Financial Sector (Collection of Data) Act 2001

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About this compilation

This compilation

This is a compilation of the *Financial Sector (Collection of Data) Act 2001* that shows the text of the law as amended and in force on 20 October 2023 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the collection of information from bodies in the financial sector, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Financial Sector (Collection of Data) Act 2001*.

2 Commencement

(1) Parts 1 and 5 commence on the day on which this Act receives the Royal Assent.

(2) Parts 2, 3 and 4 commence on a day to be fixed by Proclamation.

(3) If Parts 2, 3 and 4 do not commence under subsection (2) within the period of 12 months beginning on the day on which this Act receives the Royal Assent, those Parts commence on the first day after the end of that period.

3 Object of Act

(1) The object of this Act is to enable the Australian Prudential Regulation Authority (***APRA***) to collect information for the purposes of:

(a) assisting APRA to perform its functions or exercise its powers under other laws; and

(aa) enabling APRA to publish information given by financial sector entities; and

(b) assisting another financial sector agency to perform its functions or exercise its powers; and

(c) assisting the Minister to formulate financial policy; and

(d) reporting amounts for the purposes of the *Major Bank Levy Act 2017*.

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(2) In order to achieve that object, this Act:

(a) provides for certain corporations to be registered, and divided into categories, by APRA; and

(b) authorises APRA to determine reporting standards for corporations that are so registered and for certain other bodies that it regulates or monitors and to require them to provide APRA with information about their businesses and activities.

4 Extension to external Territories

This Act extends to every external Territory.

5 Entities covered by the Act

(1) This Act deals with financial sector entities.

(2) A ***financial sector entity*** is:

(a) a registered entity; or

(b) a regulated entity; or

(c) a corporation to which section 5A applies; or

(d) a discretionary mutual fund; or

(e) a person who:

(i) provides a financial service (within the meaning of the *Corporations Act 2001*); and

(ii) is not an entity, corporation or fund referred to in paragraphs (a) to (d) of this subsection; or

(f) a person who:

(i) is a participant in a payment system (within the meaning of section 7 of the *Payment Systems (Regulation) Act 1998*); and

(ii) is not an entity, corporation or fund referred to in paragraphs (a) to (d) of this subsection.

(3) A ***registered entity*** is a corporation whose name is entered in the Register of Entities kept by APRA under section 8.

(4) A ***regulated entity*** is any of the following:

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(a) a body regulated by APRA (within the meaning of subsection 3(2) of the *Australian Prudential Regulation Authority Act 1998*);

(c) a subsidiary of an ADI, or a subsidiary of an authorised NOHC, within the meaning of the *Banking Act 1959*.

(5) A ***discretionary mutual fund*** is a fund (however constituted) for making payments on the happening of a specified event (where there is uncertainty as to whether, or when, the event will happen), that is a fund:

(a) to which 2 or more persons contribute, and:

(i) out of which payments may be made in respect of liabilities, losses, damages or expenses of the contributors; and

(ii) that is governed by rules under which any such payment for the benefit of a contributor is subject to a discretion of a person or body; or

(b) that is declared to be a discretionary mutual fund, or included in a class of funds that are declared to be discretionary mutual funds, by regulations made for the purposes of this paragraph.

(6) However, a fund (however constituted) is not a discretionary mutual fund if:

(a) a contributor has a right, in law or equity, to a payment of a kind referred to in subparagraph (5)(a)(i); or

(b) the fund is:

(i) declared not to be a discretionary mutual fund; or

(ii) included in a class of funds that are declared not to be discretionary mutual funds;

by regulations made for the purposes of this paragraph.

(7) Despite subsection (2), the Reserve Bank is not a ***financial sector entity***.

5A Medical indemnity entities

This section applies to a corporation at a particular time if:

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(a) the corporation is a financial corporation formed within the limits of Australia; and

(b) an arrangement under which medical indemnity cover is provided for a health care professional was entered into before 1 July 2003; and

(c) the arrangement was not effected by means of a contract of insurance; and

(d) the corporation may pay, or may have to pay, an amount under the arrangement at some time after that time.

Expressions used in paragraph (b) have the same meaning as they have in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

6 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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

6A Application of Act

This Act does not apply, in relation to a discretionary mutual fund, to State insurance not extending beyond the limits of the State concerned.

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Part 2—Registration of corporations

7 Registrable corporations

(1) Subject to subsection (2), a corporation is a registrable corporation if, and only if, the corporation is a foreign corporation, a trading corporation formed within the limits of Australia or a financial corporation so formed and any of the following requirements are satisfied:

(a) the corporation engages in the provision of finance in the course of carrying on business in Australia;

(b) the corporation is specified in a determination under subsection (1A), or is in a class of corporations specified in a determination under subsection (1A).

(1A) For the purposes of paragraph (1)(b), APRA may:

(a) make a determination in writing specifying a particular corporation or corporations;

(b) make a determination in writing specifying a class of corporations or classes of corporations.

(1B) A determination made under paragraph (1A)(a) is not a legislative instrument.

(1C) A determination made under paragraph (1A)(b) is a legislative instrument.

(1D) Before making a determination under paragraph (1A)(a) or (b), APRA must consider:

(a) in the case of a determination under paragraph (1A)(a)—whether the corporation or each of the corporations specified in the determination has business activities in Australia that include the provision of finance; or

(b) in the case of a determination under paragraph (1A)(b)—whether each corporation in the class of corporations or classes of corporations specified in the determination has business activities in Australia that include the provision of finance.

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(1E) A failure to comply with subsection (1D) does not affect the validity of the determination.

(1F) As soon as practicable after making a determination under paragraph (1A)(a), APRA must give a copy of the determination to each corporation specified in the determination.

(1G) A failure to comply with subsection (1F) does not affect the validity of the determination.

(2) A corporation is not a registrable corporation if:

(a) the corporation, not being a company, society or association, is established for a public purpose by a law of the Commonwealth, of a State or of a Territory; or

(b) the corporation is an ADI for the purposes of the *Banking Act 1959*; or

(c) the corporation is a benefit society registered under a law of a State or of a Territory providing for the registration of benefit societies; or

(d) the corporation is a private health insurer within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*; or

(e) the corporation is registered under section 21 of the *Life Insurance Act 1995*; or

(f) the sole or principal business in Australia of the corporation is insurance business within the meaning of the *Insurance Act 1973*; or

(g) the corporation is authorised by a law of a State or of a Territory to act as an executor, administrator and trustee; or

(i) the corporation is covered under subsection (2A); or

(ia) the corporation is specified in a determination under subsection (2F), or is in a class of corporations specified in a determination under subsection (2F); or

(j) APRA has, by order in writing published in such manner and form as APRA determines to be appropriate, exempted the corporation from the obligation to register under this Act.

