



Australian Prudential Regulation Authority Act 1998

Act No. 50 of 1998 as amended

This compilation was prepared on 26 June 2008
taking into account amendments up to Act No. 26 of 2008

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to establish the Australian Prudential Regulation Authority, and for related purposes

Part 1—Preliminary

1 Short title *[see Note 1]*

This Act may be cited as the *Australian Prudential Regulation Authority Act 1998*.

2 Commencement *[see Note 1]*

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Definitions

- (1) In this Act, unless the contrary intention appears:

Account means the Australian Prudential Regulation Authority Special Account established under section 52.

action that is likely to have a detrimental effect on financial system stability in New Zealand includes an action that prevents or interferes with an outsourcing arrangement.

APRA means the Australian Prudential Regulation Authority.

APRA member means a member of APRA, including the Chair and Deputy Chair.

APRA staff member means any of the following:

- (a) a person appointed by APRA under section 45; or
- (b) a person assisting APRA under section 46; or
- (c) a person engaged by APRA under section 47.

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ASIC means the Australian Securities and Investments Commission.

ASIC member means a member of ASIC.

ASIC staff member has the same meaning as the expression staff member has in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*.

body regulated by APRA has the meaning given by subsection (2).

Chair means the APRA member appointed as Chair of APRA.

Deputy Chair means the APRA member appointed as Deputy Chair of APRA.

financial sector supervisory agency means a person or body having the function, in Australia or in a foreign country, of supervising or regulating financial institutions.

New Zealand financial institution means a financial institution, as defined in section 2 of the Reserve Bank of New Zealand Act 1989 of New Zealand, that carries on a business in New Zealand.

officer of the Reserve Bank Service means a person appointed under Part VII of the *Reserve Bank Act 1959*.

outsourcing arrangement means an arrangement for the business of a New Zealand financial institution, or functions relating to such business, to be carried on by an entity other than the institution.

prescribed New Zealand authority means the following:

- (a) the Reserve Bank of New Zealand;
- (b) an authority of the government of New Zealand that:
 - (i) has statutory responsibilities relating to prudential regulation or financial system stability; and
 - (ii) is prescribed by the regulations for the purposes of this definition.

prudential regulation framework law means any of the following Acts:

- (a) this Act;
- (b) the *Banking Act 1959*;

- (c) the *Financial Institutions Supervisory Levies Collection Act 1998*;
- (d) the *Financial Sector (Collection of Data) Act 2001*;
- (e) the *Financial Sector (Shareholdings) Act 1998*;
- (f) the *Financial Sector (Business Transfer and Group Restructure) Act 1999*;
- (g) the *Insurance Act 1973*;
- (h) the *Insurance Acquisitions and Takeovers Act 1991*;
- (i) the *Life Insurance Act 1995*;
- (j) the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*;
- (k) the *Retirement Savings Accounts Act 1997*;
- (l) the *Superannuation Industry (Supervision) Act 1993*;
- (m) the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*;
- (n) any Act imposing a levy to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies, or to which the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* applies;
- (o) another Act that is prescribed for the purposes of the section in which the expression appears.

prudential regulation or advice services means services of either or both of the following kinds:

- (a) services consisting of APRA performing a role in the prudential regulation or supervision of entities;
- (b) services consisting of APRA providing advice relating to the prudential regulation or supervision of entities.

Reserve Bank means the Reserve Bank of Australia.

- (2) Each of the following is a ***body regulated by APRA***:
 - (a) an ADI, within the meaning of the *Banking Act 1959*;
 - (b) an authorised NOHC, within the meaning of the *Banking Act 1959*;
 - (c) a general insurer, authorised NOHC or subsidiary of a general insurer or authorised NOHC, within the meaning of the *Insurance Act 1973*;
 - (d) Lloyd's, or a Lloyd's underwriter, as defined in section 3 of the *Insurance Act 1973*;

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- (e) a life company that is registered under the *Life Insurance Act 1995*;
- (f) the trustee of a superannuation entity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;
- (g) an RSA provider, within the meaning of the *Retirement Savings Accounts Act 1997*.

Note: ADI is short for authorised deposit-taking institution, NOHC is short for non-operating holding company and RSA is short for retirement savings account.

- (3) The regulations may amend subsection (2) as in force from time to time for the purpose of:
 - (a) making additions to, or omissions from, the kinds of bodies or entities covered by that subsection; and
 - (b) changing the descriptions of the kinds of bodies or entities covered by that subsection.

4 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.

5 External Territories

This Act extends to every external Territory.

6 Application of *Criminal Code*

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

Part 2—Establishment, functions and powers of APRA

7 Establishment of APRA

The Australian Prudential Regulation Authority is established by this section.

8 Purpose for establishing APRA

- (1) APRA is established for the purpose of regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards, and for developing the administrative practices and procedures to be applied in performing that regulatory role.
- (2) In performing and exercising its functions and powers, APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia.

8A Trans-Tasman cooperation

- (1) In performing and exercising its functions and powers, APRA must:
 - (a) support the prescribed New Zealand authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in New Zealand; and
 - (b) to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in New Zealand.
- (2) APRA must balance the requirements of subsection (1) with the requirements specified in section 8.
- (3) If:
 - (a) APRA proposes to take an action; and

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- (b) APRA has reasonable cause to believe that the action is likely to have a detrimental effect on financial system stability in New Zealand;

APRA must, to the extent that APRA considers reasonably practicable in the circumstances, having regard to urgency or other similar constraint, consult with and consider the advice of each prescribed New Zealand authority APRA considers to be relevant in the circumstances before taking the action.

- (4) The performance of a function or the exercise of a power by APRA is not invalid merely because of a failure by APRA to comply with this section.

9 APRA's functions

APRA has the following functions:

- (a) the functions conferred on it by or under this Act or any other law of the Commonwealth;
- (b) the functions conferred on it by or under any law of a State or Territory in accordance with subsection 9A(1);
- (c) the function of providing prudential regulation or advice services under agreements entered into in accordance with subsection 9A(2).

9A Conferral of functions by State or Territory laws or by agreements

Conferral of functions by or under State or Territory laws

- (1) APRA may have functions or powers conferred on it by or under a law of a State or Territory if the conferral of the functions or powers is in accordance with:
 - (a) provisions of an agreement entered into by the Commonwealth and the State or Territory, being provisions approved by the Minister for the purposes of this subsection; or
 - (b) an approval given by the Minister for the purposes of this subsection.

APRA has the functions and powers so conferred by that law.

Agreements for performance of prudential regulation or advice services

- (2) APRA may, with the approval of the Minister, enter into an agreement with a State, Territory or other person under which APRA is, for a fee, to provide prudential regulation or advice services (whether in Australia or a foreign country). The agreement is only effective for the purposes of this Act to the extent to which APRA's provision of the services is for a purpose or purposes within the Commonwealth's legislative power.

Subsection (2) agreement may deal with liabilities between the parties

- (3) An agreement entered into in accordance with subsection (2) may make provision in relation to the circumstances in which, and the extent to which, one party to the agreement is liable to the other party to the agreement in respect of matters arising under or out of the agreement.

Delegation of Minister's power to approve subsection (2) agreement

- (4) The Minister may, in writing, delegate the power under subsection (2) to approve the entering into of agreements to an SES employee, or acting SES employee, in the Department.

10 Advice to the Minister

- (1) APRA must advise the Minister as soon as practicable if it considers that a body regulated by APRA is in financial difficulty.
- (2) APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting:
- (a) matters that would improve the financial safety and efficiency, competition, contestability or competitive neutrality of the sectors in which the bodies regulated by APRA operate; or
 - (b) changes to, or in relation to, any prudential regulation framework law that APRA considers would overcome or assist in overcoming problems APRA has identified in the course of performing or exercising any of its functions and powers.

