is to assist the Reserve Bank by providing for the collection of information to facilitate the formulation of monetary policy.

### **2 Subsection 4(1) (definition of *Statistician*)**

Repeal the definition.

### **3 Subparagraph 8(1)(c)(i)**

Omit “\$5,000,000”, substitute “\$25,000,000”.

### **4 Paragraph 8(2)(e)**

Omit “*National Health Act 1953-1973*”, substitute “*National Health Act 1953*”.

### **5 Subparagraph 8(2)(k)(i)**

Omit “\$1,000,000”, substitute “\$5,000,000”.

### **6 Paragraph 8(2)(l)**

Omit “Governor” (wherever occurring), substitute “Reserve Bank”.

### **7 Subsections 10(1), (2), (4), (5), (5A), (5D) and (7)**

Omit “Governor” (wherever occurring), substitute “Reserve Bank”.

### **8 Subsection 10(1)**

Omit “he or she”, substitute “the Reserve Bank”.

### **9 Section 11**

Repeal the section, substitute:

## 11 Standards requiring the provision of information

- (1) The Reserve Bank may, by written instrument, determine standards, consistent with the object of this Act, requiring the provision of information by:
  - (a) all registered corporations; or
  - (b) a specified class of registered corporations.
- (2) A standard may impose requirements about the way in which information is to be provided.
- (3) A standard may impose different requirements to be complied with in different situations or in respect of different activities.
- (4) A standard:
  - (a) comes into force:
    - (i) unless subparagraph (ii) applies—on the day on which the determination of the standard is made; or
    - (ii) if that determination specifies a later day as the day on which the standard comes into force—on the day so specified; and
  - (b) continues in force until it is revoked.
- (5) The Reserve Bank may, by written instrument, vary or revoke a standard.
- (6) An instrument determining, varying or revoking a standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) The Reserve Bank must ensure that registered corporations and other persons can have access to the current text of the standards by such means as the Reserve Bank considers appropriate.

## 12 Exemption from obligation to comply with a standard

- (1) The Reserve Bank may, by written instrument, exempt a registered corporation from the obligation to comply with a requirement in a standard in force under section 11. The exemption may be granted subject to conditions specified in the instrument of exemption.
- (2) The Reserve Bank may, by written instrument, vary or revoke an exemption granted under subsection (1).

- (3) The Reserve Bank must ensure that registered corporations and other persons can have access to the current text of exemptions granted under subsection (1) by such means as the Reserve Bank considers appropriate.
- (4) An instrument granting an exemption or varying or revoking an exemption is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **13 Offences of failing to comply with requirements of a standard**

- (1) A registered corporation is guilty of an offence if:
  - (a) it fails to comply with a requirement of a standard in force under section 11 that is applicable to the corporation, other than a requirement about the way in which information is to be provided; and
  - (b) there is no exemption in force under section 12 exempting the corporation from the obligation to comply with the requirement.

Maximum penalty: 200 penalty units

- (2) A registered corporation is guilty of an offence if:
  - (a) it fails to comply with a requirement of a standard in force under section 11 that is applicable to the corporation, that is a requirement about the way in which information is to be provided; and
  - (b) there is no exemption in force under section 12 exempting the corporation from the obligation to comply with the requirement.

Maximum penalty: 50 penalty units

### **10 Part IV**

Repeal the Part.

### **11 Section 21**

Repeal the section, substitute:

## 21 Manner of furnishing documents

A document that is required by or under this Act or the regulations to be furnished to the Reserve Bank is to be delivered to the Head Office of the Reserve Bank.

## 12 Section 22A

Repeal the section, substitute:

### 22A Delegation of functions or powers of Reserve Bank

- (1) Subject to subsection (3), the Governor may, by signed instrument, delegate any of the Reserve Bank's functions or powers under this Act to any of the following persons:
  - (a) a member of the Reserve Bank Board;
  - (b) a member of the Reserve Bank Service.
- (2) Subject to subsection (3), the Governor may, by signed instrument, delegate any of the Reserve Bank's functions or powers under this Act:
  - (a) to the Chief Executive Officer of APRA, or to an APRA staff member, if the Chief Executive Officer of APRA agrees to the delegation; or
  - (b) to the Australian Statistician, or to an ABS staff member, if the Australian Statistician agrees to the delegation.
- (3) Subsections (1) and (2) do not apply to the Reserve Bank's functions and powers in relation to determining, varying or revoking standards under section 11.
- (4) In performing or exercising functions or powers under a delegation, the delegate must comply with any directions of the Governor.