(2A) For the purposes of paragraph (2)(i), a corporation is covered under this subsection if:

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(a) the sum of the values of the corporation's assets in Australia that consist of debts due to the corporation resulting from transactions entered into in the course of the provision of finance by the corporation does not exceed:

(i) $50,000,000; or

(ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed; and

(b) the sum of the values of the principal amounts outstanding on loans or other financing covered by subsection (2C) does not exceed:

(i) $50,000,000; or

(ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed.

(2B) For the purposes of paragraph (2A)(b), determine the value of the principal amount outstanding on a loan or other financing at the time the loan or other financing arose.

(2C) For the purposes of paragraph (2A)(b), a loan or other financing is covered by this subsection if:

(a) the loan or other financing arose in the relevant financial year mentioned in subsection (2D); and

(b) the funding or originating of the loan or other financing resulted from the carrying out, whether directly or indirectly, of activities by the corporation.

(2D) In determining whether the corporation is a registrable corporation at a time, for the purposes of paragraph (2C)(a), the relevant financial year is the most recent financial year ending before that time.

(2E) For the purposes of working out whether a corporation (the ***test corporation***) is covered under subsection (2A):

(a) identify each other corporation (if any) that is related to the test corporation (disregarding subsections 34(2) and (3)); and

(b) treat those other corporations as not being a separate entity, but rather as being a part of the test corporation.

(2F) For the purposes of paragraph (2)(ia), APRA may:

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(a) make a determination in writing specifying a particular corporation or corporations;

(b) make a determination in writing specifying a class of corporations or classes of corporations.

(2G) A determination made under paragraph (2F)(a) is not a legislative instrument.

(2H) A determination made under paragraph (2F)(b) is a legislative instrument.

(2J) As soon as practicable after making a determination under paragraph (2F)(a), APRA must give a copy of the determination to each corporation specified in the determination.

(2K) A failure to comply with subsection (2J) does not affect the validity of the determination.

8 Register of entities

(1) APRA must cause a Register of Entities to be kept for the purposes of this Act.

(2) APRA must ensure that the Register of Entities is available for inspection by any member of the public at an office of APRA during normal business hours.

(3) A person may:

(a) inspect the Register of Entities; or

(b) take an extract from, or make a copy of, that Register;

if the person pays the fee (if any) prescribed by the regulations.

9 Obligations of corporations

(1) If, on the commencement of this Part, a registrable corporation is not a registered entity, the corporation must, before the end of 60 days after the date of commencement of this Part, give to APRA the documents mentioned in subsection (5).

Penalty: 50 penalty units.

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Note: If a corporation to which subsection (1) applies fails to give the documents to APRA before the end of the period specified in that subsection, the obligation to give them to APRA continues after the end of that period with daily offences being committed until the obligation is complied with (see section 4K of the *Crimes Act 1914*).

(2) If, after the commencement of this Part, a corporation becomes a registrable corporation, whether at the time of its incorporation or at a later time and whether or not the corporation has previously been a registrable corporation, the corporation must, before the end of 60 days after the day on which it becomes a registrable corporation, give to APRA the documents mentioned in subsection (5).

Penalty: 50 penalty units.

Note: If a corporation to which subsection (2) applies fails to give the documents to APRA before the end of the period specified in that subsection, the obligation to give them to APRA continues after the end of that period with daily offences being committed until the obligation is complied with (see section 4K of the *Crimes Act 1914*).

(3) APRA may, before the end of the period referred to in subsection (1) or (2) (including any period that is taken to be substituted for that period by any other application or applications of this subsection) allow a longer period for the giving by a particular corporation of documents in accordance with that subsection and, in that case, the longer period is taken, for the purposes of the application of that subsection in relation to that corporation, to be substituted for the period referred to in that subsection.

(4) Neither subsection (1) nor (2) applies to a corporation if, before the end of the period referred to in that subsection (including any period that is taken to be substituted for that period by any application or applications of subsection (3) in relation to that corporation), the corporation ceases to be a registrable corporation.

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

(5) The documents referred to in subsections (1) and (2) are:

(a) a statement in writing setting out:

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(i) the name, the place and date of incorporation and the address of the registered office of the corporation; and

(ii) the name, and the address of the registered office, of every corporation that is related to the corporation; and

(iii) particulars of the principal methods by which the corporation ordinarily borrows moneys; and

(iv) particulars of the principal kinds of finance ordinarily provided by the corporation; and

(b) a copy of the last audited balance-sheet of the corporation; and

(c) if there is no such balance-sheet or the balance-sheet includes both assets and liabilities in Australia and assets and liabilities outside Australia but does not show the assets and liabilities in Australia separately from the assets and liabilities outside Australia—a statement showing the assets and liabilities in Australia of the corporation.

(6) If:

(a) a registered entity changes its name or the address of its registered office; or

(b) a change takes place in the principal methods by which a registered entity ordinarily borrows moneys or in the principal kinds of finance ordinarily provided by a registered entity; or

(c) a corporation that is related to a registered entity ceases to be so related; or

(d) a corporation becomes related to a registered entity;

the registered entity must, before the end of the period of 60 days after the occurrence of the event concerned, notify APRA in writing accordingly.

Penalty: 10 penalty units.

Note: If a financial sector entity to which subsection (6) applies fails to notify APRA before the end of the period specified in that subsection, the obligation to notify APRA continues after the end of that period with daily offences being committed until the obligation is complied with (see section 4K of the *Crimes Act 1914*).

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(7) A corporation is not required by this section to give to APRA a statement or notification in relation to a matter if a statement or notification in relation to that matter has already been given to APRA by another corporation.

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

(8) A statement or notification by a corporation to APRA under this section must be signed by a senior officer of the corporation.

(9) APRA must, if requested to do so by the Secretary of the Department, give the Secretary a copy of a document received by APRA under this section.

(10) An offence for a contravention of subsection (1), (2) or (6) is an offence of strict liability.

10 Matters to be included in Register of Entities

APRA must:

(a) cause to be entered in the Register of Entities the name, the address of the registered office, and any other particulars that it considers appropriate to be entered, of every corporation that gives to APRA the documents mentioned in subsection 9(5); and

(b) if a registered entity notifies APRA in accordance with subsection 9(6), or APRA otherwise becomes aware, of a change in the name or the address of the registered office of the entity, or of a change in any other particulars relating to the entity that are entered in the Register—cause the Register to be altered accordingly; and

(c) if a corporation whose name is entered in the Register ceases to exist, or ceases to be a registrable corporation—cause the corporation's name, the address of its registered office, and any other particulars relating to it, to be removed from the Register.

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11 List of names and categories of registered entities

(1) APRA must keep a list of the names of registered entities, divided into categories as APRA determines.

(2) APRA may at any time vary the list for the purpose of adding to it the names of corporations that become registered entities, or removing from it the names of corporations that are found not to be or cease to be registered entities, or for the purpose of transferring a corporation from one category to another category.