Section 10A

- (3) In addition, APRA must advise the Minister, if requested by the Minister, and may advise the Minister on its own initiative, respecting any of the Minister's functions and powers.

10A Cooperation with other agencies

- (1) The Parliament intends that APRA should, in performing and exercising its functions and powers, have regard to the desirability of APRA cooperating with other financial sector supervisory agencies, and with other agencies specified in regulations for the purposes of this subsection.
- (2) This section does not override any restrictions that would otherwise apply to APRA or confer any powers on APRA that it would not otherwise have.

Note: For example, APRA's ability to provide information to another agency remains subject to section 56.

11 APRA's powers

- (1) APRA has power to do anything that is necessary or convenient to be done for or in connection with the performance of its functions.
- (2) APRA's powers include, but are not limited to, the following powers:
 - (a) the power to acquire, hold and dispose of real and personal property;
 - (b) the power to enter into contracts;
 - (c) the power to lease the whole or any part of land or a building for the purposes of APRA;
 - (d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of APRA;
 - (e) the power to do anything incidental to any of its functions.
- (3) APRA may enter into contracts in its own right.

Note: The Chair of APRA may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

- (4) Any real or personal property held by APRA is held for and on behalf of the Commonwealth.

- (5) Any money received by APRA is received for and on behalf of the Commonwealth.
- (6) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

11A APRA's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of APRA are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

12 Directions by Minister respecting APRA policies and priorities

- (1) The Minister may give APRA a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers.
- (2) The Minister must not give a direction under subsection (1) unless he or she has:
 - (a) notified APRA in writing that he or she is considering giving the direction; and
 - (b) given the Chair an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (3) The Minister must not give a direction under subsection (1) about a particular case.
- (4) APRA must comply with a direction under subsection (1).
- (5) The Minister must cause a copy of a direction under subsection (1):
 - (a) to be published in the *Gazette* within 21 days after the direction is given; and
 - (b) to be laid before each House of the Parliament within 15 sitting days of that House after the publication;but failure of the Minister to do so does not affect the direction's validity.

Section 12A

- (6) This section does not limit any other powers to give directions that the Minister has under any other law.

12A Chair not subject to direction by APRA on certain matters

To avoid doubt, the Chair is not subject to direction by APRA in relation to the Chair's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
(b) Part 4 or 4A of this Act;
in relation to APRA.

13 APRA is a body corporate

- (1) APRA:
- (a) is a body corporate with perpetual succession; and
(b) must have a seal; and
(c) may sue and be sued.
- (3) All courts, judges and persons acting judicially must:
- (a) take judicial notice of the imprint of APRA's seal appearing on a document; and
(b) presume that the document was duly sealed.

15 Delegation by APRA

- (1) APRA may, by writing under its seal, delegate any functions or powers conferred on APRA by this Act or any other law of the Commonwealth to an APRA member or to an APRA staff member.
- (2) APRA may, by writing under its seal, delegate any functions or powers conferred on APRA by this Act or any other law of the Commonwealth:
- (a) if the Chair of ASIC agrees to the delegation—to the Chair of ASIC, to another ASIC member or to an ASIC staff member;
or
(b) if the Governor of the Reserve Bank agrees to the delegation—to the Governor or Deputy Governor of the Reserve Bank or to an officer of the Reserve Bank Service.

- (3) In performing or exercising functions or powers delegated under subsection (1) or (2), the delegate must comply with any directions given by APRA.

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

Part 3—APRA membership and other corporate matters

Division 1—Membership

16 Appointment of APRA members

- (1) APRA is to consist of not fewer than 3 members nor more than 5 members.
- (2) The APRA members are to be appointed by the Governor-General by written instrument.
- (3) At least 3 of the APRA members must be appointed as full-time members, and each of the other APRA members (if any) may be appointed as a full-time or part-time member.
- (4) The performance of APRA's functions or the exercise of APRA's powers is not affected by reason only that:
 - (a) there are fewer than 3 APRA members; or
 - (b) there are fewer than 3 full-time APRA members.

17 Restrictions on appointment

- (1) A person may only be appointed as an APRA member if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge or experience relevant to APRA's functions and powers.
- (2) A person may not be appointed as an APRA member if the person is a director, officer or employee of a body regulated by APRA.
- (3) A person who is a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, may be appointed as an APRA member, but only if the Minister considers that the person will not be prevented from the proper performance of the functions of the office because of resulting conflicts of interest.

18 Appointment of Chair and Deputy Chair

- (1) The Governor-General is to appoint a full-time APRA member as Chair of APRA.
- (2) The Governor-General may appoint another full-time APRA member as Deputy Chair of APRA.
- (3) The Deputy Chair is to act as Chair during any period when:
 - (a) the office of Chair is vacant; or
 - (b) the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office.
- (4) When acting as Chair, the Deputy Chair has all the functions and powers of the Chair.
- (5) Anything done by or in relation to a person purporting to act under subsection (3) is not invalid on the ground that the occasion for the person to act had not arisen or had ceased.

19 Acting appointments

- (1) The Minister may:
 - (a) appoint a person to act as a full-time APRA member during any period when there are fewer than 5 persons who are APRA members; or
 - (b) appoint a person to act as a part-time APRA member during any period when:
 - (i) there are fewer than 5 persons who are APRA members; and
 - (ii) there are at least 3 persons who are full-time APRA members; or
 - (c) appoint a person to act in the place of a full-time APRA member or part-time APRA member during any period when the APRA member:
 - (i) is acting as Deputy Chair in accordance with subsection (3); or
 - (ii) is absent from duty or from Australia or is, for any reason, unable to perform the functions of his or her office.

Section 19

- (2) The Minister may appoint an APRA member to act as 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 is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office.
- (3) The Minister may appoint an APRA member to act as Deputy Chair:
- (a) during a vacancy in the office of Deputy Chair, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is, for any reason, unable to perform the functions of his or her office; or
 - (c) during any period, or during all periods, when the Deputy Chair is acting as Chair.
- (4) A person appointed under paragraph (1)(a), (1)(b), (2)(a) or (3)(a) must not continue to act under the appointment for more than 12 months.
- (5) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.
- Note: For further information about acting appointments, see section 33A of the *Acts Interpretation Act 1901*.
- (6) A person is not eligible to be appointed to act in an office under this section if section 17 would prevent the person from being appointed as an APRA member.

Division 2—Terms and conditions for APRA members

20 Term of office as an APRA member

An APRA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: This section has effect subject to section 24 (under which a person may resign his or her appointment as an APRA member) and section 25 (under which a person's appointment as an APRA member may be terminated).

21 Term of office as Chair or Deputy Chair

A person appointed as Chair or Deputy Chair holds that office until:

- (a) in any case—the end of his or her current term as an APRA member; or
- (b) in any case—he or she otherwise stops being an APRA member; or
- (c) in the case of a person appointed as Deputy Chair—he or she is appointed as Chair;

whichever happens first.

Note: This section has effect subject to section 24 (under which a person may resign his or her appointment as Chair or Deputy Chair).

22 Remuneration and allowances

- (1) An APRA 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 the Minister determines.
- (2) An APRA member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

23 Leave of absence

- (1) A full-time APRA member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

Section 24

- (2) The Minister may:
- (a) grant a full-time APRA member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines; and
 - (b) grant a part-time APRA member leave of absence on the terms and conditions that the Minister determines.

