



Financial Regulator Assessment Authority Act 2021

No. 63, 2021

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About this compilation

This compilation

This is a compilation of the *Financial Regulator Assessment Authority Act 2021* that shows the text of the law as amended and in force on 15 September 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 establish the Financial Regulator Assessment Authority, and for related purposes

Part 1—Preliminary

1 Short title

This Act is the *Financial Regulator Assessment Authority Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 July 2021.	1 July 2021 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

Section 3

3 Object of this Act

The object of this Act is to provide for the independent assessment of:

- (a) APRA's effectiveness and capability; and
- (b) ASIC's effectiveness and capability.

4 Simplified outline of this Act

This Act establishes the Financial Regulator Assessment Authority.

Every 2 years, the Authority is to assess the effectiveness and capability of APRA and ASIC and then report to the Minister. The Authority is also to undertake ad hoc assessments on any matter relating to APRA's, or ASIC's, effectiveness and capability when requested by the Minister.

The Authority consists of the Chair and 2 other members. It is assisted by APS employees in the Department whose services are made available by the Secretary.

The Authority may request information from APRA and ASIC. There are limitations on how some of this information can be used and disclosed.

5 Definitions

In this Act:

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

Authority means the Financial Regulator Assessment Authority.

biennial report means a report mentioned in paragraph 12(1)(a) or (b).

Chair means the Chair of the Authority.

enforcement body has the same meaning as in the *Privacy Act 1988*.

enforcement related activity has the same meaning as in the *Privacy Act 1988*.

entrusted person means:

- (a) a member; or
- (b) a staff member; or
- (c) the Secretary; or
- (d) an APS employee; or
- (e) a consultant engaged under section 37; or
- (f) any other person employed or engaged to provide services to the Commonwealth in connection with the Authority; or
- (g) an officer or employee of a person mentioned in paragraph (e) or (f) whose duties relate to the Authority.

member means a member of the Authority and includes the Chair.

officer has the same meaning as in section 9 of the *Corporations Act 2001*.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

protected information means information of any of the following kinds that is obtained by the Authority from APRA or ASIC (the **source agency**):

- (a) information that is prohibited from being disclosed by a person under:
 - (i) a law of the Commonwealth other than this Act; or
 - (ii) a law of a State or Territory;
- (b) information the disclosure of which by the source agency would or could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;

Section 6

- (c) information that is protected against disclosure by legal professional privilege;
- (d) information the disclosure of which:
 - (i) could reasonably be expected to prejudice the security, defence or international relations of Australia; or
 - (ii) could reasonably be expected to prejudice relations between the Commonwealth Government and the Government of a State or Territory; or
 - (iii) would involve disclosing deliberations or decisions of the Cabinet, or of a Committee of the Cabinet; or
 - (iv) could reasonably be expected to endanger a person's life or physical safety; or
 - (v) could reasonably be expected to prejudice one or more enforcement related activities; or
 - (vi) would involve unreasonably disclosing personal information (within the meaning of the *Privacy Act 1988*).

Note: For the purposes of paragraph (a), the following do not matter:

- (a) who the law prohibits from disclosing the information;
- (b) the circumstances in which the law prohibits the disclosure.

rules means the rules made under section 51.

Secretary means the Secretary of the Department.

staff member means a member of the staff assisting the Authority (see section 36).

use, in relation to information, includes make a record of.

6 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

7 Act extends to things outside Australia

This Act extends to acts, omissions, matters and things outside Australia.

Part 2 Establishment, functions and cooperation

Division 1 Simplified outline of this Part

Section 8

Part 2—Establishment, functions and cooperation

Division 1—Simplified outline of this Part

8 Simplified outline of this Part

The Financial Regulator Assessment Authority is established.

The Authority's functions include:

- (a) once every 2 years, assessing the effectiveness and capability of each of APRA and ASIC and reporting to the Minister; and
- (b) when requested by the Minister, undertaking assessments on any matter relating to APRA's, or ASIC's, effectiveness and capability.

APRA and ASIC and their members and staff are required to cooperate with and provide information to the Authority.

Division 2—Authority

9 Establishment

The Financial Regulator Assessment Authority is established by this section.

10 Membership

The Authority consists of the following members:

- (a) a Chair;
- (c) 2 other members.