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

- (5) The Governor may, by signed instrument, vary or revoke a delegation under this section.
- (6) In this section:

**ABS staff member** means a person referred to in subsection 16(1) or (2) of the *Australian Bureau of Statistics Act 1975*.



**APRA** means the Australian Prudential Regulation Authority established by section 7 of the *Australian Prudential Regulation Authority Act 1998*.

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

**Australian Statistician** means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

**Reserve Bank Board** means the Board referred to in section 9 of the *Reserve Bank Act 1959*.

**Reserve Bank Service** means the Reserve Bank Service referred to in subsection 66(2) of the *Reserve Bank Act 1959*.

## **22B References to Reserve Bank—direction by the Governor**

- (1) If, under section 22A:
  - (a) the Governor delegates to a person a function or power of the Reserve Bank; and
  - (b) the delegation makes a reference to the Reserve Bank in another provision of this Act inappropriate, whether for administrative reasons or any other reason;the Governor may, by signed instrument, direct that the provision is to have effect as if the reference to the Reserve Bank were a reference to the person referred to in paragraph (a).
- (2) If the Governor gives a direction in relation to a provision, the provision has effect in accordance with the direction while the direction is in force.
- (3) A direction:
  - (a) comes into force:
    - (i) unless subparagraph (ii) applies—on the day on which it is made; or
    - (ii) if the direction specifies a later day as the day on which the direction comes into force—on the day so specified; and
  - (b) continues in force until it is revoked.

(4) The Governor may, by signed instrument, vary or revoke a direction.

(5) An instrument making, varying or revoking a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**13 Section 25**

Omit “*Reserve Bank Act 1959-1973*” (wherever occurring), substitute “*Reserve Bank Act 1959*”.

**14 Section 26 (penalty)**

Omit “10”, substitute “50”.

**15 Section 30**

Repeal the section.

## **Schedule 4—Amendment of the Financial Corporations (Transfer of Assets and Liabilities) Act 1993**

**1 Section 3 (subparagraph (b)(ii) of the definition of *eligible foreign ADI*)**

Omit “3”, substitute “5”.

**2 Section 3 (subparagraph (b)(ii) of the definition of *eligible foreign ADI*)**

Omit “made either before, or not later than 5 years after, this Act commenced”, substitute “made before this Act commenced, or made after this Act commenced but before 1 July 2001”.

**3 Section 3 (paragraph (b) of the definition of *newly established local ADI*)**

Omit “3”, substitute “5”.

**4 Section 3 (paragraph (b) of the definition of *newly established local ADI*)**

Omit “made either before, or not later than 5 years after, this Act commenced”, substitute “made before this Act commenced, or made after this Act commenced but before 1 July 2001”.

**5 Paragraph 4(b)**

Omit “and has been from and including 18 June 1993,”.

**6 Paragraphs 7(2)(a), (3)(a), (4)(a) and (5)(a)**

Omit “, and has been from and including 18 June 1993,”.

**7 Paragraph 7(6)(c)**

Omit “within 8 years from the day on which this Act commences”, substitute “before 1 July 2004”.

**8 Sub-subparagraph 20(2)(bb)(ii)(B)**

Omit “5”, substitute “8”.

**9 Sub-subparagraph 24(2)(bb)(ii)(B)**

Omit “5”, substitute “8”.

**10 Subsection 170-33(2) of Schedule 1**

Omit “5”, substitute “8”.

**11 Subsection 170-133(2) of Schedule 2**

Omit “5”, substitute “8”.

## **Schedule 5—Amendment of the Financial Laws Amendment Act 1997**

### **1 Subsection 2(2)**

Repeal the subsection.

### **2 Before subsection 2(3)**

Insert:

(2A) Items 1 and 1A of Schedule 4 are taken to have commenced on 22 December 1996.

### **3 Items 15, 16, 17, 18, 19 and 20 of Schedule 3**

Repeal the items.

### **4 After item 1 of Schedule 4**

Insert:

### **1A Section 3 (paragraph (b) of the definition of *newly established local bank*)**

Omit “3”, substitute “5”.