24 Resignation

A person may resign his or her appointment as an APRA member, as Chair, or as Deputy Chair, by giving a written resignation to the Governor-General.

25 Termination of appointment

- (1) The appointment of an APRA member is immediately terminated if the member becomes a director, officer or employee of a body regulated by APRA.
- (2) The Governor-General may terminate the appointment of an APRA member:
- (a) for misbehaviour or physical or mental incapacity; or
 - (b) if 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 his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (c) in the case of a full-time member—if the member is absent from duty, except on leave of absence:
 - (i) for 14 consecutive days; or
 - (ii) for 28 days in any period of 12 months; or
 - (d) in the case of a part-time member—if the member is absent, except on leave of absence, from 3 consecutive meetings of APRA; or
 - (e) in the case of a full-time member—if the member engages, except with the Minister's approval, in paid employment outside the functions of his or her office; or

- (f) in the case of a part-time member—if the member engages in paid employment that conflicts or could conflict with the proper performance of the functions of his or her office; or
 - (g) the member is or becomes a director, officer or employee of a body operating in the financial sector, other than a body regulated by APRA, and the Minister considers that the person is, will be, or could be, prevented from the proper performance of the functions of his or her office because of resulting conflicts of interest; or
 - (h) if the member fails, without reasonable excuse, to comply with subsection 48A(1) or 48B(1); or
 - (i) if the member has an interest that has been, or should have been, disclosed under subsection 48A(1) or 48B(1) and that conflicts, or could conflict, to a significant extent, with the proper performance of the functions of his or her office.
- (3) In spite of anything contained in this section, if an APRA member:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age (within the meaning of that Act);
- then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless the Board (within the meaning of that Act) has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, if an APRA member:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless the Board (within the meaning of that Act) has given a certificate under section 13 of that Act.
- (5) In spite of anything contained in this section, if an APRA member:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;
- then he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless the
-

Part 3 APRA membership and other corporate matters

Division 2 Terms and conditions for APRA members

Section 26

Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

26 Other terms and conditions

An APRA 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.

Division 3—APRA meetings

27 Times and places of meetings

- (1) APRA must hold the meetings that are necessary for the efficient performance and exercise of its functions and powers.
- (2) Meetings are to be held at the times and places that the Chair determines.
- (3) The Chair must convene a meeting if requested in writing by 2 or more APRA members.

28 Quorum

At a meeting:

- (a) if APRA consists of 3 or 4 APRA members—2 APRA members; or
 - (b) in any other case—3 APRA members;
- constitute a quorum.

29 Who is to preside at meetings

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting but the Deputy Chair is present, the Deputy Chair must preside.
- (3) If neither the Chair nor the Deputy Chair is present at a meeting, the APRA members present must elect one of their number to preside.

30 Voting at meetings

- (1) A question arising at a meeting is to be determined by a majority of the votes of the APRA members present and voting.
- (2) The person presiding at a meeting has:
 - (a) a deliberative vote; and
 - (b) if necessary, also a casting vote.

Section 31

31 Conduct of meetings

- (1) APRA may regulate proceedings at its meetings as it considers appropriate.
- (2) However, proceedings at a meeting must not be inconsistent with this Division.

Note 1: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which APRA members may participate in meetings.

Note 2: Requirements relating to disclosure of interests are contained in Division 1 of Part 4A of this Act.

32 APRA resolutions without meetings

A resolution is taken to have been passed at a meeting if:

- (a) APRA has determined:
 - (i) that resolutions may be passed in accordance with this section; and
 - (ii) the method of indicating agreement with a resolution passed in accordance with this section; and
- (b) without meeting, a majority of the APRA members indicate agreement with the resolution in accordance with the method determined by APRA; and
- (c) that majority would have constituted a quorum at a meeting; and
- (d) all APRA members were informed of the proposed resolution, or reasonable efforts were made to inform all APRA members of the proposed resolution.

Part 4—APRA staff members

45 Appointment of permanent, temporary and casual staff

- (1) The Chair may, on behalf of APRA, appoint such permanent, temporary or casual staff as he or she considers necessary for the performance of APRA's functions.
- (2) The terms and conditions of appointment (including as to remuneration) are to be determined by the Chair.

46 Staff seconded to APRA

APRA may be assisted by persons appointed or engaged under the *Public Service Act 1999*, and by officers and employees of authorities of the Commonwealth or prescribed New Zealand authorities, whose services are made available to APRA in connection with the performance or exercise of any of its functions or powers.

47 Consultants and other people engaged to perform services

- (1) The Chair may, on behalf of APRA, engage consultants or other people to provide advice to APRA or perform services for APRA.
- (2) The terms and conditions of engagement (including as to remuneration) are to be determined by the Chair.

48 Appointments of person appointed to perform specific roles

Under other laws of the Commonwealth, APRA has power to appoint people to perform particular roles (for example, investigators and administrators under Division 2 of Part II of the *Banking Act 1959*). A person appointed to perform such a role must be:

- (a) a person who has been appointed by the Chair under section 45; or
- (b) a person who is assisting APRA under section 46; or
- (c) a person who has been engaged by the Chair under section 47.

Section 48AA

48AA Delegation by Chair

- (1) The Chair may, in writing, delegate any functions or powers conferred on the Chair by this Part or Part 4A to an APRA member (other than the Chair) or to an APRA staff member.
- (2) In performing or exercising functions or powers delegated under subsection (1), the delegate must comply with any directions given by the Chair.

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

48AB APRA Values

- (1) The Chair must determine, in writing, the APRA Values.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

- (2) The Chair must uphold and promote the APRA Values.
- (3) APRA members (other than the Chair) and staff appointed under section 45 must uphold the APRA Values.
- (4) To avoid doubt, an instrument under subsection (1) is not a legislative instrument.

48AC APRA Code of Conduct

- (1) The Chair must determine, in writing, the APRA Code of Conduct.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

- (2) The APRA Code of Conduct applies to APRA members and staff appointed under section 45.
- (3) To avoid doubt, an instrument under subsection (1) is not a legislative instrument.

Part 4A—Disclosure of interests of APRA members, APRA staff members and delegates

Division 1—Disclosure of interests of APRA members

48A Standing obligation to disclose interests

- (1) An APRA member must disclose any interest that the member has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the APRA member's appointment.
- (3) The disclosure must be by notice in writing given to the Minister, and to each of the other APRA members, as soon as practicable after the APRA member becomes aware of the potential for conflict of interest.
- (4) Without limiting subsection (1), interests that must be disclosed under that subsection include:
 - (a) any agreement, understanding or expectation that the APRA member will:
 - (i) resume a previous business relationship (whether or not that relationship existed immediately before the member's appointment); or
 - (ii) enter into a new business relationship; when the member ceases to be a member; and
 - (b) any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph (a).

Section 48B

- (5) Paragraphs (4)(a) and (b) apply to agreements, understandings or arrangements entered into, or expectations arising, before or after the member's appointment.
- (6) The obligation to disclose an interest described in paragraph (4)(a) is subject to the following provisions:
 - (a) disclosure is required whether or not the field of business or legal nature of the relationship has been determined;
 - (b) if the interest is an expectation to enter into a new business relationship—the interest does not have to be disclosed unless the member can identify the other party, or one or more other parties, to the relationship.