(3) In determining the category in which a corporation is to be included or in determining whether a corporation should be transferred from one category to another category, APRA must have regard to:

(a) the assets and liabilities of the corporation; and

(b) the principal methods by which the corporation ordinarily borrows moneys; and

(c) the principal kinds of finance ordinarily provided by the corporation;

and must try to ensure that, as far as practicable, corporations carrying on the same or similar kinds of business are included in the same category.

(4) APRA must cause a copy of the list, and, if a variation of the list is made, a copy of the variation, to be published in the *Gazette*.

(5) If APRA prepares a new list in substitution for the existing list and any variations made to that list, subsection (4) applies in respect of the new list and any variation made to that list.

(6) As soon as practicable after a corporation is included in a category or is transferred from one category to another category, APRA must notify the corporation of the category in which it has been included or to which it has been transferred.

(7) If:

(a) after a corporation has been included in a category, the corporation requests APRA to transfer the corporation to another category; or

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(b) after a corporation has been transferred from one category to another category, the corporation requests APRA to re-transfer the corporation to the former category or to transfer the corporation to a third category;

and the corporation gives information or makes submissions to APRA in support of the request, APRA must, after taking into account the information or submissions:

(c) reconsider the question of the category in which the corporation should be included; and

(d) if APRA thinks that the corporation should be transferred to a different category, vary the list accordingly.

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Part 3—Provision of documents to APRA

Division 1—Deferred application of this Part in relation to registered entities

12 Application

(1) This Part does not apply in respect of registered entities until the date of commencement of Part 2.

(2) Until that date, a reference in this Part to a financial sector entity is taken to be a reference only to such an entity that is a regulated entity.

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Division 2—Determination of reporting standards and requirement to provide documents

13 Determination of reporting standards for, and the provision of, certain documents

(1) APRA may:

(a) determine, in writing, reporting standards that are required to be complied with by financial sector entities of a kind referred to in paragraphs 5(2)(a) to (d) with respect to any of the following documents (***reporting documents***):

(i) statements, reports, returns, certificates or other documents containing information of a financial or accounting nature relating to the business or activities of the entities;

(ii) surveys, reports, returns, certificates or other documents containing other information relating to the business or activities of the entities; and

(b) publish those reporting standards that are legislative instruments in any way that it considers appropriate.

Note: When APRA has determined a reporting standard, it has power at any time to revoke or vary the standard (see subsection 33(3) of the *Acts Interpretation Act 1901*).

(1A) A reporting standard is a legislative instrument, unless:

(a) APRA considers, on reasonable grounds, that the reporting standard includes confidential information, the publication of which is likely to have a detrimental effect on:

(i) the stability of the financial system; or

(ii) the stability of one or more financial institutions; and

(b) APRA considers, on reasonable grounds, that the information to be contained in the reporting documents is required urgently by APRA for any of the following purposes:

(i) to determine the financial or prudential condition of financial sector entities;

(ii) to determine the nature or level of exposure that financial sector entities have to risks, including risks

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relating to particular transactions, entities, business sectors, asset classes or events;

(iii) to assess potential threats to the stability of the financial system;

(iv) to assist APRA, the Minister or a financial sector agency to respond to any threats to the stability of the financial system;

(v) to determine what, if any, action should be taken by, or in relation to, one or more financial sector entities; and

(c) the reporting standard does not require the information referred to in paragraph (b) to be given on an ongoing basis.

(1B) If the Minister directs APRA under section 13C to determine reporting standards under this subsection in relation to a financial sector entity or financial sector entities, APRA must:

(a) by legislative instrument, determine reporting standards that are required to be complied with by the financial sector entity or entities with respect to any of the following documents (***reporting documents***):

(i) statements, reports, returns, certificates or other documents containing information of a financial or accounting nature relating to the business or activities of the entities;

(ii) surveys, reports, returns, certificates or other documents containing other information relating to the business or activities of the entities; and

(b) publish those reporting standards in any way that APRA considers appropriate.

Note: When APRA has determined a reporting standard, APRA has power at any time to revoke or vary the standard (see subsection 33(3) of the *Acts Interpretation Act 1901*).

(2) The reporting standards may include matters relating to:

(a) the forms of reporting documents; and

(b) the information to be contained in reporting documents; and

(bb) the auditing of reporting documents; and

(c) the persons who are to sign reporting documents; and

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(d) the times as at which, or the periods to which, the information in reporting documents is to relate; and

(e) the giving of reporting documents to APRA, and the specifying of, or the authorising of APRA to specify, the times before which, or the periods within which, those documents are to be so given; and

(f) the discretion of APRA, in particular cases, to vary reporting standards, including, but not limited to, the discretion to vary any times or periods specified in or under the standards as mentioned in paragraph (e).

(2A) Without limiting the matters that may be included in the reporting standards under paragraph (2)(b), the matters may relate to information (including personal information or tax file numbers, for example) that APRA requires to perform APRA's functions under:

(a) Division 2AA of Part II of the *Banking Act 1959*; or

(b) Part VC of the *Insurance Act 1973*.

(2B) Without limiting the matters that may be included in the reporting standards, the matters may relate to reporting of amounts for the purposes of the *Major Bank Levy Act 2017*.

(2C) A reporting standard made under this section may make provision in relation to a matter mentioned in subsection (2B) by applying, adopting or incorporating any matter contained in any other instrument or writing as in force or existing from time to time.

(2D) Subsection (2C) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(3) The reporting standards may impose:

(a) different requirements to be complied with by different financial sector entities or classes of financial sector entities, including (to avoid doubt) requirements to be complied with only by a particular entity or particular entities; and

(b) different requirements to be complied with in different situations and in respect of different businesses or activities.

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(4) A reporting standard that is determined for a particular financial sector entity may, in addition to, or instead of, a reporting standard that would apply to the entity apart from this subsection, require the entity to provide information relating to the consolidated position of the entity and its subsidiaries other than subsidiaries (if any) excluded from the requirement by that reporting standard.

(4A) A reporting standard may require an RSE licensee to provide information in relation to the investment of assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities (the ***relevant assets***) by the RSE licensee or a person connected with the RSE licensee (the ***investor***), including information about the following:

(a) any deductions (whether to cover fees, taxes, costs or for any other purpose) from the return on the investment made by the investor before all or part of the remainder of the return is paid or reinvested;

(aa) the extent to which the profits of the investor is attributable to deductions made by the investor;

(ab) if the return on the investment made by the investor is passed on (in whole or in part) to members of a regulated superannuation entity of the RSE licensee—the effect of any deduction by the investor on the amount passed on to the members;

(ac) if the investor is a person connected with the RSE licensee—the relationship between the RSE licensee and the investor;

(b) if the investor has invested all or part of the relevant assets in financial products or other property—the financial products or other property in which the investor has invested the relevant assets;

(c) if the investor has invested all or part of the relevant assets in a managed investment scheme (within the meaning of the *Corporations Act 2001*) and the assets of the scheme have been invested in whole or part in financial products or other property—the financial products or other property in which the assets of the scheme have been invested;

(d) if the investor has invested all or part of the relevant assets in a pooled superannuation trust or other kind of trust and the assets of the trust have been invested in whole or part in

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financial products or other property—the financial products or other property in which the assets of the trust have been invested;

(e) the operations of the investor.