11 Authority is part of the Department for certain purposes

For the purposes of paragraph (a) of the definition of *Department of State* in section 8 of the *Public Governance, Performance and Accountability Act 2013*, the Authority is prescribed in relation to the Department.

Note: This means that the members are officials of the Department for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Division 3—Functions

12 Functions

- (1) The Authority has the following functions:
 - (a) to assess and report to the Minister on APRA's effectiveness and capability;
 - (b) to assess and report to the Minister on ASIC's effectiveness and capability;
 - (c) at any time when requested by the Minister, to assess and report to the Minister on any matter relating to:
 - (i) APRA's effectiveness and capability; or
 - (ii) ASIC's effectiveness and capability;
 - (d) any other function conferred by this Act or any other law of the Commonwealth;
 - (e) any other function that is incidental or conducive to the performance of any of the above functions.
- (2) However, the functions of the Authority do not include assessing or reporting on only a single case.
- (3) For the purposes of paragraph (1)(a), (b) or (c), the Authority may:
 - (a) undertake an assessment itself; or
 - (b) cause an assessment, or the preparation of the resulting report, to be undertaken by someone else.

13 Timing and requests relating to the biennial assessment and reporting functions

- (1) The Authority must undertake each of the assessments mentioned in paragraphs 12(1)(a) and (b) once in every 2 financial years starting on 1 July 2021.
- (2) The Minister may request the Authority to:
 - (a) consider one or more matters; or
 - (b) not consider one or more matters;

when undertaking such an assessment.

- (3) The Authority must comply with such a request.
- (4) If such a request is made in writing, the request is not a legislative instrument.
- (5) The Minister may withdraw or amend such a request at any time before the Authority reports to the Minister.

14 Requests relating to the ad hoc assessment and reporting function

- (1) The Minister may request the Authority to assess and report on a matter mentioned in paragraph 12(1)(c).
- (2) The Minister may include in such a request terms of reference (including timeframes) for the assessment and report.
- (3) The Authority must comply with such a request.
- (4) If such a request is made in writing, the request is not a legislative instrument.
- (5) The Minister may withdraw or amend such a request at any time before the Authority reports to the Minister.

15 Assessments and reviews undertaken by others

- (1) In performing the functions mentioned in paragraphs 12(1)(a) to (c), the Authority may take into account any of the following that the Authority considers relevant:
 - (a) an assessment relating to:
 - (i) APRA's effectiveness and capability; or
 - (ii) ASIC's effectiveness and capability;undertaken by someone other than the Authority;
 - (b) a review relating to APRA or ASIC undertaken by someone other than the Authority.
- (2) Subsection (1) does not limit the matters the Authority may take into account in performing its functions or exercising its powers.

Section 16

16 Reports to be given to APRA or ASIC

Proposed reports

- (1) Before giving a report mentioned in section 12 to the Minister, the Authority must give a copy of the proposed report to the following:
 - (a) if the proposed report relates to APRA—APRA;
 - (b) if the proposed report relates to ASIC—ASIC.
- (2) If the recipient of the proposed report gives written comments to the Authority, the Authority must consider the comments before giving the final report to the Minister.

Final reports

- (3) If the Authority gives a report mentioned in section 12 to the Minister, the Authority must give a copy to the following:
 - (a) if the report relates to APRA—APRA;
 - (b) if the report relates to ASIC—ASIC.
- (4) The Authority must not publish a report mentioned in section 12 unless the report has been tabled in a House of the Parliament or published by the Minister.

17 Biennial reports must be tabled

The Minister must cause a copy of a biennial report to be tabled in each House of the Parliament within 20 sitting days of that House after the report is received by the Minister.

18 Powers

The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

19 Independence

Subject to this Act and to other laws of the Commonwealth:

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- (a) the Authority has complete discretion in the performance of the Authority's functions and the exercise of the Authority's powers; and
- (b) the Authority is not subject to direction from anyone in relation to:
 - (i) how a particular assessment will be undertaken; or
 - (ii) the content of a report to the Minister.

Note: The Authority may be requested to do certain things (see subsections 13(2) and 14(1)).

Division 4—Cooperation with Authority

20 Cooperation with Authority

Cooperation

- (1) A person to whom this section applies must cooperate with the Authority, the members and the staff members, to the extent reasonably necessary to enable the Authority to perform its functions and exercise its powers.

