



Insurance Acquisitions and Takeovers Act 1991

Act No. 6 of 1992 as amended

This compilation was prepared on 27 September 2007
taking into account amendments up to Act No. 154 of 2007

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

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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An Act relating to the control of Australian-registered insurance companies, and for other purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Insurance Acquisitions and Takeovers Act 1991*.

2 Commencement [see Note 1]

- (1) Subject to this section, 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 it receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects of Act and simplified outline of Act

The following is a statement setting out the objects of this Act and a simplified outline of this Act:

Objects of Act

- To set out rules about the **control** of, and the **compulsory notification** of proposals relating to:
 - (a) the **acquisition** or **leasing** of **assets** of Australian-registered insurance companies (Part 3);
or
 - (b) the entering into of **agreements** relating to **directors** of Australian-registered insurance companies (Part 4).

- To protect the **public interest** in a number of ways, including:
 - (a) ensuring that the affairs of Australian-registered insurance companies are carried out in a **prudential manner**; and
 - (b) preventing **unsuitable persons** from being in a **position of influence** over Australian-registered insurance companies; and
 - (c) preventing the **undue concentration of economic power** in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system.

Simplified outline of Act

- A proposal must be **notified** to the Minister.
- A proposal can be **stopped** if the Minister makes a **permanent restraining order**.
- A proposal can be **carried out** if the Minister makes a **go-ahead decision**.
- If an unauthorised proposal is carried out, the Minister can make a **divestment order**.
- This Act is enforced by **criminal sanctions** and **court orders**.

4 Interpretation

In this Act, unless the contrary intention appears:

accounting period means:

- (a) in relation to a company authorised under the *Insurance Act 1973* to carry on insurance business—the company's financial year (within the meaning of that Act); or
- (b) in relation to a company registered under the *Life Insurance Act 1995*—the company's financial year (within the meaning of that Act).

acquisition includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law; or
- (b) an acquisition by way of enforcement of a security held solely for the purposes of a moneylending agreement.

agreement means any agreement, whether formal or informal and whether express or implied, but does not include a moneylending agreement.

APRA means the Australian Prudential Regulation Authority.

arrangement has the meaning given by section 6.

asset includes an interest in an asset.

associate has the meaning given by section 7.

associate-inclusive control interest has the meaning given by section 14.

Australia includes the external Territories.

Australian general insurance industry means so much of the Australian insurance industry as does not consist of the Australian life insurance industry.

Australian-registered insurance company means:

- (a) a company authorised under the *Insurance Act 1973* to carry on insurance business; or
 - (b) a company registered under the *Life Insurance Act 1995*;
- but does not include:
- (c) a company any part of the activities of which consists of State banking not extending beyond the limits of the State concerned (within the meaning of paragraph 51(xiii) of the Constitution); or
 - (d) a company any part of the activities of which consists of State insurance not extending beyond the limits of the State concerned (within the meaning of paragraph 51(xiv) of the Constitution).

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book outstanding claims provision, in relation to a company, in relation to a particular date, means:

- (a) if the company was authorised under the *Insurance Act 1973* to carry on insurance business at the end of the last accounting period of the company before that date—the company's outstanding claims liability (within the meaning of the prudential standards determined under that Act) as at the end of that accounting period; or
- (b) in any other case—the company's outstanding claims provision as at that date.

book unearned premiums provision, in relation to a company, in relation to a particular date, means:

- (a) if the company was authorised under the *Insurance Act 1973* to carry on insurance business at the end of the last accounting period of the company before that date—the company's premiums liability (within the meaning of the prudential standards determined under that Act) as at the end of that accounting period; or
- (b) in any other case—the company's unearned premiums provision as at that date.

book value, in relation to an asset held by a company at a particular time, means:

- (a) if the company:
 - (i) was authorised under the *Insurance Act 1973* to carry on insurance business; or
 - (ii) was registered under the *Life Insurance Act 1995*; at the end of the last accounting period of the company before that time—the value of the asset as at the end of that accounting period; or
- (b) in any other case—the value of the asset as at that time.

company means a body corporate.

constituent document, in relation to a company, means:

- (a) the memorandum and articles of association of the company; or
- (b) any rules or other documents constituting the company or governing its activities.

contract of insurance includes a contract of life insurance and ***insurer*** has a corresponding meaning.

contract of life insurance means a life policy or sinking fund policy, within the meaning of the *Life Insurance Act 1995*.

direct control interest has the meaning given by section 15.

director includes any person occupying the position of director of a company, by whatever name called.

discretionary trust means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (i) the identities of those who may benefit under the trust;
 - (ii) how beneficiaries are to benefit, as between themselves, under the trust.