(4B) If:

(a) a reporting standard requires an RSE licensee to provide information (the ***required information***) in relation to the investment of relevant assets by the RSE licensee or a person connected with the RSE licensee; and

(b) the relevant assets are invested under a contract or other arrangement between:

(i) the RSE licensee, a related body corporate of the RSE licensee or a custodian in relation to the relevant assets and the RSE licensee or related body corporate (the ***first party***); and

(ii) a person connected with the RSE licensee (the ***second party***);

the contract or arrangement is taken to include:

(c) a term requiring the first party, at the time the relevant assets are invested or as soon as reasonably practicable after that time, to notify the second party that the assets are, or are derived from, a registrable superannuation entity; and

(d) a term requiring the second party, if notified by the first party in accordance with paragraph (c), to, as soon as reasonably practicable after being notified, provide the first party with the required information of which the second party is aware.

(4C) A person is ***connected with*** an RSE licensee for the purposes of subsections (4A) and (4B) if the person is:

(a) a related body corporate of the RSE licensee; or

(b) a custodian in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities, and in relation to the RSE licensee or a related body corporate of the RSE licensee; or

(c) a person who, under a contract or other arrangement with:

(i) the RSE licensee; or

(ii) a related body corporate of the RSE licensee; or

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(iii) a custodian in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities, and in relation to the RSE licensee or a related body corporate of the RSE licensee;

invests assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities.

(4D) A reporting standard may require an RSE licensee to provide information in relation to any money, consideration or other benefit given to an entity (the ***receiving entity***) by the RSE licensee or a person connected with the RSE licensee (the ***paying entity***) out of the assets, or assets derived from assets, of a registrable superannuation entity of the RSE licensee, including information about the following:

(a) details of the receiving entity;

(b) details of how the money, consideration or benefit is given to the receiving entity;

(c) if the receiving entity is not the RSE licensee—the relationship between the receiving entity and the paying entity;

(d) the purpose for which the money, consideration or other benefit is given;

(e) the way in which the money, consideration or other benefit is used by the receiving entity, and any entity with which that entity deals, including the extent to which the receiving entity's profit is attributable to that money, consideration or other benefit.

(4E) If:

(a) a reporting standard requires an RSE licensee to provide information (the ***required information***) in relation to any money, consideration or other benefit given to a receiving entity by a paying entity out of the assets, or assets derived from assets, of a registrable superannuation entity of the RSE licensee; and

(b) the money, consideration or other benefit is given under a contract or other arrangement between the paying entity and the receiving entity;

the contract or arrangement is taken to include:

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(c) a term requiring the paying entity, at the time the money, consideration or benefit is given or as soon as reasonably practicable after that time, to notify the receiving entity that the money, consideration or benefit is given out of assets, or assets derived from, a registrable superannuation entity; and

(d) a term requiring the receiving entity, if notified by the paying entity in accordance with paragraph (c), to, as soon as reasonably practicable after being notified, provide the paying entity with the required information of which the receiving party is aware.

(4F) A person is ***connected with*** an RSE licensee for the purposes of subsection (4D) if the person is:

(a) a related body corporate of the RSE licensee; or

(b) a custodian in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities, and in relation to the RSE licensee or a related body corporate of the RSE licensee; or

(c) a person who, under a contract or other arrangement with the RSE licensee or a person mentioned in paragraphs (a) or (b):

(i) invests assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities; or

(ii) provides a financial service (within the meaning of the *Corporations Act 2001*) in relation to assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities.

(4G) Subsections (4D) and (4E) do not apply in relation to any money, consideration or other benefit given to another entity by the RSE licensee if it is an investment of assets, or assets derived from assets, of the RSE licensee's registrable superannuation entities by the RSE licensee.

(5) When preparing proposed reporting standards, subject to subsection (6), APRA must consult:

(a) if the standards would affect a class or classes of financial sector entities—the entities concerned or such associations or other bodies representing them as APRA thinks appropriate; or

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(b) if the standards would affect only a particular financial sector entity or particular financial sector entities—the entity or entities concerned.

(6) However, subsection (5) does not apply if APRA is satisfied that the delay that would be involved in holding the consultations would:

(a) prejudice the interests of depositors, policy holders or members of the financial sector entity or financial sector entities concerned; or

(b) have a detrimental effect on the stability of the financial system.

(7) The validity of a reporting standard is not affected by any failure of APRA to hold consultations as required by subsection (5).

(9) If a financial sector entity is required by or under a reporting standard to give a reporting document to APRA before a particular time or within a particular period, the entity must comply with the requirement.

Penalty: 50 penalty units.

(10) To avoid doubt, section 4K of the *Crimes Act 1914* applies to an obligation imposed by subsection (9).

Note: The effect of section 4K of the *Crimes Act 1914* is that, if a financial sector entity to which subsection (9) applies refuses or fails to comply with a requirement before the time, or within the period, specified in the requirement, the obligation to comply with the requirement continues after that time or that period with daily offences being committed until the requirement is complied with.

(11) An offence for a contravention of subsection (9) is an offence of strict liability.

13A Copy of reporting standard to be given to financial sector entities and the Minister etc.

(1) If a reporting standard determined under subsection 13(1) is not a legislative instrument, APRA must, as soon as practicable after the reporting standard is determined, give a copy of the standard to:

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(a) each financial sector entity that is required to comply with the standard; and
(b) the Minister.

(2) At the same time that a copy of the reporting standard is given to a financial sector entity under subsection (1), APRA must give the financial sector entity a written statement that explains the effect of section 13B.

13B Financial sector entity must not disclose that it has been given a copy of a reporting standard etc.

(1) If APRA gives a financial sector entity a copy of a reporting standard under subsection 13A(1), the financial sector entity must not disclose to any person:
(a) that the financial sector entity has been given a copy of the reporting standard; or
(b) any confidential information that is included in the reporting standard.

Penalty: Imprisonment for 2 years.

(2) However, subsection (1) does not apply if:
(a) the disclosure is to:
(i) APRA for the purposes of APRA performing APRA's functions under this Act or any other law of the Commonwealth; or
(ii) an employee, officer or contractor of the financial sector entity for the purposes of the employee, officer or contractor performing his or her duties in relation to reporting standards; or
(iii) a lawyer for the financial sector entity; or
(b) the disclosure is authorised under an Act or another law; or
(c) the confidential information included in the reporting standard has already been lawfully made available to the public from other sources.