Information gathering

- (2) Without limiting subsection (1), a person to whom this section applies must, to the extent reasonably necessary to enable the Authority to perform its functions and exercise its powers:
 - (a) give the Authority any information that is requested by the Authority; and
 - (b) produce any document in APRA's or ASIC's possession that is requested by the Authority; and
 - (c) answer any questions asked by the Authority.
- (3) A request by the Authority under paragraph (2)(a) or (b) must allow the person a reasonable time to comply.
- (4) The Authority must notify a person that it intends to ask the person questions under paragraph (2)(c) a reasonable time before asking the questions.

Persons to whom this section applies

- (5) This section applies to the following:
 - (a) APRA;
 - (b) an APRA member (within the meaning of subsection 3(1) of the *Australian Prudential Regulation Authority Act 1998*);
 - (c) an APRA staff member (within the meaning of that subsection);

- (d) ASIC;
- (e) a member of ASIC;
- (f) a staff member (within the meaning of subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*).

21 Legal professional privilege

- (1) A person is not excused from giving information, producing a document or answering a question under section 20 on the ground that to do so would disclose material that is protected against disclosure by legal professional privilege.
- (2) The fact that a person is not excused under subsection (1) from giving information, producing a document or answering a question does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or answer.

Part 3—Members, staff and consultants

Division 1—Simplified outline of this Part

22 Simplified outline of this Part

Three members of the Authority, including the Chair, are appointed by the Minister.

The Chair is to convene meetings of the Authority.

The Authority is assisted by APS employees in the Department whose services are made available by the Secretary. The Secretary may engage consultants to assist the Authority.

Division 3—Members

24 Appointment

- (1) Members are to be appointed by the Minister by written instrument.

Note: A Member may be reappointed, subject to subsection 25(2): see section 33AA of the *Acts Interpretation Act 1901*.

- (2) Before appointing a person as a member, the Minister must have regard to the person's experience, expertise and qualifications in fields relevant to the Authority's functions.
- (3) In making appointments, the Minister must, to the extent reasonably practicable, ensure that the members collectively possess the skills and qualifications necessary for the Authority to perform its functions.
- (4) The Minister must appoint one member to be the Chair.
- (5) A member holds office on a part-time basis.

25 Period of appointment

- (1) A member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) A person must not hold office as a member for a total of more than 10 years.

26 Acting appointments

Acting members

- (1) The Minister may, by written instrument, appoint a person to act as a member:
 - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or

Section 27

- (b) during any period, or during all periods, when a member:
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Acting Chair

- (2) The Minister may, by written instrument, appoint a member to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

27 Remuneration

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) A member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

28 Leave

The Minister may grant leave of absence to any member on the terms and conditions that the Minister determines.

29 Terms and conditions

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

30 Other paid work

A member must not engage in any paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of the member's duties.

31 Disclosure of interests

- (1) A disclosure by a member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the member is taken not to have complied with section 29 of that Act if the member does not comply with subsection (1) of this section.

32 Resignation

- (1) A member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

33 Termination of appointment

- (1) The Minister may terminate the appointment of a member:

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- (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member if:
- (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Authority; or
 - (c) the member engages in paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of member's duties (see section 30); or
 - (d) the member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Division 4—Decision-making by Authority

34 Meetings of Authority

- (1) The Chair must convene such meetings of the Authority as are, in the Chair's opinion, necessary for the efficient performance of the Authority's functions and exercise of the Authority's powers.

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

- (2) Subject to subsection (4) and section 35, the Authority may operate in the way it determines.
- (3) A determination under subsection (2) must be made by a majority of members at a meeting of the Authority at which the Chair has a deliberative vote and, in the event of an equality of votes, a casting vote.
- (4) The Chair must ensure that minutes of meetings are kept.

35 Decisions without meetings

- (1) The Authority is taken to have made a decision at a meeting if the decision is made in accordance with procedures determined under subsection 34(2) for making decisions without meeting.
- (2) A member is not entitled to take part in making a proposed decision as mentioned in subsection (1) if the member would not have been entitled to vote on the proposal if the matter had been considered at a meeting of the Authority.
- (3) The Authority must keep a record of decisions made in accordance with this section.