Federal Court means the Federal Court of Australia.

insurance business has the same meaning as in the *Insurance Act 1973*.

interest in an asset has the meaning given by section 10.

interest in a share has the meaning given by section 11.

lending money includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

life insurance business has the same meaning as in the *Life Insurance Act 1995*.

moneylending agreement means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

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non-arm's length arrangement means an arrangement where the parties to the arrangement are not dealing with each other at arm's length in relation to the arrangement.

non-arm's length transaction means a transaction where the parties to the transaction are not dealing with each other at arm's length in relation to the transaction.

officer, in relation to a company, includes:

- (a) a director, secretary or employee of the company; or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or
- (c) a liquidator of the company appointed in a voluntary winding up.

outstanding claims provision, in relation to a company, means so much of the total provision for liabilities made in its accounts as consists of provision for claims, reduced by any allowance made in its accounts for reinsurance recoverables in respect of the claims.

prudential conduct, in relation to a company, means the conduct by the company of its affairs (whether or not relating to the insurance business or life insurance business of the company):

- (a) in such a way as:
 - (i) to keep itself in a sound financial position; and
 - (ii) not to cause or promote instability in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system; and
- (b) with integrity, prudence and professional skill.

relative, in relation to a person, means:

- (a) the person's spouse; or
- (b) another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person; or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a son, daughter or remoter issue of the person; or
- (e) a brother or sister of the person.

reviewable decision means a decision of the Minister under Part 3 or 4 or paragraph 66(1)(b).

share, in relation to a company, means a share in the share capital of the company, and includes:

- (a) stock into which any or all of the share capital of the company has been converted; or
- (b) an interest in such a share or in such stock.

total book net liabilities, in relation to a company's contracts of life insurance, in relation to a particular date, means:

- (a) if the company was registered under the *Life Insurance Act 1995* at the end of the last accounting period of the company before that date—the total net liabilities in respect of all of the company's contracts of life insurance as at the end of that accounting period; or
- (b) in any other case—the total net liabilities in respect of all of the company's contracts of life insurance as at that date.

unearned premiums provision, in relation to a company, means so much of the total provision for liabilities made in its accounts as consists of provision for unearned premiums.

value of an asset of a company at a particular time means the amount that, if:

- (a) an accounting period of the company had ended at that time; and
- (b) the company had, under the *Financial Sector (Collection of Data) Act 2001*, given to APRA copies of financial statements for, or as at the end of, that accounting period; and
- (c) the financial statements had been prepared in accordance with applicable accounting principles;

would have been shown in those statements as the value of the asset at that time.

voting power has the meaning given by section 13.

5 What is contrary to the public interest

- (1) For the purposes of the application of this Act to an Australian-registered insurance company, a particular matter is taken to be contrary to the public interest if it is:

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- (a) likely to adversely affect the prudential conduct of the affairs of the company; or
 - (b) likely to result in an unsuitable person being in a position of influence over the company; or
 - (c) likely to unduly concentrate economic power in the Australian general insurance industry, in the Australian life insurance industry or in the Australian financial system; or
 - (d) contrary to the national interest.
- (2) For the purposes of this section, a person is taken to be an unsuitable person to be in a position of influence over a company if the person is not a fit and proper person to be in such a position of influence.
- (3) For the purposes of this section, a person is taken to be in a position of influence over a company if:
- (a) the person, either alone or together with one or more associates, is in a position to control 15% or more of the voting power in the company; or
 - (b) one or more directors of the company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person acting alone or of the person acting together with one or more associates; or
 - (c) the person has power, either acting alone or together with one or more associates, to appoint or remove a director of the company; or
 - (d) the person is a director of the company; or
 - (e) the person takes part in the management of the company.

6 Entering into an agreement or arrangement

- (1) For the purposes of this Act, a person is taken to have proposed to enter into an agreement or arrangement if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in this Act to entering into an agreement or arrangement includes a reference to altering or varying an agreement or arrangement.

- (3) A reference in this Act to entering into an arrangement is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
- (a) entering into an agreement; or
 - (b) creating a trust, whether express or implied; or
 - (c) entering into a transaction;
- and a reference in this Act to an arrangement is to be construed accordingly.
- (4) A reference in this Act to an arrangement does not include a reference to a moneylending agreement.