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

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13C Minister may direct APRA to determine reporting standards

(1) The Minister may, in writing, direct APRA to determine reporting standards under subsection 13(1B) that are to be complied with by any of the following:

(a) financial sector entities of a kind referred to in paragraph 5(2)(e), or a class of those entities;

(b) financial sector entities of a kind referred to in paragraph 5(2)(f), or a class of those entities;

(c) a particular financial sector entity of a kind referred to in paragraph 5(2)(e) or (f), or particular financial sector entities of that kind.

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

(3) This section does not limit the power of APRA to determine reporting standards under subsection 13(1).

14 Principal executive officer of financial sector entity (other than a superannuation entity) to notify the entity's governing body of a failure to provide reporting documents to APRA

(1) This section applies if a financial sector entity (other than a superannuation entity) that is required by or under a reporting standard to give a reporting document to APRA before a particular time or within a particular period fails to comply with the requirement.

(2) It is the duty of the principal executive officer of the entity, as soon as practicable after that time or the end of that period, as the case may be, to notify the governing body of the entity in writing that the failure has occurred.

(3) The principal executive officer of a financial sector entity must not refuse or fail to notify the governing body of the entity as required by subsection (2).

Penalty: 50 penalty units.

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(4) An offence for a contravention of subsection (3) is an offence of strict liability.

15 When reporting standards begin to apply to particular financial sector entities

(1) The reporting standards apply to a financial sector entity only on and after the day declared by APRA to be the day on which the standards begin to apply to the entity or to the class or kind of financial sector entities in which the entity is included.

(2) APRA may, by writing published in the *Gazette*, make declarations for the purposes of subsection (1).

16 Exemptions

(1) APRA may, by written notice, exempt a financial sector entity from the requirement to comply with:
  (a) all the requirements contained in any one or more applicable reporting standards; or
  (b) a specified requirement or requirements contained in an applicable reporting standard or applicable reporting standards.

(1A) A notice under subsection (1) is not a legislative instrument.

(1B) APRA may, by legislative instrument, exempt a class or kind of financial sector entities from the requirement to comply with:
  (a) all the requirements contained in any one or more applicable reporting standards; or
  (b) a specified requirement or requirements contained in an applicable reporting standard or applicable reporting standards.

(2) An exemption under subsection (1) or (1B) may be unconditional or subject to conditions and may be of indefinite duration or limited in the time of its operation.

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17 APRA may require the variation of a reporting document or the provision of financial information

(1) If APRA thinks that a reporting document given to APRA by a financial sector entity:

(a) is incorrect, incomplete or misleading; or

(b) does not comply with a reporting standard that applies to it; or

(c) does not contain information, or adequate information, about a matter;

APRA may give the entity written notice requesting it to give APRA in writing such explanation or information as is specified in the notice.

(2) The notice must specify the period within which the explanation or information is to be given. The period specified must be not less than 14 days beginning on the day on which the notice is given.

(3) If the notice requested the giving of an explanation and:

(a) the entity fails to give the explanation; or

(b) after considering the explanation given by the entity, APRA still thinks that the document is incorrect, incomplete or misleading or does not comply with the reporting standard;

APRA may give the entity such written directions as APRA thinks necessary for the variation of the document so that it will cease to be incorrect, incomplete or misleading or will comply with the reporting standard, as the case may be.

(4) If the notice requested the giving of information and:

(a) the entity fails to give the information; or

(b) APRA thinks that the information given is inadequate;

APRA may give the entity such written directions as APRA thinks necessary for the giving of the information or the giving of adequate information.

(5) Directions under subsection (3) or (4) must specify a period within which they are to be complied with. The period specified must not be less than 14 days beginning on the day on which the directions are given.

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(6) If, at any time, APRA is satisfied that a direction is no longer necessary or should be varied, APRA must give the financial sector entity written notice revoking or varying the direction, as the case may be.

(7) If:

(a) a financial sector entity applies to APRA to revoke or vary a direction; and

(b) APRA thinks that the direction should be revoked or varied;

APRA must give the entity written notice revoking or varying the direction, as the case may be.

(8) A financial sector entity must comply with a direction given to it under subsection (3) or (4) or with such a direction as varied under subsection (6) or (7), as the case requires.

Penalty: 50 penalty units.

(9) To avoid doubt, section 4K of the *Crimes Act 1914* applies to an obligation imposed by subsection (8).

Note: The effect of section 4K of the *Crimes Act 1914* is that, if a financial sector entity refuses or fails to comply with a direction before the time, or within the period, specified in the direction, the obligation to comply with the direction continues after that time or that period with daily offences being committed until the direction is complied with.

(10) An offence for a contravention of subsection (8) is an offence of strict liability.

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Division 2A—Auditing of documents

17A Application of this Division

(1) This Division applies if a financial sector entity is required to appoint an auditor under reporting standards that relate to the collection of information that APRA requires:

(a) to perform APRA's functions under:

(i) Division 2AA of Part II of the *Banking Act 1959*; or

(ii) Part VC of the *Insurance Act 1973*; or

(b) to assist a financial sector agency to perform its functions or exercise its powers.

(2) Also, this Division applies if a financial sector entity is required to appoint an auditor under reporting standards that APRA issued on the direction of the Minister.

17B Auditor's functions and duties

(1) The auditor must perform the functions and duties of an auditor that are set out in the reporting standards.

(2) The auditor must comply with the reporting standards in performing their functions and duties.

(3) The financial sector entity must make any arrangements that are necessary to enable the auditor to perform their functions and duties.

17C Auditor must notify APRA of attempts to unduly influence etc. the auditor

(1) If the auditor is aware of circumstances that amount to:

(a) an attempt by any person to unduly influence, coerce, manipulate or mislead the auditor in connection with the performance of the auditor's functions or duties; or

(b) an attempt by any person to otherwise interfere with the performance of the auditor's functions or duties;

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the auditor must notify APRA in writing of those circumstances as soon as practicable, and in any case within 28 days, after the auditor becomes aware of those circumstances.

(2) The auditor commits an offence if the auditor contravenes subsection (1).

Penalty: Imprisonment for 12 months or 50 penalty units, or both.

17D Giving false or misleading information to auditor

Offence—person knows the information is false or misleading etc.

(1) A person commits an offence if:
  (a) the person is:
    (i) a financial sector entity; or
    (ii) an employee, officer or trustee of a financial sector entity; and
  (b) the person gives information, or allows information to be given, to an auditor of the financial sector entity; and
  (c) the information relates to the affairs of the financial sector entity; and
  (d) the person knows that the information:
    (i) is false or misleading in a material particular; or
    (ii) is missing something that makes the information misleading in a material respect.

Penalty: Imprisonment for 5 years or 200 penalty units, or both.

Offence—person fails to ensure the information is not false or misleading etc.