## **Schedule 6—Amendment of the Life Insurance Act 1995**

### **1 Section 16ZA**

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

if the following requirements have been satisfied:

- (a) the assignment must be by memorandum of transfer in accordance with, or substantially in accordance with, the form set out in the relevant benefit fund rules;
- (b) the memorandum must be signed by the transferor and the transferee;
- (c) the transferor must give 2 copies of the signed memorandum to the friendly society concerned;
- (d) the assignment must be registered in a register of assignments kept by the friendly society concerned;
- (e) the date of registration must be inserted in the memorandum;
- (f) the memorandum must be signed by an officer of the friendly society concerned who is authorised to do so by the friendly society.

## **Schedule 7—Amendment of the Reserve Bank Act 1959**

### **1 Section 17**

Omit “Subject to subsection (2), a person”, substitute “A person”.

### **2 Section 17**

Omit “of a corporation (other than the Reserve Bank) the business of which is wholly or mainly that of banking”, substitute “of an ADI”.

## Schedule 8—Amendment of the Retirement Savings Accounts Act 1997

### 1 Subsection 68(1)

Omit all the words from and including “APRA” (second occurring), substitute:

APRA may refer the details of the matter to the persons specified in subsection (2).

Note: Persons to whom APRA refers the details of the matter are subject to secrecy obligations under section 56 of the *Australian Prudential Regulation Authority Act 1998*. In particular, see paragraph (c) of the definition of *officer* in subsection 56(1), and subsections 56(2), (9) and (10), of that Act.



## **Schedule 9—Amendment of superannuation legislation relating to financial assistance to funds**

### ***Financial Institutions Supervisory Levies Collection Act 1998***

#### **1 Section 16 (at the end of the definition of *fund*)**

Add “, but does not include a self managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*)”.

### ***Superannuation (Financial Assistance Funding) Levy Act 1993***

#### **2 Title**

Omit “**any such**”, substitute “**certain**”.

#### **3 Section 3**

Omit “such”, substitute “certain”.

#### **4 Section 5 (at the end of the definition of *fund*)**

Add “, but does not include a self managed superannuation fund”.

### ***Superannuation Industry (Supervision) Act 1993***

#### **5 Section 228**

Insert:

***defined benefit fund*** means:

- (a) a public sector superannuation scheme that:
  - (i) is a regulated superannuation fund; and
  - (ii) has at least one defined benefit member; or
- (b) a regulated superannuation fund (other than a public sector superannuation scheme) that has at least one defined benefit member.

## 6 Section 228

Insert:

*defined benefit member* means:

- (a) a member entitled, on retirement or termination of his or her employment, to be paid a benefit defined, wholly or in part, by reference to one or more of the following:
  - (i) the amount of the member's salary at a particular date, being the date of the termination of the member's employment or of the member's retirement or an earlier date;
  - (ii) the amount of the member's salary averaged over a period before retirement;
  - (iii) a specified amount; or
- (b) a member who is being paid a defined benefit pension.

## 7 Section 228

Insert:

*defined benefit pension* means a pension other than:

- (a) a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund solely for the purposes of providing benefits to members of that fund; or
- (b) an allocated pension (as defined in subregulation 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994*).

## 8 Section 228

Insert:

*eligible loss*:

- (a) in relation to a fund that is not a defined benefit fund—means a loss suffered by the fund as a result of fraudulent conduct, or theft; and
- (b) in relation to a fund that is a defined benefit fund—means so much of a loss suffered by the fund as a result of fraudulent conduct, or theft, that a standard employer-sponsor of the fund:
  - (i) is required to pay to the fund; but

- (ii) cannot pay to the fund while remaining able to pay all debts incurred by the standard employer-sponsor, as and when the debts become due and payable.

**9 Section 228 (definition of loss)**

Repeal the definition.

**10 Paragraph 229(1)(a)**

Repeal the paragraph, substitute:

- (a) a fund suffers an eligible loss after the commencement of this Part; and

**11 At the end of Division 1 of Part 23**

Add:

**230A APRA to advise Minister in relation to application for assistance**

- (1) The Minister must make a written request to APRA for advice in relation to the application. The request may specify:
  - (a) particular matters that APRA is to provide advice about; and
  - (b) a time by which the advice must be provided.
- (2) APRA must comply with the request and may, in its advice, also address any other issues that APRA considers relevant to the determination of the application.
- (3) The Minister's written request to APRA made under subsection (1) for advice in relation to the application for assistance must be laid before each House of the Parliament as soon as practicable after the Minister has made a written determination under subsection 231(1).