7 Associates

- (1) For the purposes of this Act, the following persons are associates of a person:
- (a) a relative of the person;
 - (b) a partner of the person;
 - (c) a corporation of which the person is an officer;
 - (d) if the person is a company—an officer of the company;
 - (e) an employee or employer of the person;
 - (f) an officer of a company of which the person is an officer;
 - (g) an employee of a natural person of whom the person is an employee;
 - (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subsection benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;
 - (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;
 - (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;

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- (k) a company in which the person has, apart from this paragraph, an associate-inclusive control interest of not less than 15%;
 - (l) a person who is, because of this subsection, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (in this subsection called the *first person*) enters, or proposes to enter, into an arrangement with another person (in this subsection called the *second person*) that relates to any of the following matters:
- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;
 - (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
 - (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together;
- then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of this Act in relation to the matter concerned.

8 Proposals to acquire shares or assets

- (1) For the purposes of this Act, a person is taken to propose to acquire shares or assets if the person:
- (a) makes an offer to acquire the shares or assets; or
 - (b) makes or publishes a statement (however expressed) that expressly or impliedly invites a holder of the shares or assets to offer to dispose of the shares or assets; or
 - (c) takes part in, or proposes to take part in, negotiations with a view to the acquisition of the shares or assets.
- (2) A reference in this section to an asset includes a reference to any or all of the interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is the insurer.

9 Meaning of *entitled to acquire*

For the purposes of this Act, a person is entitled to acquire anything if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

10 Meaning of *interest in an asset*

- (1) Subject to this section, a person holds an interest in an asset if the person has any legal or equitable interest in the asset.
- (2) Without limiting the generality of subsection (1), a person is taken to hold an interest in an asset if:
 - (a) the person has entered into a contract to purchase the asset; or
 - (b) the person has a right (otherwise than because of having an interest under a trust) to have the asset transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (c) the person has a right to acquire the asset, or an interest in the asset, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (d) the person is otherwise entitled to acquire the asset or an interest in the asset.
- (3) A person is taken to hold an interest in an asset even if the person holds the interest in the asset jointly with another person.
- (4) For the purposes of this Act, an interest in an asset must be disregarded if it is held by a person whose ordinary business includes the lending of money and the person holds the interest solely by way of security for the purposes of a moneylending agreement.
- (5) An interest in an asset is not to be disregarded only because of:
 - (a) its remoteness; or
 - (b) the manner in which it arose; or

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- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

11 Meaning of *interest in a share*

- (1) Subject to this section, a person holds an interest in a share if the person has any legal or equitable interest in the share.
- (2) Without limiting the generality of subsection (1), a person is taken to hold an interest in a share if:
 - (a) the person has entered into a contract to purchase the share; or
 - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
 - (d) the person is otherwise entitled to acquire the share or an interest in the share; or
 - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) A person is taken to hold an interest in a share even if the person holds the interest in the share jointly with another person.
- (4) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (5) An interest in a share is not to be disregarded only because of:
 - (a) its remoteness; or
 - (b) the manner in which it arose; or

- (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

12 Certain interests in shares to be disregarded

For the purposes of this Act, the following interests must be disregarded:

- (a) an interest in a share of a person whose ordinary business includes the lending of money if the person holds the interest solely by way of security for the purposes of a moneylending agreement;
- (b) an interest in a share of a person, being an interest held by the person because the person holds a prescribed office;
- (c) an interest of a prescribed kind in a share, being an interest of such person as is prescribed.

13 Voting power

- (1) A reference in this Act to the voting power in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (a) the making of distributions of capital or profits of the company to its shareholders;
 - (b) the constituent document of the company;
 - (c) any variation of the share capital of the company.
- (2) A reference in this Act to control of the voting power in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
 - (a) whether or not having legal or equitable force; and
 - (b) whether or not based on legal or equitable rights.
- (3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this section.
- (4) If a company:
 - (a) is limited both by shares and by guarantee; or

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(b) does not have a share capital;
this section has effect as if the members or policy holders of the company were shareholders in the company.

14 Associate-inclusive control interest in a company

- (1) A particular type of associate-inclusive control interest that a person holds in a company at a particular time is the aggregate of:
 - (a) the direct control interests in the company of that type that the person holds at that time; and
 - (b) the direct control interests in the company of that type held at that time by associates of the person.
- (2) In calculating the associate-inclusive control interest that a person holds in a company, a direct control interest held because of subsection 15(5) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).