Division 5—Staff and consultants

36 Arrangements relating to the staff of the Department

- (1) The staff assisting the Authority are to be APS employees in the Department whose services are made available to the Authority, by the Secretary, in connection with the performance of any of the Authority's functions or the exercise of any of the Authority's powers.
- (2) When performing services for the Authority, the staff are subject to the directions of the Authority.

37 Consultants

The Secretary may, on behalf of the Commonwealth, engage consultants to assist in the performance of any of the Authority's functions or the exercise of any of the Authority's powers.

Part 4—Information management

Division 1—Simplified outline of this Part

38 Simplified outline of this Part

Some of the information the Authority obtains from APRA or ASIC is protected information.

The Authority must not include protected information in its reports to the Minister.

An entrusted person may commit an offence if the person uses or discloses protected information other than in certain circumstances.

Division 2—Inclusion of information in reports

39 Protected information not to be included in reports

- (1) The Authority must not include protected information in a report mentioned in section 12.
- (2) Before giving such a report to the Minister, the Authority must consult with the following to ensure that protected information is not included in the report:
 - (a) if the report is prepared using information obtained by the Authority from APRA—APRA;
 - (b) if the report is prepared using information obtained by the Authority from ASIC—ASIC.
- (3) This section does not apply in relation to protected information that has already been lawfully made available to the public.

Division 3—Secrecy**Subdivision A—Unauthorised use or disclosure of protected information****40 Unauthorised use or disclosure of protected information**

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) the person obtains information in the person's capacity as an entrusted person; and
 - (c) the information is protected information; and
 - (d) the person uses or discloses the information; and
 - (e) the use or disclosure is not authorised by a provision in Subdivision B.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply in relation to use or disclosure of information if the information has already been lawfully made available to the public.

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

- (3) Subsection (1) does not apply if the conduct is:
- (a) authorised by a law of the Commonwealth other than the following:
 - (i) this Act;
 - (ii) subsection 11CM(1) of the *Banking Act 1959*;
 - (iii) subsection 109E(1) of the *Insurance Act 1973*;
 - (iv) subsection 231E(1) of the *Life Insurance Act 1995*;
 - (v) subsection 72(1) or section 73 of the *Financial Accountability Regime Act 2023*; or
 - (b) in compliance with a requirement under a law of the Commonwealth other than this Act.

Section 41

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

- (4) Section 15.4 of the *Criminal Code* (Extended geographical jurisdiction—category D) applies to an offence against subsection (1).

41 Limit on disclosure to courts and tribunals

- (1) Except when it is necessary to do so for the purposes of this Act, a person who is, or has been, an entrusted person is not to be required to disclose, or produce a document containing, protected information to:
- (a) a court; or
 - (b) a tribunal, authority or person that has the power to require the answering of questions or the production of documents.
- (2) However, subsection (1) does not prevent a person who is, or has been, an officer (within the meaning of section 56 of the *Australian Prudential Regulation Authority Act 1998*) from being required to disclose protected information (within the meaning of that section), or to produce a protected document (within the meaning of that section), when it is necessary to do so for the purposes of a prudential regulation framework law (within the meaning of subsection 3(1) of that Act).

Subdivision B—Authorised use or disclosure of protected information

42 Authorisation to use or disclose protected information for the purposes of functions, duties and powers

An entrusted person may use or disclose protected information:

- (a) for the purposes of this Act; or
- (b) in performing functions, or exercising powers, under a law of the Commonwealth as an entrusted person; or
- (c) in performing duties as an entrusted person in relation to the Authority.

43 Authorisation to disclose protected information to the Secretary, APRA and ASIC

- (1) An entrusted person may disclose protected information to:
 - (a) the Secretary; or
 - (b) APRA; or
 - (c) ASIC.
- (2) An entrusted person may use protected information for the purposes of disclosing protected information under subsection (1).

44 Authorisation to use or disclose protected information for purposes of enforcement related activity

- (1) An entrusted person may use protected information, or disclose protected information to an enforcement body, if the entrusted person reasonably believes that the use or disclosure is reasonably necessary for, or directly related to, one or more enforcement related activities being conducted by, or on behalf of, an enforcement body.
- (2) An enforcement body to which protected information is disclosed under subsection (1) may use or disclose the information for the purposes of conducting one or more enforcement related activities.