48B Obligation to disclose interests before deciding a particular matter

- (1) An APRA member who has an interest that could conflict with the proper performance of the functions of his or her office, as they give the member a role in deciding a particular matter, must not perform the role in deciding the matter unless:
 - (a) the member has disclosed that interest to each of the other APRA members; and
 - (b) each of the other APRA members has consented to the member performing that role in deciding that matter despite the possible conflict of interest.
- (2) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the APRA member's appointment.
- (3) An APRA member, other than the Chair, who gives a consent under paragraph (1)(b) must, as soon as practicable, advise the Chair that he or she has given the consent.
- (4) If an interest is disclosed under subsection (1), the Chair must, as soon as practicable, give the Minister a written notice:
 - (a) describing the interest and the matter; and
 - (b) advising the Minister whether the other APRA members have consented as mentioned in paragraph (1)(b).

Division 2—Disclosure of interests of APRA staff members and delegates

48D The Chair to ensure adequate disclosure of interests requirements apply to APRA staff members and delegates

The Chair must take reasonable steps to ensure that there are, where appropriate, adequate disclosure of interests requirements applying to:

- (a) APRA staff members; and
- (b) people (other than APRA members and APRA staff members) performing or exercising functions or powers delegated to them by APRA under section 15.

Note: Under section 48AA, the Chair can delegate the power conferred on him or her by this section.

Part 5—Financial and taxation matters

50 APRA's share of levy money

Determination of Commonwealth costs

- (1) The Minister is to make, by legislative instrument, for each financial year, either of the following determinations:
 - (a) a determination specifying the amount of the levy money payable to the Commonwealth, in respect of levy for that financial year, to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions;
 - (b) a determination, in respect of each class of levy for that financial year, specifying the amount of the levy money payable to the Commonwealth in respect of that class of levy for that financial year, to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions.

Crediting to Account

- (2) An amount determined under paragraph (1)(a) or (b) is not to be credited to the Account.
- (3) The amount of levy money paid to APRA, on behalf of the Commonwealth, for a financial year that exceeds the amount determined under paragraph (1)(a), or the total of the amounts determined under paragraph (1)(b), for that financial year is to be credited to the Account.

Note: The annual financial statements of APRA, in respect of the Account, must be prepared in accordance with the Finance Minister's Orders (see section 49 of the *Financial Management and Accountability Act 1997*).

- (4) If:
 - (a) the Commonwealth refunds any levy money that has been paid to APRA; and
 - (b) apart from this subsection an amount equal to that levy money would otherwise be credited to the Account;

that amount is not to be credited to the Account.

- (5) If:
- (a) the Commonwealth refunds any levy money that has been paid to APRA; and
 - (b) that levy money has already been credited to the Account;
- that amount is to be debited from the Account.

Definitions

- (6) In this section:

levy means levy paid or payable under the *Financial Institutions Supervisory Levies Collection Act 1998*, other than levy imposed by the *Superannuation (Financial Assistance Funding) Levy Act 1993*.

levy money:

- (a) in relation to levy, means any amount paid or payable to the Commonwealth in respect of levy; or
- (b) in relation to a particular class of levy, means any amount paid or payable to the Commonwealth in respect of that class of levy.

51 Charges for APRA's services etc.

- (1) APRA may, by legislative instrument, fix charges to be paid to APRA by a person in respect of:
- (a) services and facilities APRA provides the person; or
 - (b) applications or requests (however described) made to APRA under any law of the Commonwealth.

The instrument may also provide for the waiver or refund of charges.

- (1A) Subsection (1) does not apply to a fee payable to APRA under an agreement entered into in accordance with subsection 9A(2).
- (2) A charge fixed under subsection (1) must be reasonably related to the costs and expenses incurred or to be incurred by APRA in relation to the matters to which the charge relates and must not be such as to amount to taxation.

Section 52

52 Australian Prudential Regulation Authority Special Account

- (1) The Australian Prudential Regulation Authority Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

53 Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) amounts received under an agreement or contract entered into under section 9A or 11;
- (c) amounts required to be credited to the Account in accordance with section 50;
- (d) amounts of any fees, charges or penalties paid to APRA, on behalf of the Commonwealth, under section 51 or any other law of the Commonwealth.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

54 Purposes of the Account

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by APRA in the performance of its functions or the exercise of its powers;
 - (b) in payment of any remuneration or allowances payable to persons appointed or engaged under this Act;
 - (c) in making any other payments which APRA is authorised or required to make under this Act or any other law of the Commonwealth.

Note: See section 21 of the *Financial Management and Accountability Act 1997*.

55 Liability to taxation

- (1) Subject to subsection (2), APRA is not subject to taxation under the laws of the Commonwealth or of a State or Territory.
- (2) Subject to subsection (3), the regulations may provide that subsection (1) or subsection (1A) does not apply in relation to a specified law of the Commonwealth or of a State or Territory, or to laws included in a specified class of laws of the Commonwealth or of a State or Territory.

Note: Despite subsection (1), APRA may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*).

- (3) If regulations made for the purpose of subsection (2) provide that subsection (1) does not apply in relation to the laws of the Commonwealth that impose income tax, APRA is to be taken not to be a public authority for the purposes of section 50-25 of the *Income Tax Assessment Act 1997*.

Part 6—Secrecy

56 Secrecy—general obligations

(1) In this section:

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

court includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

financial sector entity has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

officer means:

- (a) an APRA member; or
- (b) an APRA staff member; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;other than an employee of the body to which the information or document relates.

personal information has the same meaning as in the *Privacy Act 1988*.

produce includes permit access to.

protected document means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and containing information relating to the affairs of:

- (a) a body regulated by APRA; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA; or

- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA; or
 - (ca) a registered entity; or
 - (cb) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a registered entity; or
 - (cc) a person who has been, is, or proposes to be, a customer of a registered entity;
- other than:
- (d) a document containing information that has already been lawfully made available to the public from other sources; or
 - (e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and relating to the affairs of:

- (a) a body regulated by APRA; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA; or
- (ca) a registered entity; or
- (cb) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a registered entity; or
- (cc) a person who has been, is, or proposes to be, a customer of a registered entity;

other than :

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- (d) information that has already been lawfully made available to the public from other sources; or
- (e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

registered entity means a corporation that is, or has at any time been, a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

- (2) A person who is or has been an officer is guilty of an offence if:
 - (a) the person directly or indirectly:
 - (i) discloses information acquired in the course of his or her duties as an officer to any person or to a court; or
 - (ii) produces a document to any person or to a court; and
 - (b) the information is protected information, or the document is a protected document; and
 - (c) the disclosure or production is not in accordance with subsection (3), (4), (5), (5AA), (5A), (5B), (5C), (6), (7), (7A), (7B) or (7C).

Penalty: Imprisonment for 2 years.

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

- (3) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purposes of a prudential regulation framework law.

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

- (4) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
 - (a) is by an employee of the person to whose affairs the information or document relates; or
 - (b) occurs after the person to whose affairs the information or document relates has agreed in writing to the disclosure or production.

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

- (5) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
- (a) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency (including foreign agencies) specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency; or
 - (b) is to another person and is approved by APRA by instrument in writing.

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

- (5AA) It is not an offence if the disclosure of protected information or the production of a protected document is made:
- (a) by an officer of an agency to which the information or document has been disclosed or produced under paragraph (5)(a); and
 - (b) for the same purpose as the information or document was so disclosed or produced to that agency.

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

- (5A) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Australian Statistician for the purposes of the *Census and Statistics Act 1905*.

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

- (5B) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to:
- (a) the Reserve Bank of Australia; or
 - (b) another prescribed authority.

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

- (5C) If a document relating to a financial sector entity (other than an entity that is, or is included in a class of entities that are, excluded

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by the regulations from the operation of this subsection) is a reporting document that:

- (a) was given by the entity to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*; and
- (b) is determined by APRA under section 57 to be a document that does not contain confidential information;

it is not an offence to disclose the document, or any information contained in the document, to any person (including to disclose the document by making it available for inspection by the public or to disclose the information by making a document containing the information so available).