15 Direct control interests in a company

- (1) A person holds a direct control interest in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.
- (2) A person also holds a direct control interest in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.
- (3) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.
- (4) A person also holds a direct control interest in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.
- (5) If:

- (a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subsection) in a company (in this subsection called the *first level company*); and
- (b) the first level company holds the same type of direct control interest in another company (in this subsection called the *second level company*);

the person is taken to hold that type of direct control interest in the second level company equal to the percentage calculated using the formula:

First level percentage \times Second level percentage

where:

First level percentage means the percentage of the direct control interest held by the person in the first level company.

Second level percentage means the percentage of the direct control interest held by the first level company in the second level company.

16 Power to appoint director

- (1) A reference in this Act to a power to appoint a director includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of this Act, a person is taken to have the power to appoint a director if:
 - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
 - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

17 Deemed notices—options

For the purposes of this Act, if a person gives a notice to the Minister stating that the person has or proposes to acquire an option to acquire shares or assets, the notice has effect as if it

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included a statement that the person proposes to acquire the shares or assets.

18 Application of Act

- (1) This Act extends to all the external Territories.
- (2) This Act extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.
- (3) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (4) The Crown in a capacity covered by subsection (3) is not liable to be prosecuted for an offence against, or arising out of, this Act.

19 Severability

- (1) If this Act would be wholly or partly invalid apart from this subsection, this Act has effect as if each reference in this Act to an Australian-registered insurance company were, by express provision, confined to an Australian-registered insurance company that:
 - (a) carries on as its sole or principal business the business of insurance; or
 - (b) carries on as its principal business the business of banking; or
 - (c) is a financial or trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
 - (d) is a foreign corporation (within the meaning of paragraph 51(xx) of the Constitution); or
 - (e) is incorporated in a Territory.

Part 3—Control of acquisition or leasing of assets of Australian-registered insurance companies

Division 1—Interpretation

35 Interpretation

In this Part:

breach of condition offence means an offence against subsection 41(3).

conditional go-ahead decision means a go-ahead decision that is subject to conditions.

divestment order means an order under section 44.

go-ahead decision means a decision under subsection 41(1).

permanent restraining order means an order under section 43.

trigger proposal has the meaning given by section 36.

36 Meaning of *trigger proposal*—proposals to acquire or lease assets of Australian-registered insurance companies

If any of the following paragraphs applies:

- (a) both of the following conditions are satisfied:
 - (i) one or more persons propose to acquire assets of an Australian-registered insurance company under a non-arm's length transaction;
 - (ii) the sum of:
 - (A) the value of the assets proposed to be acquired;
 - and

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- (B) the total value of any assets of the company acquired by the persons or their associates under non-arm's length transactions in the 12-month period before the date of the proposed acquisition;
is 15% or more of the total book value of the assets of the company as at that date;
- (b) both of the following conditions are satisfied:
 - (i) one or more persons propose to enter into a non-arm's length arrangement relating to the leasing or letting on hire of, or the granting of other rights to use, assets of an Australian-registered insurance company;
 - (ii) the sum of:
 - (A) the value of the assets concerned; and
 - (B) if the persons or their associates have entered into one or more non-arm's length arrangements relating to the leasing or letting on hire of, or the granting of other rights to use, assets of the company, being arrangements entered into in the 12-month period before the date when the proposed arrangement referred to in subparagraph (i) will be entered into—the total value of those assets;
is 15% or more of the total book value of the assets of the company as at that date;
- (c) all of the following conditions are satisfied:
 - (i) one or more persons propose to acquire any or all of the interests, rights or benefits of an Australian-registered insurance company under one or more contracts of life insurance where the company is the insurer;
 - (ii) the company is registered under the *Life Insurance Act 1995*;
 - (iii) the sum of:
 - (A) the total net liabilities in respect of those contracts; and
 - (B) if the persons or their associates have acquired any or all of the interests, rights or benefits of the company under one or more contracts of life insurance where the company is the insurer, being acquisitions that occurred in the

12-month period before the date of the proposed acquisition referred to in subparagraph (i)—the total net liabilities in respect of those contracts;

is 15% or more of the total book net liabilities in respect of all of the company's contracts of life insurance as at that date;

(d) all of the following conditions are satisfied:

- (i) one or more persons propose to acquire any or all of the interests, rights or benefits of an Australian-registered insurance company under one or more contracts of insurance where the company is the insurer;
- (ii) the company is authorised under the *Insurance Act 1973* to carry on insurance business;
- (iii) the sum of:
 - (A) any reduction in the company's unearned premiums provision resulting from the acquisition; and
 - (B) if the persons or their associates have acquired any or all of the interests, rights or benefits of the company under one or more contracts of insurance where the company is the insurer, being acquisitions that occurred in the 12-month period before the date of the proposed acquisition referred to in subparagraph (i)—the total of any reductions in the company's unearned premiums provision resulting from those acquisitions;

is 15% or more of the company's book unearned premiums provision as at that date;