45 Authorisation to use or disclose protected information in the public interest

- (1) The Secretary may, in writing:
 - (a) certify that it is necessary in the public interest for an entrusted person to use or disclose protected information in a particular case; and
 - (b) specify any conditions on the use or disclosure.
- (2) A certificate made under subsection (1) is not a legislative instrument.
- (3) An entrusted person may use or disclose protected information in a particular case if:

Part 4 Information management

Division 3 Secrecy

Section 45

- (a) the Secretary has certified under subsection (1) that it is necessary in the public interest for the entrusted person to do so; and
 - (b) the use or disclosure is in accordance with any conditions specified in the certificate.
- (4) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary under subsection (1).

Part 5—Miscellaneous

46 Simplified outline of this Part

This Part deals with miscellaneous matters such as liability, delegations and rules.

47 Protection from liability

Members and staff members

- (1) A member or a staff member (the ***protected person***) is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of an act done or omitted to be done in good faith:
 - (a) in the performance or purported performance of any function or duty of the protected person or the Authority under or in relation to this Act; or
 - (b) in the exercise or purported exercise of any power of the protected person or the Authority under or in relation to this Act.

Consultants and contractors etc.

- (2) A person mentioned in paragraph (e), (f) or (g) of the definition of ***entrusted person*** in section 5 is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of an act done or omitted to be done in good faith:
 - (a) in assisting in the performance or purported performance of any function or duty of the Authority under or in relation to this Act; or
 - (b) in assisting in the exercise or purported exercise of any power of the Authority under or in relation to this Act.

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Members and staff of cooperating agencies

- (3) An individual mentioned in subsection 20(5) is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of any of the following acts done in good faith under, or purportedly under, subsection 20(2):
- (a) giving the Authority information;
 - (b) producing a document to the Authority;
 - (c) answering a question asked by the Authority.

48 Delegation by Minister

- (1) The Minister may, in writing, delegate to:
- (a) the Secretary; or
 - (b) an SES employee or an acting SES employee in the Department, other than a staff member;
- the Minister's functions or powers under the following provisions:
- (c) subsection 26(2) (appointment of acting Chair);
 - (d) section 28 (leave).

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (3) In performing a function, or exercising a power, delegated under subsection (1), the delegate must comply with any written directions of the Minister.

49 Delegation by Authority

- (1) The Authority may, in writing, delegate to a member or staff member the Authority's functions or powers under the following provisions:
- (a) subsections 16(1) and (3) (reports to be given to APRA or ASIC);
 - (b) subsection 39(2) (protected information not to be included in reports).

- (2) The Authority may, in writing, delegate the Authority's functions or powers under subsection 20(2) (cooperation with Authority) to:
- (a) a member; or
 - (b) a staff member who is:
 - (i) an SES employee; or
 - (ii) an acting SES employee; or
 - (iii) classified as Executive Level 2 or equivalent; or
 - (iv) acting in a position usually occupied by an APS employee who is so classified.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (3) In performing a function, or exercising a power, delegated under subsection (1) or (2), the delegate must comply with any written directions of the Authority.
- (4) The delegation continues in force despite a change in the membership of the Authority.
- (5) The delegation may be varied or revoked by the Authority (whether or not there has been a change in the membership of the Authority).

50 Delegation by Secretary

- (1) The Secretary may, in writing, delegate to an SES employee or an acting SES employee in the Department the Secretary's functions or powers under the following provisions:
- (a) section 36 (arrangements relating to staff of the Department);
 - (b) section 37 (consultants).

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) Despite subsection (1), the Secretary's functions or powers under section 36 cannot be delegated to a staff member.

Section 51

- (4) In performing a function, or exercising a power, delegated under subsection (1), the delegate must comply with any written directions of the Secretary.

51 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

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

Endnotes

Endnote 1—About the endnotes

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.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous (prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
ed = editorial change	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment can be given effect	SR = Statutory Rules
(md not incorp) = misdescribed amendment cannot be given effect	Sub-Ch = Sub-Chapter(s)
mod = modified/modification	SubPt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Regulator Assessment Authority Act 2021	63, 2021	29 June 2021	1 July 2021 (s 2(1) item 1)	
Financial Accountability Regime (Consequential Amendments) Act 2023	68, 2023	14 Sept 2023	Sch 1 (items 32, 33): 15 Sept 2023 (s 2(1) item 2)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 4	
Division 3	
Subdivision A	
s 40	am No 68, 2023