(2) A person commits an offence if:
  (a) the person is an employee or officer of a financial sector entity; and
  (b) the person gives information, or allows information to be given, to an auditor of the financial sector entity; and
  (c) the information relates to the affairs of the financial sector entity; and

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(d) the information:
(i) is false or misleading in a material particular; or
(ii) is missing something that makes the information misleading in a material respect; and

(e) the person did not take reasonable steps to ensure that the information:
(i) was not false or misleading in a material particular; or
(ii) was not missing something that makes the information misleading in a material respect.

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

Determining whether information is false or misleading

(3) If information is given to the auditor in response to a question asked by the auditor, the information and the question must be considered together in determining whether the information is false or misleading.

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Division 3—Administrative penalties in lieu of prosecution for certain offences

18 Application of Division

This Division applies to an offence for a contravention of subsection 9(1), (2) or (6), 13(9), 14(3) or 17(8).

19 When an infringement notice can be served

(1) Subject to subsection (2), if APRA has reasonable grounds to believe that a person has committed an offence or offences, APRA may cause an infringement notice to be served on the person in accordance with this Division.

(2) An infringement notice must not relate to more than one offence unless:

(a) the offences are:

(i) an offence constituted by refusing or failing to comply with a requirement before a specified time or within a specified period; and

(ii) one or more daily offences constituted by refusing or failing to comply with the requirement after that time or period; or

(b) the offences are 2 or more daily offences constituted by refusing or failing to comply with the same requirement after the time before which, or the end of the period within which, the requirement was to be complied with.

Note: For daily offences, see section 4K of the *Crimes Act 1914*.

(3) An infringement notice does not have any effect unless it is served within one year after the day on which the offence or the earlier or earliest of the offences is alleged to have been committed.

20 Matters to be included in an infringement notice

(1) An infringement notice must:

(a) state the name of the person on whom it is to be served; and

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(b) state that it is being served on behalf of APRA; and

(c) state:

(i) the nature of the alleged offence or offences; and

(ii) the time (if known) and date on which, and the place at which, the offence or the earlier or earliest of the offences is alleged to have been committed; and

(iii) the maximum penalty that a court could impose for the alleged offence or offences; and

(d) specify a penalty that is payable under the notice in respect of the alleged offence or offences; and

(e) state that, if the person:

(i) does not wish the matter to be dealt with by a court; and

(ii) has, within 28 days after the date of service of the notice, done the act the failure to do which constituted the offence or offences;

the person may pay to APRA in that period the amount of the penalty specified in the notice; and

(f) state that the person may make written representations to APRA seeking the withdrawal of the notice.

Note: APRA has power to extend periods stated in notices given under paragraph (1)(e) (see section 25).

(2) An infringement notice may contain any other matters that APRA considers necessary.

(3) The penalty to be specified in an infringement notice under paragraph (1)(d) is whichever is the lesser of:

(a) one-fifth of the maximum amount of the fine or fines that a court could impose for the offence or offences; or

(b) 50 penalty units.

21 Withdrawal of infringement notice

(1) A person on whom an infringement notice has been served may make written representations to APRA seeking the withdrawal of the notice.

(2) APRA may withdraw an infringement notice served on a person (whether or not the person has made representations seeking the

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withdrawal) by causing written notice of the withdrawal to be served on the person within the period within which the penalty specified in the infringement notice is required to be paid.

(3) The matters to which APRA may have regard in deciding whether or not to withdraw an infringement notice include, but are not limited to, the following:

(a) whether the person has previously been convicted of an offence for a contravention of this Act;

(b) the circumstances in which the offence or offences specified in the notice are alleged to have been committed;

(c) whether the person has been previously been served with an infringement notice in respect of which the person paid the penalty specified in the notice;

(d) any written representations made by the person.

(4) If:

(a) the person pays the penalty specified in the infringement notice within the period within which the penalty is required to be paid; and

(b) the notice is withdrawn after the person pays the penalty;

APRA must refund to the person, out of money appropriated by the Parliament, an amount equal to the amount paid.

22 What happens if penalty is paid

(1) This section applies if:

(a) an infringement notice is served on a person; and

(b) the person has done the act the failure to do which constituted the offence or offences and pays the penalty specified in the notice before the end of the period referred to in paragraph 20(1)(e); and

(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the offence or offences specified in the notice, and for any other offence or offences constituted by the same omission, is taken to be discharged.

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(3) Further proceedings cannot be taken against the person for the offence or offences specified in the notice and proceedings cannot be taken against the person for any other offence or offences constituted by the same omission.

(4) The person is not regarded as having been convicted of the offence or offences specified in the notice.

23 More than one infringement notice may not be served for the same offence

This Division does not permit the service of more than one infringement notice on a person for the same offence or offences.

24 Infringement notice not required to be served

This Division does not:

(a) require an infringement notice to be served on a person in relation to an offence; or

(b) affect the liability of a person to be prosecuted for an offence if:

(i) an infringement notice is not served on the person in relation to the offence or in relation to any other offence constituted by the same omission; or

(ii) an infringement notice served on the person in relation to the offence or in relation to any other offence constituted by the same omission has been withdrawn; or

(c) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice served on the person in relation to the offence or in relation to any other offence constituted by the same omission; or

(d) limit the amount of the penalty that may be imposed by a court on a person convicted of an offence.

25 APRA may extend period for payment of penalty

(1) APRA may, by writing, extend, in relation to a particular person, the period referred to in paragraph 20(1)(e).

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(2) The power of APRA under subsection (1) to extend the period may be exercised before or after the end of the period.

(3) If APRA extends a period under subsection (1), a reference in this Division, or in a notice or other instrument under this Division, to the period is taken, in relation to the person, to be a reference to the period as so extended.

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Part 3A—Review of decisions

25A Notice of reviewable decision

(1) If APRA makes a reviewable decision (the ***original decision***), then APRA must give a notice in writing of the original decision to the person in relation to whom the decision is made.

(2) The notice must include a statement to the effect that:

(a) the person may, if dissatisfied with the original decision, seek a reconsideration of that decision by APRA in accordance with sections 25B and 25C; and

(b) a person whose interests are affected by the original decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by APRA on that reconsideration confirming or varying the original decision, make application to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.

25B Request for review of decisions

(1) A person in relation to whom a reviewable decision is made, may, if dissatisfied with the decision, request APRA to reconsider the decision.

(2) The request must:

(a) be made by notice in writing; and

(b) be given to APRA within:

(i) the period of 21 days after the day on which the decision first comes to the notice of the person; or

(ii) within such further period as APRA allows; and

(c) set out the reasons for making the request.

25C Review of decision

(1) On receiving the request, APRA:

(a) must reconsider the decision; and

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(b) may, in such manner as APRA thinks fit:
(i) confirm the decision; or
(ii) revoke the decision; or
(iii) vary the decision.