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

- (6) It is not an offence if the disclosure of protected information or the production of a protected document is to:
 - (a) an APRA member; or
 - (b) an APRA staff member;

for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or a Territory.

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

- (6A) It is not an offence if the disclosure of protected information or the production of a protected document is to:
 - (a) an auditor who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC; or
 - (b) an actuary who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC;

and the disclosure is for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or Territory.

- (7) It is not an offence if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

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

- (7A) It is not an offence if the information, or the information contained in the document, as the case may be, is all or any of the following:
- (a) the names of bodies that are regulated by APRA;
 - (b) the addresses at which bodies referred to in paragraph (a) conduct business;
 - (c) any other information that is reasonably necessary to enable members of the public to contact persons who perform functions in relation to bodies referred to in paragraph (a).

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

- (7B) It is not an offence if the information, or the information contained in the document, as the case may be, is:
- (a) a statement of APRA's opinion as to whether or not a body regulated by APRA is complying, or was complying at a particular time, with a particular provision of a prudential regulation framework law; or
 - (b) a description of:
 - (i) court proceedings in relation to a breach or suspected breach by a person of a provision of a prudential regulation framework law; or
 - (ii) activity engaged in, or proposed to be engaged in, by APRA in relation to such a breach or suspected breach; or
 - (c) a description of action under a prudential regulation framework law that APRA has taken or is proposing to take in relation to:
 - (i) a body regulated by APRA; or
 - (ii) an individual who holds or has held a position with or in relation to such a body.

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

- (7C) If information referred to in subsection (7A) or paragraph (7B)(a) that relates to a body that is, or has at any time been, regulated by APRA under the *Superannuation Industry (Supervision) Act 1993* is disclosed to the Registrar of the Australian Business Register established under section 24 of the *A New Tax System (Australian*

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Business Number) Act 1999, the Registrar may enter the information in that Register.

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

- (8) A person who is, or has been, an officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of a prudential regulation framework law.
- (9) If a person discloses information or produces a document under this section to another person, the first person may, at the time of the disclosure, impose conditions to be complied with in relation to the information disclosed or the document produced.
- (10) A person is guilty of an offence if the person fails to comply with a condition imposed under subsection (9).

Penalty: Imprisonment for 2 years.

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

- (11) A document that:
 - (a) is a protected document; or
 - (b) contains protected information;is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

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

- (12) A disclosure of personal information is taken to be authorised by law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* if:
 - (a) the information is protected information and the disclosure is made in accordance with any of subsections (4), (5), (5AA), (6), (7A), (7B) and (7C); or
 - (b) the information is contained in a protected document and the disclosure is made by the production of the document in accordance with any of those subsections.

57 Determination as to confidentiality

APRA may, by legislative instrument, determine whether a document that was given to APRA by a registered entity, or by a body regulated by APRA, under section 13 of the *Financial Sector (Collection of Data) Act 2001* contains confidential information, but must not make such a determination unless APRA has:

- (a) given to the entity or body, or to an association or other body representing the class of entities or bodies within which the entity or body is included, a reasonable opportunity to make representations as to whether information of the kind contained in the document is confidential; and
- (b) taken any such representations into account.

Part 7—Miscellaneous

58 Protection from liability

- (1) Subject to subsection (2), APRA, an APRA member, an APRA staff member, or an agent of APRA, an APRA member or an APRA staff member, is not subject to any liability to any person in respect of anything done, or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on APRA, an APRA member or an APRA staff member by or under:
 - (a) this Act or another law of the Commonwealth; or
 - (b) a law of a State or Territory referred to in paragraph 9(b); or
 - (c) subject to subsection (3), an agreement referred to in paragraph 9(c).
- (2) Subsection (1) does not apply to an act or omission in bad faith.
- (3) Subsection (1), as it applies in relation to powers, functions or duties conferred or imposed by an agreement referred to in paragraph 9(c), has effect subject to provisions of the agreement referred to in subsection 9A(3) (which allows the agreement to deal with liabilities as between the parties).

59 Annual reports

Annual report to be given to Minister

- (1) The Chair must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on APRA's operations during that financial year.

Note: Section 34C of the *Acts Interpretation Act 1901* contains provisions relating to annual reports.

Contents of annual report

- (2) A report under subsection (1) must include the following:
 - (a) information on the following matters under the *Banking Act 1959*:

- (i) the activities of ADI statutory managers (within the meaning of the *Banking Act 1959*), and persons conducting investigations, under Division 2 of Part II of the *Banking Act 1959*;
 - (ii) the activities of persons conducting investigations under section 61 of the *Banking Act 1959*;
 - (b) information on the exercise during the year of APRA's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*;
 - (c) information on any other matters required by the regulations;
 - (d) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
 - (e) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.
- (3) Paragraph (2)(a) does not authorise the inclusion in the annual report of information with respect to the affairs of a particular ADI or authorised NOHC, a particular subsidiary of an ADI or authorised NOHC, or a particular customer of an ADI.

Annual report to be tabled in Parliament

- (4) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (5) In this section:

ADI has the same meaning as in the *Banking Act 1959*.

authorised NOHC has the same meaning as in the *Banking Act 1959*.

60 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, prescribing penalties, not exceeding 10 penalty units, for offences against the regulations.

Table of Acts**Notes to the *Australian Prudential Regulation Authority Act 1998*****Note 1**

The *Australian Prudential Regulation Authority Act 1998* as shown in this compilation comprises Act No. 50, 1998 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Prudential Regulation Authority Act 1998</i>	50, 1998	29 June 1998	1 July 1998 (see <i>Gazette</i> 1998, No. S316)	
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i>	54, 1998	29 June 1998	Schedule 18 (items 41, 42): (a)	S. 2(18) (am. by 146, 1999, Sch. 1 [item 486])
as amended by				
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 486, 487): (b)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 1 (items 1–3, 5–9) and Schedule 8: Royal Assent (c) Schedule 1 (item 4): 1 July 1999 (see <i>Gazette</i> 1999, No. S283) (c)	Sch. 8 (item 22)
<i>Superannuation Legislation Amendment Act (No. 3) 1999</i>	121, 1999	8 Oct 1999	Schedule 2 (items 1, 2): Royal Assent (d)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 236): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (e)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 53, 54): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (f)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000</i>	24, 2000	3 Apr 2000	Schedule 1 (items 1, 2): (g) Schedule 1 (items 3–13): Royal Assent (g) Schedule 12 (items 1–3): 3 Apr 2000 (g)	Sch. 12 (items 1–3)
<i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	S. 4
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 63, 64, 66): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (h) Schedule 3 (items 65, 67): 1 July 2002 (see <i>Gazette</i> 2002, No. GN24) (h)	Ss. 4–14 [see Note 1]
<i>General Insurance Reform Act 2001</i>	119, 2001	19 Sept 2001	Schedules 1 and 3: 1 July 2002 Remainder: Royal Assent	—
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and <i>Gazette</i> 2002, No. GN24)	Sch. 3
<i>Financial Sector Legislation Amendment Act (No. 1) 2002</i>	37, 2002	26 June 2002	Schedule 1: 27 June 2002 (j)	Sch. 1 (item 2)
<i>Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Act 2003</i>	36, 2003	2 May 2003	1 July 2003	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Prudential Regulation Authority Amendment Act 2003</i>	42, 2003	24 June 2003	Schedules 1–3: 1 July 2003 (see <i>Gazette</i> 2003, No. S230) Remainder: Royal Assent	Sch. 3
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	Schedule 2 (items 68, 69, 174): Royal Assent	Sch. 2 (item 174)
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (item 20) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11)
<i>Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Act 2006</i>	147, 2006	6 Dec 2006	6 Dec 2006	—
<i>Governance Review Implementation (Treasury Portfolio Agencies) Act 2007</i>	74, 2007	5 June 2007	Schedules 1 and 2: 1 July 2007 Remainder: Royal Assent	Sch. 2 (items 1, 11–20)
<i>Financial Sector Legislation Amendment (Restructures) Act 2007</i>	117, 2007	28 June 2007	28 June 2007	—
<i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 32–34): Royal Assent	—