**12 Subsection 231(1)**

Omit "and any additional information given by the trustee", substitute "any additional information given by the trustee, and APRA's advice under section 230A".

**13 Subsection 231(1)**

Omit "loss", substitute "an eligible loss".

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**14 Section 232**

Omit “loss”, substitute “eligible loss”.

## **Schedule 10—Other amendments of the Superannuation Industry (Supervision) Act 1993**

### **1 Subparagraph 6(1)(a)(viii)**

Omit “(other than section 140)”.

### **2 Subparagraph 6(1)(c)(iii)**

Repeal the subparagraph.

### **3 Subsection 10(1) (definition of *approved form*)**

Repeal the definition, substitute:

*approved form* has the meaning given by section 11A.

### **4 Subsection 10(1)**

Insert:

*signed*, in relation to a body corporate, means executed by or on behalf of the body corporate in a way that is effective in law and that binds the body corporate.

### **5 After section 11**

Insert:

#### **11A Approved forms**

- (1) In this Act, a reference to an *approved form* is a reference to a form approved by the Regulator, in writing, for the purposes of the provision in which the expression appears.
- (2) An approved form may require particular information to be included in the completed form.
- (3) An approved form may do either or both of the following:
  - (a) require or permit the form to be attached to, or to form part of, another document;
  - (b) require or permit the form to be given on a specified kind of data processing device or by specified electronic

transmission, in accordance with specified software or other requirements.

- (4) An approved form may require the form to be signed by a particular person or persons. This applies whether or not a provision of this Act also requires the form to be signed.
- (5) An approved form may make different requirements to be complied with according to whether or not the form is given in a way that is required or permitted as mentioned in paragraph (3)(b).
- (6) If an approved form makes a requirement as mentioned in subsection (2), (3) or (4), a purported use of the form is not effective for the purposes of this Act unless the requirement has been complied with.

### **11B Electronic lodgment of approved forms**

- (1) If a person gives the Regulator an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b):
  - (a) the form is taken to constitute a written notice; and
  - (b) if the form includes the electronic signature of a person—the form is taken to be signed by that person.
- (2) The person's *electronic signature* is a unique identification, in an electronic form, that is approved by the Regulator for use by the person.
- (3) A person is guilty of an offence if:
  - (a) the person gives the Regulator an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b); and
  - (b) either:
    - (i) the form purports to be given by another person; or
    - (ii) the form purports to be given on behalf of another person, and that other person has not consented to the giving of the form.

Maximum penalty: 50 penalty units.

- (4) A person is guilty of an offence if:
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- (a) the person gives the Regulator an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b); and
- (b) the form includes the electronic signature of another person who has not consented to the inclusion of the signature.

Maximum penalty: 50 penalty units.

- (5) Subsections (3) and (4) are offences of strict liability within the meaning of section 6.1 of the *Criminal Code*.

### **11C Declaration required if approved form lodged electronically on trustee's behalf**

- (1) This section applies if:
  - (a) the Regulator is given an approved form in a way that is required or permitted as mentioned in paragraph 11A(3)(b); and
  - (b) the form is given to the Regulator by a person on behalf of the trustee, or one or more of the trustees, of a superannuation entity.

In this section, the trustee, or each of the trustees, on whose behalf the form is given is referred to as the *responsible trustee*.

- (2) The responsible trustee is guilty of an offence if the responsible trustee does not, before the form is given to the Regulator, make a signed declaration that states that:
  - (a) the person is authorised to give the form to the Regulator on the responsible trustee's behalf; and
  - (b) the information in the form is correct.

Maximum penalty: 50 penalty units.

- (3) The responsible trustee is guilty of an offence if the responsible trustee does not retain the declaration for 5 years after it is made.

Maximum penalty: 50 penalty units.

- (4) The responsible trustee is guilty of an offence if:
  - (a) within the 5 year period, the Regulator requests the responsible trustee to produce the declaration to the Regulator; and
  - (b) the responsible trustee does not comply with the request.

Maximum penalty: 50 penalty units.

- (5) Subsections (2), (3) and (4) are offences of strict liability within the meaning of section 6.1 of the *Criminal Code*.

### **11D Electronic lodgment—documents other than approved forms**

- (1) A document that is not required to be lodged in an approved form may be lodged with the Regulator electronically only if:
- (a) the Regulator and the person seeking to lodge it (either on the person's own behalf or on another person's behalf) have agreed, in writing, that it may be lodged electronically; or
  - (b) the Regulator has approved, in writing, the electronic lodgment of documents of that kind.
- (2) The document is taken to be lodged with the Regulator if it is lodged in accordance with the agreement or approval (including any requirements of the agreement or approval as to authentication).