(2) If APRA does not confirm, revoke or vary a decision within the period of 21 days after receiving the request to reconsider the decision, APRA is, at the end of that period, taken to have confirmed the decision under subsection (1).

(3) If APRA confirms, revokes or varies a decision (including because of the application of subsection (2)) by the end of the period referred to in subsection (2), APRA must serve a notice on the person who made the request. The notice must:
(a) inform the person of the result of APRA's reconsideration of the decision; and
(b) set out the findings on material questions of fact; and
(c) refer to the evidence or other material on which those findings were based; and
(d) give APRA's reasons for confirming, revoking or varying the decision; and
(e) include a statement that:
(i) the person may, if dissatisfied with the decision, seek a reconsideration of the decision; and
(ii) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision, apply to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.

(4) Any failure to comply with the requirements of subsection (3) in relation to a decision does not affect the validity of the decision.

25D Applications to Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of APRA that have been confirmed or varied under section 25C.

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(2) If a decision is, under subsection 25C(2), taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making an application for review of the decision were the period:

(a) beginning on the day on which the decision is taken to be confirmed; and

(b) ending 28 days later.

(3) If a person makes a request under section 25B in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.

(4) For the purposes of:

(a) a review of a decision of APRA that has been confirmed or varied under section 25C; or

(b) a request under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of such a decision;

a non-presidential member of the Administrative Appeals Tribunal must not sit as a member of the Administrative Appeals Tribunal if he or she is a director or employee of:

(c) an entity of any kind carrying on (whether in Australia or elsewhere) insurance business (within the meaning of the *Insurance Act 1973*) or life insurance business (within the meaning of the *Life Insurance Act 1995*); or

(d) if an entity referred to in paragraph (c) is a body corporate—a body corporate that is related to it.

(5) The question whether 2 bodies corporate are related to each other for the purposes of paragraph (4)(d) is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

(6) An order must not be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of a decision except by the Administrative Appeals Tribunal.

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Part 4—Miscellaneous

26 Saving of other laws

This Act is not intended to exclude or limit the operation of any other laws of the Commonwealth, or the operation of any laws of a State or Territory, in so far as those laws are capable of operating concurrently with this Act.

27 Entities may be directed to comply with Act

If a financial sector entity is convicted of an offence against this Act as a result of the entity having failed to comply with a provision of this Act or of the regulations, or with a reporting standard made or direction given by APRA, the Federal Court of Australia may direct the entity to comply, within a period specified by the Court, with the provision, reporting standard or direction, as the case may be.

28 Validity of acts and transactions of financial sector entities

The validity of an act or transaction of a financial sector entity is not affected merely because a provision of this Act or of the regulations, a reporting standard or a direction has not been complied with.

29 Corporation not to hold out that it is a registered entity

A corporation must not, in the course of carrying on any business, advertise or hold out, by the use of the words "registered under the *Financial Sector (Collection of Data) Act 2001*", the words "registered with APRA" or words having a similar meaning, that the corporation is a registered entity or has any special status under or because of this Act, whether or not the corporation is a registered entity.

Penalty: 50 penalty units.

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29A Delegation by Minister

The Minister may, in writing, delegate all or any of his or her functions or powers under this Act to:

(a) the Secretary of the Department; or

(b) an SES employee, or acting SES employee, in the Department.

30 Regulations

The Governor-General may make regulations prescribing all 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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Part 5—Interpretation

31 Definitions

In this Act, unless the contrary intention appears:

APRA means the Australian Prudential Regulation Authority.

arrangement has the same meaning as in subsection 761B(1) of the *Corporations Act 2001*.

Australia includes all the external Territories.

balance-sheet includes a statement of assets and liabilities or any similar document.

category means one of the categories into which registered entities are divided in the list kept for the purposes of section 11.

co-operative housing society means a society registered or incorporated as a co-operative housing society or similar society under a law of a State or Territory.

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

decision, in Part 3A, has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

discretionary mutual fund has the meaning given by subsections 5(5) and (6).

financial corporation means a financial corporation to which paragraph 51(xx) of the Constitution applies.

financial product has the same meaning as in Division 3 of Part 7.1 of the *Corporations Act 2001*.

financial sector agency means:

(a) ASIC; or

(b) the Reserve Bank; or

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(c) a Commonwealth, State or Territory authority prescribed by the regulations.

financial sector entity has the meaning given by section 5.

foreign corporation means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution.

governing body of a financial sector entity means the board of directors, trustee or trustees, committee of management, council or other governing authority of the entity.

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

principal executive officer of a financial sector entity means the principal executive officer of the entity for the time being, by whatever name called, and whether or not he or she is a member of the governing body of the entity.

registered entity has the meaning given by subsection 5(3).

registrable corporation has the meaning given by section 7.

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

regulated entity has the meaning given by subsection 5(4).

related, in relation to an RSE licensee that is a body corporate and another body corporate, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

reporting document means a document of a kind mentioned in subparagraph 13(1)(a)(i) or (ii) or 13(1B)(a)(i) or (ii).

reporting standard means a reporting standard determined by APRA under section 13.

Reserve Bank means the Reserve Bank of Australia.

reviewable decision means any of the following decisions:

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(a) a decision not to exempt an organisation under paragraph 7(2)(j);
(aa) a decision to make a determination under paragraph 7(1A)(a);
(ab) a decision not to make a determination under paragraph 7(2F)(a);
(b) a decision not to allow a longer period under subsection 9(3);
(c) a decision to include (including by transfer) a registered entity in a particular category under section 11;
(d) a decision under section 13 to determine a reporting standard for a particular financial sector entity;
(e) a decision to vary a reporting standard determined under section 13 for a particular financial sector entity.

RSE licensee has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

share includes stock, and also includes an interest in a share or in any stock.

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

trading corporation means a trading corporation to which paragraph 51(xx) of the Constitution applies.

32 Meaning of certain other expressions

Provision of finance

(1) A reference in this Act to the provision of finance includes a reference to the following:
(a) the lending of money, with or without security;
(aa) the carrying out of activities, whether directly or indirectly, that result in the funding or originating of loans or other financing;
(b) the supplying of goods by way of hire-purchase;
(c) the sale (other than a lay-by sale), in the course of the carrying on of a business of selling goods by retail, of goods

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on terms under which payment in full for the goods is not required to be made before the expiration of 3 months from the day on which the goods are sold or agreed to be sold;

(d) the letting on hire of goods;

(e) the acquisition of debts due to another person;

(f) the purchase of bills of exchange or promissory notes;

(g) the purchase of securities issued by the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory;

(h) the purchase of debentures or other securities (other than shares) issued by a corporation.

(1A) A reference in this Act to the provision of finance does not include a reference to the following:

(a) the provision of financial advice;

(b) intra-group financing activity between corporations that are related to one another.