Act Notes

- (a) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 18 (items 41 and 42) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsection 2(18) of which provides as follows:
- (18) The items in Schedule 18 amending the *Australian Prudential Regulation Authority Act 1998* commence:
- (a) on the commencement of the *Australian Prudential Regulation Authority Act 1998* if the *Public Service Act 1999* commences before the commencement of the *Australian Prudential Regulation Authority Act 1998*; or
- (b) immediately after the commencement of the *Public Service Act 1999* if that Act does not commence before the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- The *Public Service Act 1999* commenced on 5 December 1999 (see *Gazette* 1999, No. S584).
- (b) The *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* was amended by Schedule 1 (items 486 and 487) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (4) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (4) If:
- (a) an item (the **amending item**) of a Schedule to this Act is expressed to amend, or to amend a part of, a section (the **amended section**) of another Act; and
- (b) at the time when the *Public Service Act 1999* commences, the amended section:
- (i) has not yet been enacted; or
- (ii) has been enacted but has not yet commenced;
- then the amending item commences immediately after the commencement of the amended section.
- The amended items commenced on 5 December 1999 immediately after the *Public Employment (Consequential and Transitional) Amendment Act 1999* came into operation.
- (c) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 1 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(1), (2)(a) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) The following provisions commence on the transfer date:
- (a) item 4 of Schedule 1 (the commencement of the rest of the items in this Schedule is covered by subsection (1));
- (d) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 2 (items 1 and 2) only of the *Superannuation Legislation Amendment Act (No. 3) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 1 (item 236) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.

Act Notes

- (f) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 10 (items 53 and 54) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (g) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 1 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsections 2(1), (2), (12) and (13) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 1 and 2 of Schedule 1 are taken to have commenced immediately after the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (12) Part 1 of Schedule 12 commences:
- (a) after all of the Acts listed in subsection (13) have received the Royal Assent; and
- (b) on the day that is the last day on which any of those Acts received the Royal Assent.
- (13) These are the relevant Acts for the purposes of paragraph (12)(a):
- (a) this Act;
- (b) each of the Acts referred to in the definition of **Validation Act** in item 1 of Schedule 12 to this Act.
- (h) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 3 (items 63–67) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsections 2(3) and (4)(b) of which provide as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (4) Items 65 and 67 of Schedule 3 commence on the later of:
- (b) the time when Part 1 of Schedule 2 to the *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001* commences.
- (i) The *Australian Prudential Regulation Authority Act 1998* was amended by Schedule 1 only of the *Financial Sector Legislation Amendment Act (No. 1) 2002*, subsection 2(1) (item 2) of which provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedules 1 to 3	The day after the day on which this Act receives the Royal Assent	27 June 2002

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3.....	am. No. 44, 1999; No. 160, 2000; Nos. 55 and 119, 2001; No. 42, 2003; No. 147, 2006; Nos. 74 and 117, 2007
Part 2	
Note to s. 7.....	am. No. 42, 2003 rep. No. 74, 2007
S. 8.....	am. No. 42, 2003; No. 147, 2006
S. 8A.....	ad. No. 147, 2006
S. 9.....	rs. No. 44, 1999
S. 9A.....	ad. No. 44, 1999 am. No. 146, 1999
S. 10.....	rs. No. 42, 2003
S. 10A.....	ad. No. 42, 2003
S. 11.....	am. No. 74, 2007
S. 11A.....	ad. No. 74, 2007
S. 12.....	rs. No. 42, 2003
S. 12A.....	ad. No. 74, 2007
S. 13.....	am. No. 42, 2003
S. 14.....	rep. No. 74, 2007
S. 15.....	rs. No. 42, 2003
Part 3	
Part 3.....	rs. No. 42, 2003
Division 1	
Ss. 16–19.....	rs. No. 42, 2003
Division 2	
Ss. 20–24.....	rs. No. 42, 2003
S. 25.....	rs. No. 42, 2003 am. No. 26, 2008
S. 26.....	rs. No. 42, 2003
Division 3	
Ss. 27–30.....	rs. No. 42, 2003
S. 31.....	am. No. 156, 1999 rs. No. 42, 2003
S. 32.....	rs. No. 42, 2003
Ss. 33, 34.....	rep. No. 42, 2003
Part 4	
Heading to Part 4.....	rs. No. 42, 2003
Div. 1 of Part 4.....	rep. No. 42, 2003
Ss. 35–37.....	rep. No. 42, 2003
S. 38.....	am. No. 54, 1998

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
	rep. No. 42, 2003
S. 39.....	rep. No. 42, 2003
S. 40.....	am. No. 156, 1999 rep. No. 42, 2003
Ss. 41–44.....	rep. No. 42, 2003
Heading to Div. 2 of Part 4.....	rep. No. 42, 2003
S. 45.....	am. No. 42, 2003; No. 74, 2007
S. 46.....	am. No. 54, 1998 (as am. by No. 146, 1999); No. 147, 2006
S. 47.....	am. No. 42, 2003; No. 74, 2007
S. 48.....	am. No. 74, 2007
Ss. 48AA–48AC.....	ad. No. 74, 2007
Part 4A	
Part 4A.....	ad. No. 42, 2003
Division 1	
Ss. 48A, 48B.....	ad. No. 42, 2003
S. 48C.....	ad. No. 42, 2003 rep. No. 74, 2007
Division 2	
Heading to s. 48D.....	am. No. 74, 2007
S. 48D.....	ad. No. 42, 2003 am. No. 74, 2007
Note to s. 48D.....	ad. No. 74, 2007
Part 5	
S. 49.....	rep. No. 74, 2007
S. 50.....	rs. No. 37, 2002 am. No. 42, 2003 rs. No. 74, 2007
S. 51.....	am. No. 44, 1999; No. 74, 2007
S. 52.....	rs. No. 74, 2007
S. 53.....	am. No. 8, 2005 rs. No. 74, 2007
S. 54.....	rs. No. 74, 2007
S. 55.....	am. No. 24, 2000; No. 101, 2006; No. 74, 2007
Note to s. 55(2).....	ad. No. 74, 2007
Part 6	
S. 56.....	am. Nos. 44 and 121, 1999; Nos. 24 and 160, 2000; Nos. 55, 119 and 121, 2001; No. 37, 2002; Nos. 36 and 42, 2003
Note to s. 56(3).....	ad. No. 24, 2000
Note to s. 56(4).....	ad. No. 24, 2000
Note to s. 56(5)	
Renumbered Note 1.....	No. 24, 2000 rep. No. 42, 2003
Note 2 to s. 56(5).....	ad. No. 24, 2000
Renumbered Note.....	No. 42, 2003
Note to s. 56(6).....	ad. No. 24, 2000