### **6 Paragraph 18(3)(b)**

Omit “under the common or official seal of”, substitute “signed by”.

### **7 Subsection 19(4)**

Omit all the words from and including “written notice” to and including the end of paragraph (b), substitute:

written notice that is:

- (a) in the approved form; and
- (b) signed by the trustee or each trustee;

### **8 Subsections 36A(4), (5) and (6)**

Repeal the subsections.

### **9 Subsection 131A(1)**

Omit all the words from and including “the Regulator” (second occurring), substitute:

the Regulator may refer the details of the matter to the persons specified in subsection (2).

Note: Persons to whom the Regulator refers the details of the matter are subject to secrecy obligations under section 56 of the *Australian*



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*Prudential Regulation Authority Act 1998* (if APRA is the Regulator) or section 252C of this Act (if the Commissioner of Taxation is the Regulator). In particular, see paragraph (c) of the definition of *officer* in subsection (1), and subsections (2), (9) and (10), of those sections.

**10 Subsection 140(2)**

Omit “a form approved by ASIC”, substitute “the approved form”.

**11 Subsection 254(1)**

Omit “the prescribed information to APRA or such other body or person as is specified in the regulations”, substitute “such information to APRA, or to such other body or person as is specified in the regulations, as is required by the approved form”.

**12 Subsection 254(1) (note)**

Repeal the note, substitute:

Note: The approved form for information required to be given under this subsection may require the trustee to set out the tax file number of the entity. See subsection 299U(8).

**13 Subsection 299U(8)**

Repeal the subsection, substitute:

*Information to be given after establishment of entity*

- (8) The approved form for information required to be given under subsection 254(1) may require the tax file number of the entity to be given.

## **Schedule 11—Other miscellaneous minor technical amendments**

### ***Financial Sector Reform (Amendments and Transitional Provisions) Act 1998***

#### **1 Subsection 2(16)**

Omit “*Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 1998*” (wherever occurring), substitute “*Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2000*”.

#### **2 Subsection 2(17)**

Omit “*Superannuation Legislation Amendment Act 1998*” (wherever occurring), substitute “*Superannuation Legislation Amendment Act 1999*”.

#### **3 Part 3 of Schedule 17 (heading)**

Repeal the heading, substitute:

### **Part 3—Amendment to take account of Schedule 3 to the Superannuation Legislation Amendment Act 1999**

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

#### **4 After subsection 3(7)**

Insert:

- (7A) Items 8, 9, 11 and 12 of Schedule 6 are taken to have commenced immediately after the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* received the Royal Assent.

### ***Income Tax Assessment Act 1936***

#### **5 Subsection 161(3)**

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Omit “physically”.

## Schedule 12—Transitional, saving and application provisions

### Part 1—Transitional provisions for validation of determinations relating to financial sector supervisory levies

#### 1 Definitions

In this Part:

**Collection Act** means the *Financial Institutions Supervisory Levies Collection Act 1998*.

**deferred payment day** means the day that is 6 weeks after the day on which this Part commences.

**Imposition Act** means any of the following Acts:

- (a) the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*;
- (b) the *General Insurance Supervisory Levy Imposition Act 1998*;
- (c) the *Life Insurance Supervisory Levy Imposition Act 1998*;
- (d) the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*;
- (e) the *Superannuation Supervisory Levy Imposition Act 1998*.

**levy paying entity** has the same meaning as in the Collection Act.

**Validation Act** means any of the following Acts:

- (a) the *Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Act 2000*;
- (b) the *General Insurance Supervisory Levy Determination Validation Act 2000*;
- (c) the *Life Insurance Supervisory Levy Determination Validation Act 2000*;
- (d) the *Retirement Savings Account Providers Supervisory Levy Determination Validation Act 2000*;
- (e) the *Superannuation Supervisory Levy Determination Validation Act 2000*.

#### 2 Deferral of date for paying levy

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## Part 2—Transitional provisions relating to amendments of the Financial Corporations Act 1974

### 4 Definitions

In this Part:

*amended Act* means the *Financial Corporations Act 1974* as in force immediately after the commencement of Schedule 3 to this Act.

*old Act* means the *Financial Corporations Act 1974* as in force immediately before the commencement of Schedule 3 to this Act.