Money received by co-operative housing society for its shares constitutes borrowing

(2) For the purposes of this Act, the receipt of money by a co-operative housing society in respect of the issue of shares in the capital of the society is taken to constitute the borrowing of those moneys by the society.

When debt is due

(3) For the purposes of this Act, a debt is taken to be due even though the time for payment of the debt has not arrived.

33 Assets of corporations

(1) Subject to subsection (2), for the purposes of the application of sections 7 and 34 in relation to a corporation:

(a) the assets of the corporation on any day are taken to be the assets in Australia of the corporation that were included in the assets of the corporation in the last balance-sheet of the corporation prepared and audited before that day; and

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(b) the value on that day of any of those assets is taken to be the value of the assets concerned as shown in that balance-sheet.

(2) If, for the purposes of the application of this section in relation to a corporation on any day, there is not such a balance-sheet as is mentioned in subsection (1), then, for the purposes of the application of sections 7 and 34 in relation to the corporation:

(a) the assets of the corporation on that day are taken to be the assets in Australia of the corporation; and

(b) the value on that day of any of those assets is taken to be the value of the assets concerned as shown in the accounting records of the corporation.

34 Related corporations

(1) Subject to subsections (2) and (3), the question whether corporations are related to each other for the purposes of this Act is to be determined in the same manner as the question whether bodies corporate are related to each other is determined under the *Corporations Act 2001*.

(2) A corporation is not taken for the purposes of this Act to be related to another corporation (not being a corporation that carries on in Australia a business, whether or not that business is its sole or principal business, of selling goods by retail) unless the first-mentioned corporation is a foreign corporation, a trading corporation formed within the limits of Australia or a financial corporation so formed and:

(a) the sole or principal business activities in Australia of the first-mentioned corporation are the borrowing of money and the provision of finance; or

(b) the sum of the amounts of such of the assets in Australia of the first-mentioned corporation as consist of debts due to that corporation, being debts resulting from transactions entered into in the course of the provision of finance by that corporation, exceeds:

(i) 50%; or

(ii) if a greater or lesser percentage is prescribed by the regulations—the percentage so prescribed;

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of the sum of the values of all the assets in Australia of that corporation.

(3) A corporation is not taken for the purposes of this Act to be related to another corporation (being a corporation that carries on in Australia a business, whether or not that business is its sole or principal business, of selling goods by retail) unless the first-mentioned corporation:

(a) is a foreign corporation, a trading corporation formed within the limits of Australia or a financial corporation so formed; and

(b) engages in the provision of finance in the course of carrying on in Australia a business, whether or not that business is its sole or principal business, of selling goods by retail.

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

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

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

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

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

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

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

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

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

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

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

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

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

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

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

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector (Collection of Data) Act 2001	104, 2001	17 Sept 2001	s 7–30: 1 July 2002 (s 2(2) and gaz 2002, No GN24) Remainder: 17 Sept 2001 (s 2(1))	
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (item 191): 15 July 2001 (s 2(3) and gaz 2001, No S285)	s 4–14
General Insurance Reform Act 2001	119, 2001	19 Sept 2001	Sch 3 (item 11): 1 July 2002 (s 2(2))	—
Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003	36, 2003	2 May 2003	Sch 1 (items 2, 3): 1 July 2003 (s 2)	—
Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007	32, 2007	30 Mar 2007	Sch 2 (item 10): 1 Apr 2007 (s 2(1) item 7)	—
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007	149, 2007	24 Sept 2007	Sch 1: 24 Sept 2007 (s 2(1) item 2)	—
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Sch 4 (items 37–40): 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 Sector Legislation Amendment (Review of Prudential Decisions) Act 2008	25, 2008	26 May 2008	Sch 4 (items 15–17, 43): 26 May 2008 (s 2(1) item 11)	Sch 4 (item 43)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 203): 27 Feb 2010 (s 2(1) item 2)	—
Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Act 2010	82, 2010	29 June 2010	Sch 4 (items 7–25): 27 July 2010 (s 2(1) item 13) Sch 4 (item 37): 29 June 2010 (s 2(1) item 1)	Sch 4 (item 37)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 61): 19 Apr 2011 (s 2(1) item 18)	—
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	171, 2012	3 Dec 2012	Sch 3 (items 24–37, 46): 1 July 2013 (s 2(1) items 16, 18)	Sch 3 (item 46)
Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015	87, 2015	26 June 2015	Sch 1 (item 21, 22): 1 July 2015 (s 2(1) item 2) Sch 2: 27 June 2015 (s 2(1) item 9)	Sch 2
Treasury Laws Amendment (Major Bank Levy) Act 2017	64, 2017	23 June 2017	Sch 1 (items 2, 3): 24 June 2017 (s 2(1) item 2)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Banking Measures No. 1) Act 2018	9, 2018	5 Mar 2018	Sch 2: 5 Mar 2018 (s 2(1) item 2)	—
Corporations Amendment (Asia Region Funds Passport) Act 2018	61, 2018	29 June 2018	Sch 2A (item 3): 18 Sept 2018 (s 2(1) item 2)	—
Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019	40, 2019	5 Apr 2019	Sch 8 (items 2A–4): 6 Apr 2019 (s 2(1) item 4)	Sch 8 (item 4)
Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023	76, 2023	20 Sept 2023	Sch 2 (items 640–643): 20 Oct 2023 (s 2(1) item 2)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 149, 2007; No 82, 2010; No 171, 2012; No 87, 2015; No 64, 2017
s 5	am No 119, 2001; No 36, 2003; No 149, 2007; No 82, 2010; No 76, 2023
s 5A	ad No 36, 2003
s 6A	ad No 149, 2007
Part 2	
s 7	am No 32, 2007; No 75, 2009; No 87, 2015; No 9, 2018
s 9	am No 5, 2011
Part 3	
Division 2	
s 13	am No 154, 2007; No 82, 2010; No 171, 2012; No 64, 2017; No 61, 2018; No 40, 2019; No 76, 2023
s 13A	ad No 82, 2010
s 13B	ad No 82, 2010
	am No 171, 2012
s 13C	ad No 82, 2010
s 16	am No 154, 2007; No 82, 2010
Division 2A	
Division 2A	ad No 82, 2010
s 17A	ad No 82, 2010
s 17B	ad No 82, 2010
s 17C	ad No 82, 2010
s 17D	ad No 82, 2010
Part 3A	
Part 3A	ad No 25, 2008
s 25A	ad No 25, 2008
s 25B	ad No 25, 2008
s 25C	ad No 25, 2008

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Endnote 4—Amendment history

Provision affected	How affected
s 25D	ad No 25, 2008
Part 4	
s 29A	ad No 82, 2010
Part 5	
s 31	am No 149, 2007; No 25, 2008; No 82, 2010; No 171, 2012; No 9, 2018; No 76, 2023
s 32	am No 9, 2018
s 34	am No 55, 2001

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