(e) all of the following conditions are satisfied:

- (i) one or more persons propose to acquire any or all of the interests, rights or benefits of an Australian-registered insurance company under one or more contracts of insurance where the company is the insurer;
- (ii) the company is authorised under the *Insurance Act 1973* to carry on insurance business;
- (iii) the sum of:

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- (A) any reduction in the company's outstanding claims provision resulting from the acquisition; and
 - (B) if the persons or their associates have acquired any or all of the interests, rights or benefits of the company under one or more contracts of insurance where the company is the insurer, being acquisitions that occurred in the 12-month period before the date of the proposed acquisition referred to in subparagraph (i)—the total of any reductions in the company's outstanding claims provision resulting from those acquisitions; is 15% or more of the company's book outstanding claims provision as at that date;
- the proposal is a trigger proposal for the purposes of this Part.

37 When trigger proposal carried out

For the purposes of this Part, if one or more persons:

- (a) acquire assets as mentioned in paragraph 36(a); or
- (b) enter into an arrangement as mentioned in paragraph 36(b); or
- (c) acquire interests, rights or benefits as mentioned in paragraph 36(c), (d) or (e);

the person is, or each of the persons are, taken to have carried out a trigger proposal.

Division 2—Notification

38 Compulsory notification of trigger proposal

If:

- (a) a person carries out a trigger proposal; and
- (b) the person did not, before the acquisition or before entering into the arrangement, as the case may be, give to the Minister a notice in the prescribed form stating the person's intention to acquire the assets, interests, rights or benefits or to enter into the arrangement, as the case requires; and
- (c) either:
 - (i) the person knew that the proposal concerned was a trigger proposal; or
 - (ii) the person had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether it was a trigger proposal;

the person is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

40 Trigger proposal must not be carried out before a go-ahead decision is given

If:

- (a) a person carries out a trigger proposal; and
- (b) the Minister did not give a go-ahead decision in relation to the proposal before the relevant acquisition occurred or the relevant arrangement was entered into;

the person commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of

Part 3 Control of acquisition or leasing of assets of Australian-registered insurance companies

Division 2 Notification

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that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

Division 3—Go-ahead decisions

41 Unconditional or conditional go-ahead decision

- (1) The Minister may make a decision (in this Part called a *go-ahead decision*) that the Commonwealth Government has no objection to a trigger proposal, either:
 - (a) unconditionally; or
 - (b) so long as the person concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.
- (2) If the Minister makes a go-ahead decision, the person must be given written advice of the decision, and of the conditions (if any) applicable to the decision, before the end of 10 days after the day on which the decision is made.
- (3) If:
 - (a) the person is given written advice of the go-ahead decision within the period of 10 days; and
 - (b) the person carries out the proposal; and
 - (c) the decision is subject to conditions; and
 - (d) the person does not comply with the conditions;the person is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.
- (4) If the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister is not empowered to make a permanent restraining order in relation to the trigger proposal.

Division 4—Permanent restraining orders and divestment orders

43 Permanent restraining order

If the Minister is satisfied that the result of a trigger proposal would be contrary to the public interest, the Minister may make an order (in this Part called a *permanent restraining order*) prohibiting the proposed acquisition or prohibiting the entering into of the proposed arrangement, as the case may be, to which the trigger proposal relates.

44 Divestment order

- (1) If:
- (a) a person carries out a trigger proposal; and
 - (b) the Minister is satisfied that the acquisition or arrangement is contrary to the public interest;
- the Minister may, for remedial purposes, make an order (in this Part called a *divestment order*):
- (c) in a case involving the acquisition of assets, interests, rights or benefits—directing a person acquiring the assets, interests, rights or benefits to dispose of those assets, interests, rights or benefits within a specified time to a person, or to any of the persons, approved in writing by the Minister; or
 - (d) in any case—directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind.
- (2) Before the end of the time specified in a divestment order applicable to a person (including that time as extended under this subsection), the Minister may, by notice in writing served on the person, vary the order by extending or further extending that time.
- (3) The Minister must not refuse to approve a person for the purposes of subsection (1) unless the Minister is satisfied that it would be contrary to the public interest for that person to acquire the assets, interests, rights or benefits concerned.
- (4) If:

- (a) a person is given written advice of a go-ahead decision before the end of 10 days after the day on which the decision is made; and
 - (b) the person carries out the proposal concerned;
- the Minister must not make a divestment order in relation to the proposal unless:
- (c) the person is convicted of a breach of condition offence in relation to the acquisition or arrangement; or
 - (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person in respect of a breach of condition offence in relation to the acquisition or arrangement.