*registered corporation* has the same meaning as in the amended Act.

*Reserve Bank* means the Reserve Bank of Australia.

### 5 Treatment of exemptions and determinations under paragraph 8(2)(l)

An exemption or determination in force immediately before the commencement of Schedule 3 to this Act under paragraph 8(2)(l) of the old Act continues in force after that commencement as if it were an exemption or determination under paragraph 8(2)(l) of the amended Act.

### 6 Treatment of matters under section 10

The following provisions apply in relation to matters under section 10 of the old Act:

- (a) the list under subsection 10(1) of the old Act, being that list as in force immediately before the commencement of Schedule 3 to this Act, has effect after that commencement as if it were prepared by the Reserve Bank under subsection 10(1) of the amended Act;
- (b) an obligation on the Governor of the Reserve Bank to publish notice of a matter, being an obligation that is undischarged as at the commencement of Schedule 3 to this Act, becomes, on that commencement, an obligation that the Reserve Bank is to discharge;
- (c) a determination in force under a provision of section 10 of the old Act immediately before the commencement of Schedule 3 to this Act continues to have effect, after that

commencement, as if it were a determination under that provision of section 10 of the amended Act;

- (d) a request under subsection 10(7) of the old Act that has not been dealt with by the commencement of Schedule 3 to this Act is, after that commencement, to be dealt with as if it were a request under subsection 10(7) of the amended Act.

## **7 Standards taken to have been determined on commencement**

- (1) Immediately after the commencement of Schedule 3 to this Act, the Reserve Bank is taken to have determined standards under section 11 of the amended Act that require classes of registered corporations:
  - (a) to provide to the Reserve Bank the same information that those classes of corporations were required to provide under section 11 of the old Act; and
  - (b) to provide that information in the same way in which those classes of corporations were required to provide that information under section 11 of the old Act.
- (2) The standards come into force on that commencement.
- (3) Subsection 11(6) of the amended Act does not apply in respect of the determination of the standards.

## **Part 3—Transitional provision relating to amendment of the Life Insurance Act 1995**

### **8 Treatment of assignments under section 16ZA**

- (1) If an assignment of an interest in a benefit fund of a friendly society was made:
  - (a) before the day on which this Act receives the Royal Assent; and
  - (b) in accordance with section 16ZA of the *Life Insurance Act 1995*, as then in force, disregarding the effect of item 1 of Schedule 6 to this Act;the assignment is taken to have been made in accordance with section 16ZA of the *Life Insurance Act 1995* as amended by that item.
- (2) Expressions used in this item have the same meanings as they have in the *Life Insurance Act 1995*.



## **Part 4—Transitional provisions relating to amendments of the Reserve Bank Act 1959**

### **9 Disqualification**

- (1) This item applies if a person:
- (a) was a member of the Reserve Bank Board immediately before the commencement of Schedule 7 to this Act; and
  - (b) held a position as a director, officer or employee of a particular ADI immediately before that commencement; and
  - (c) was not disqualified from the Reserve Bank Board under section 17 of the old Act, immediately before that commencement, because of holding that position with that ADI; and
  - (d) would, apart from this item, have been disqualified from the Reserve Bank Board under section 17 of the amended Act, immediately after that commencement, because of holding that position with that ADI.
- (2) Despite section 17 of the amended Act, the person is not disqualified from the Reserve Bank Board under that section merely because the person continues to hold that position with that ADI after that commencement.
- (3) In this item:
- ADI** has the same meaning as in the amended Act.
- amended Act** means the *Reserve Bank Act 1959* as in force immediately after the commencement of Schedule 7 to this Act.
- disqualified from the Reserve Bank Board** means not capable of appointment, or of continuing to act, as a member of the Reserve Bank Board.
- old Act** means the *Reserve Bank Act 1959* as in force immediately before the commencement of Schedule 7 to this Act.
- Reserve Bank** means the Reserve Bank of Australia.

**Schedule 12** Transitional, saving and application provisions

**Part 5** Application of amendments of superannuation legislation relating to financial assistance to funds

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**Part 5—Application of amendments of  
superannuation legislation relating to  
financial assistance to funds**

**10 Application of amendments of superannuation legislation  
relating to financial assistance to funds**

The amendments made by Schedule 9 only apply in relation to losses incurred by a fund after the commencement of that Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 30 June 1999  
Senate on 29 September 1999]*

(153/99)

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