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 56(7)	ad. No. 24, 2000
Note to s. 56(11)	ad. No. 24, 2000
S. 57.....	am. No. 44, 1999 rep. No. 24, 2000 ad. No. 121, 2001 am. No. 74, 2007
Part 7	
S. 58.....	rs. No. 44, 1999 am. No. 42, 2003
S. 59.....	rs. No. 74, 2007

Table A

Table A

Application, saving or transitional provisions

Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999 (No. 44, 1999)

Schedule 8

22 Regulations may deal with transitional, saving or application matters

- (1) The regulations may deal with matters of a transitional, saving or application nature relating to:
 - (a) the transition from the application of provisions of the replaced legislation to the application of provisions of the *Banking Act 1959*, the *Life Insurance Act 1995*, the *Financial Sector (Transfers of Business) Act 1999*, the *Financial Sector (Shareholdings) Act 1998* or the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) the transition, for The Cairns Cooperative Weekly Penny Savings Bank Limited, from the application of provisions of the *Financial Intermediaries Act 1996* of Queensland to the application of provisions of any of the Acts referred to in paragraph (a); or
 - (c) the amendments and repeals made by the Schedules to this Act.
- (2) Without limiting subitem (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
 - (a) by applying (with or without modifications) to the matter:
 - (i) provisions of a law of the Commonwealth, or of a State or Territory; or
 - (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
 - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
 - (b) by otherwise specifying rules for dealing with the matter;

Table A

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- (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (3) Without limiting subitems (1) and (2), the regulations may provide for the continued effect, for the purposes of a provision of a law of the Commonwealth, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a law of a State or Territory. In the case of an instrument or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.
- (4) Without limiting subitem (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:
- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;
 - (b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;
 - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (5) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations for the purposes of this item:
- (a) may be expressed to take effect from a date before the regulations are notified in the *Gazette*; and
 - (b) may provide for a determination of a kind referred to in subitem (4) to take effect from a date before the determination is made (including a date before the regulations are notified in the *Gazette*).
- (6) In this item, a reference to a *law*, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.
- (7) In this item:
- replaced legislation* means:
- (a) the AFIC Codes; and
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Table A

- (b) the Financial Institutions Codes; and
- (c) the Friendly Societies Codes; and
- (d) the *Australian Financial Institutions Commission Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland; and
- (e) the *Financial Institutions (Queensland) Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992* of Queensland; and
- (f) the **Friendly Societies (Victoria) Act 1996** of Victoria, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in the Schedule to the **Friendly Societies (Victoria) Act 1996** of Victoria; and
- (g) the *Friendly Societies (Western Australia) Act 1999*; and
- (h) any other law of a State or Territory prescribed by the regulations for the purposes of this definition.

Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000 (No. 24, 2000)

Schedule 12

1 Definitions

In this Part:

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

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

Imposition Act means any of the following Acts:

- (a) the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*;
- (b) the *General Insurance Supervisory Levy Imposition Act 1998*;

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- (c) the *Life Insurance Supervisory Levy Imposition Act 1998*;
- (d) the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*;
- (e) the *Superannuation Supervisory Levy Imposition Act 1998*.

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

Validation Act means any of the following Acts:

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

2 Deferral of date for paying levy

- (1) This item applies to a levy paying entity if, because of section 4 of a Validation Act:
 - (a) the entity is liable to pay levy imposed by an Imposition Act; and
 - (b) the levy payable by the entity would, apart from this item, have been due and payable under section 9 of the Collection Act before the deferred payment day.
- (2) The levy payable by the entity is taken to be due and payable on the deferred payment day, despite section 9 of the Collection Act.

Note: This provision affects the calculation of late payment penalty (if any) under section 10 of the Collection Act.

3 No retrospective criminal liability

Nothing in this Part or the Validation Acts is taken to make a person criminally liable in respect of acts or omissions of the person before the day on which this Part commences, if the person would not have been so liable had this Part and the Validation Acts not been enacted.

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Financial Sector Legislation Amendment Act (No. 1) 2000 (No. 160, 200)

4 Actuarial services provided by APRA

- (1) APRA is taken to have had the function of providing actuarial services for the period commencing on 1 July 1998 and ceasing at the end of the day on which the Australian Government Actuary ceases to be a part of APRA.
- (2) Subsection (1) does not mean that APRA did not or does not have the power to provide actuarial services that are incidental to another function of APRA.
- (3) Subsection (1) confers functions and powers to the extent to which they are not in excess of the legislative power of the Commonwealth.
- (4) In this section:

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

Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act (No. 1) 2001 (No. 121, 2001)

Schedule 3

1 Treatment of certain exemptions and determinations in connection with obligations of corporations to register

An exemption or determination by the Reserve Bank that was in force immediately before the commencement of this Schedule under paragraph 8(2)(1) of the *Financial Corporations Act 1974* continues to have effect as if it were an exemption or determination by APRA under paragraph 7(2)(j) of the *Financial Sector (Collection of Data) Act 2001*.

2 Former Register of Corporations

On the commencement of this Schedule, the Register of Corporations that, immediately before that commencement, was kept by the Reserve Bank under subsection 9(9) of the *Financial Corporations Act 1974* continues in existence as the Register of Entities kept by APRA under section 8 of the *Financial Sector (Collection of Data) Act 2001*.

3 Former list of registered corporations and categories

- (1) On the commencement of this Schedule:
 - (a) the list (the *former list*) of registered corporations, divided into categories, that, immediately before that commencement, was prepared by the Reserve Bank under section 10 of the *Financial Corporations Act 1974* continues in existence as a list (the *new list*) of the names of registered entities, divided into categories, kept by APRA under subsection 11(1) of the *Financial Sector (Collection of Data) Act 2001*; and
 - (b) a reference in any instrument having effect under an Act to a corporation included in a particular category in the former list is taken to be a reference to that corporation in its capacity as a registered entity included in the corresponding category in the new list.
 - (2) An obligation on the Reserve Bank to publish notice, or to notify a person, of a matter under section 10 of the *Financial Corporations Act 1974*, being an obligation that is undischarged as at the commencement of this Schedule, becomes, on that commencement, an obligation that APRA is to discharge in respect of the corresponding matter under section 11 of the *Financial Sector (Collection of Data) Act 2001*.
 - (3) A determination by the Reserve Bank that was in force under a provision of section 10 of the *Financial Corporations Act 1974* immediately before the commencement of this Schedule continues to have effect, after that commencement, as if it were a determination by APRA under the corresponding provision of section 11 of the *Financial Sector (Collection of Data) Act 2001*.
 - (4) A request to the Reserve Bank under subsection 10(7) of the *Financial Corporations Act 1974* that has not been dealt with by the commencement of this Schedule is, after that commencement, to be
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Table A

dealt with by APRA as if it were a request under subsection 11(7) of the *Financial Sector (Collection of Data) Act 2001*.

4 Definitions

In this Schedule:

APRA means the Australian Prudential Regulation Authority.

Reserve Bank means the Reserve Bank of Australia.

Financial Sector Legislation Amendment Act (No. 1) 2002 (No. 37, 2002)

Schedule 1

2 Application

The amendment made by item 1 applies for the financial year that began on 1 July 2001 and for all later financial years.

Australian Prudential Regulation Authority Amendment Act 2003
(No. 42, 2003)

Schedule 3

1 Definitions

In this Schedule:

amended Act means the *Australian Prudential Regulation Authority Act 1998* as in force after the commencement of the amendments.

commencement of the amendments means the commencement of the amendments made by Schedule 1.

old Act means the *Australian Prudential Regulation Authority Act 1998* as in force immediately before the commencement of the amendments.

2 APRA's corporate existence is continued

- (1) The body corporate that was, immediately before the commencement of the amendments, the Australian Prudential Regulation Authority (**APRA**) continues in existence after that commencement by force of this item under the corporate structure provided for by the amended Act.

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Note: Rights, liabilities and obligations as between APRA and other people, and things done by or on behalf of APRA, or in relation to APRA, are therefore not affected by the restructure of APRA.

(2) However, this does not imply that any person who, immediately before the commencement of the amendments, was a member of APRA's Board, or was APRA's Chief Executive Officer, continues to hold office after that commencement.

Note: These people cease to hold office on the commencement of the amendments because of the repeal of the provisions under which they were appointed.

3 Continued protection from liability

Section 58 of the old Act continues to apply in relation to conduct, before the commencement of the amendments, of APRA's Board, a member of APRA's Board or an agent of a member of APRA's Board.

Note: The reference to a member of APRA's Board covers APRA's Chief Executive Officer.

4 Continued effect of certain delegations

(1) A delegation in force, immediately before the commencement of the amendments, under subsection 15(1) or (2) of the old Act continues to have effect after that commencement as if it were a delegation under APRA's seal under that subsection of the amended Act. If the delegation was to one or more members of APRA's Board, it continues to have effect as if it were a delegation to any APRA member.

(2) A direction in force, immediately before the commencement of the amendments, under subsection 15(3) of the old Act continues to have effect after that commencement, in relation to a delegation to which subitem (1) applies, as if it were a direction given by APRA under that subsection of the amended Act.

(3) A delegation to one or more members of APRA's Board in force, immediately before the commencement of the amendments, under a provision amended by Schedule 2 continues to have effect after that commencement as if it were a delegation under the amended provision to any APRA member.

Note: Delegations in favour of APRA, or APRA staff members, are not affected by the Schedule 2 amendments.

Table A

5 Continued effect of determinations of terms and conditions for staff and consultants

A determination of terms and conditions in force, immediately before the commencement of the amendments, under subsection 45(2) or 47(2) of the old Act continues to have effect after that commencement as if it were a determination by APRA under that subsection of the amended Act.

6 Continued effect of approvals under paragraph 56(5)(b)

An approval in force, immediately before the commencement of the amendments, under paragraph 56(5)(b) of the old Act continues to have effect after that commencement as if it were an approval by APRA under that paragraph of the amended Act.

7 Continued or extended effect of certain regulations

- (1) Regulations in force, immediately before the commencement of the amendments, under paragraph (k) of the definition of *Act covered by this section* in subsection 56(1) of the old Act continue to have effect after that commencement as if they were made under paragraph (o) of the definition of *prudential regulation framework law* in subsection 3(1) of the amended Act, but only as that paragraph applies for the purposes of section 56 of the amended Act.
- (2) Regulations in force, immediately before the commencement of the amendments, under paragraph 56(5)(a) of the old Act have effect after that commencement (in addition to the effect they continue to have for that paragraph of the amended Act) as if they were also made under subsection 10A(1) of the amended Act.

8 Delegations by ASIC to APRA staff members

- (1) Subsection 102(2A) of the *Australian Securities and Investments Commission Act 2001* has effect after the commencement of the amendments as if the reference in that subsection to the Chief Executive Officer of APRA were instead a reference to APRA.
- (2) For the purposes of that subsection as it continues to have effect, an agreement to a delegation, in force under that subsection immediately before the commencement of the amendments, continues to have effect after that commencement as if it were given by APRA.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

Schedule 2

174 Saving provision—provisions that formerly referred to the Treasurer

- (1) Any thing that:
- (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
 - (b) was in effect immediately before the commencing time;
- continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.
- (2) In this item:
- affected provision*** means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.
- commencing time*** means the day this Act receives the Royal Assent.
- Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

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6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent

Table A

necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and

Table A

- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Governance Review Implementation (Treasury Portfolio Agencies) Act 2007
(No. 74, 2007)

Schedule 2

1 Definitions

In this Schedule:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Agency means:

- (a) ASIC as established under the *Australian Securities and Investments Commission Act 2001* immediately before the commencement time; or
- (b) CAMAC as established under the *Australian Securities and Investments Commission Act 2001* immediately before the commencement time; or

Table A

- (c) APRA as established under the *Australian Prudential Regulation Authority Act 1998* immediately before the commencement time.

Agency head means:

- (a) in relation to ASIC—the Chairperson of ASIC; or
- (b) in relation to CAMAC—the Convenor of CAMAC; or
- (c) in relation to APRA—the Chair of APRA.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the time when this Schedule commences.

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

member means:

- (a) in relation to ASIC—a member of ASIC; or
- (b) in relation to CAMAC—a member of CAMAC; or
- (c) in relation to APRA—an APRA member.

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11 Pre-existing property, money and financial liabilities

- (1) Any real or personal property or money that is held by APRA immediately before the commencement time is taken, immediately after that time, to be held by APRA for and on behalf of the Commonwealth.
- (2) Any financial liabilities of APRA that exist immediately before the commencement time are taken, immediately after that time, to be liabilities of the Commonwealth.
- (3) After the commencement time, there must be credited to the Australian Prudential Regulation Authority Special Account an amount equal to the total of all money held by APRA immediately before the commencement time.

12 Appointment and engagement of staff and consultants

- (1) A person who is appointed or engaged by APRA under section 45 or 47 of the *Australian Prudential Regulation Authority Act 1998* immediately before the commencement time, is taken to be appointed or engaged (as the case requires) by the Chair, on behalf of APRA, immediately after the commencement time.
- (2) If:
 - (a) an instrument is in force under section 45 or 47 of the *Australian Prudential Regulation Authority Act 1998* immediately before the commencement time; and
 - (b) the instrument contains a reference to APRA;so far as the context permits, the instrument has effect from the commencement time as if the reference to APRA were a reference to the Chair of APRA.
- (3) To avoid doubt, the amendments made by items 53 to 56 of Schedule 1 do not constitute a transmission of business for the purposes of the *Workplace Relations Act 1996*.

13 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of APRA, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Chair of APRA.

14 Financial statements and other reporting requirements

Reporting requirements

- (1) If:
- (a) immediately before the commencement time, a law required an Agency or a member of the Agency to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;

the Agency head must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), the Agency head is required to provide a report for a part of a period; and
 - (b) the Agency head is also required to provide a similar report for the remainder of the period;

the Agency head may meet the requirements in a single report for the period.

Outstanding reporting requirements

- (3) If:
- (a) a law required the Agency or a member of the Agency to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;

the Agency head must provide the report as required.

Application of law to Agency head

- (4) To avoid doubt, if, under this item, an Agency head is required to provide a report under a law, the law applies to the Agency head in respect of the report in the same way as the law would have applied to the Agency or the member of the Agency in respect of the report.

Table A

15 New annual report requirements to apply from 2007-2008 and later financial years

Sections 136 and 162 of the *Australian Securities and Investments Commission Act 2001* (as inserted by items 12 and 46 of Schedule 1 to this Act), and item 66 of Schedule 1 to this Act, apply to the 2007-2008 financial year and later financial years.

16 Continuing obligation to keep records

If, immediately before this item commences, an Agency has kept accounting records under subsection 20(1) of the *Commonwealth Authorities and Companies Act 1997*, then, after this item commences, section 20 of that Act (as in force from time to time), continues to apply, in respect of those records, as if the Agency continued to be subject to that Act.

17 Constitutional safety net—acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

18 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Schedule; or
- (b) the operation of this Schedule in any other respect.

19 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule, in relation to an Agency, to the Agency head.
 - (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
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Table A

20 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 1 to this Act.