45 Offence of contravening permanent restraining order or divestment order

A person who contravenes a permanent restraining order or divestment order is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

46 Publication of orders

A permanent restraining order or divestment order under this Part is to be in writing signed by the Minister and has no effect unless it is published in the *Gazette* within 10 days after the day on which it is made.

47 When orders come into operation

- (1) A permanent restraining order comes into operation on the day on which it is published in the *Gazette*.
- (2) A divestment order comes into operation on such date as is specified in the order, being a date not earlier than 30 days after the date of publication of the order in the *Gazette*.

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Division 4 Permanent restraining orders and divestment orders

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48 Revocation of orders

- (1) The Minister may, at any time, by notice published in the *Gazette*, revoke a permanent restraining order or a divestment order.
- (2) The Minister must not revoke a permanent restraining order or divestment order if the Minister is satisfied that it would be contrary to the public interest to do so.

Part 4—Control of agreements relating to the directorate of Australian-registered insurance companies

Division 1—Interpretation

49 Interpretation

In this Part:

breach of condition offence means an offence against subsection 55(3).

conditional go-ahead decision means a go-ahead decision that is subject to conditions.

divestment order means an order under section 58.

go-ahead decision means a decision under subsection 55(1).

permanent restraining order means an order under section 57.

trigger proposal has the meaning given by section 50.

50 Meaning of *trigger proposal*—agreements relating to the directorate of Australian-registered insurance companies

If:

- (a) either of the following subparagraphs applies:
 - (i) one or more persons propose to enter into an agreement in relation to an Australian-registered insurance company;
 - (ii) it is proposed to alter a constituent document of an Australian-registered insurance company; and
- (b) under the proposed agreement or in consequence of the proposed alteration:
 - (i) one or more directors of the Australian-registered insurance company will be accustomed or under an obligation, whether formal or informal, to act in

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accordance with the directions, instructions or wishes of:

- (A) a person whose associate-inclusive control interest in the company is 15% or more, being a person acting alone or together with one or more associates; or
 - (B) an associate of such a person; or
- (ii) either:
- (A) a person whose associate-inclusive control interest in the company is 15% or more, being a person acting alone or together with one or more associates; or
 - (B) an associate of such a person;
- will have the power to appoint or remove one or more directors of the Australian-registered insurance company;

the proposal is a trigger proposal for the purposes of this Part.

51 When trigger proposal carried out

For the purposes of this Part, if:

- (a) either of the following subparagraphs applies:
 - (i) one or more persons enter into an agreement in relation to an Australian-registered insurance company;
 - (ii) a constituent document of an Australian-registered insurance company is altered; and
- (b) the agreement or alteration has an effect mentioned in paragraph 50(b);

the following provisions have effect:

- (c) if subparagraph (a)(i) applies—each of the persons is taken to have carried out a trigger proposal;
- (d) if subparagraph (a)(ii) applies—the company is taken to have carried out a trigger proposal.

Division 2—Notification

52 Compulsory notification of trigger proposal

If:

- (a) a person or company carries out a trigger proposal; and
- (b) if subparagraph 51(a)(i) applies—the person did not, before entering into the agreement, give to the Minister a notice in the prescribed form stating the person’s intention to enter into the agreement; and
- (c) if subparagraph 51(a)(ii) applies—the company did not, before the alteration, give to the Minister a notice in the prescribed form stating the proposal to make the alteration; and
- (d) either:
 - (i) the person or company knew that the proposal concerned was a trigger proposal; or
 - (ii) the person or company had reasonable grounds to suspect that the proposal concerned was a trigger proposal but did not make all reasonable efforts to ascertain whether it was a trigger proposal;

the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

54 Trigger proposal must not be carried out before a go-ahead decision is given

If:

- (a) a person or company carries out a trigger proposal; and
- (b) the Minister did not give a go-ahead decision in relation to the proposal before the relevant agreement was entered into or the relevant alteration to the company’s constituent document was made, as the case may be;

Part 4 Control of agreements relating to the directorate of Australian-registered insurance companies

Division 2 Notification

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the person or company commits an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

Division 3—Go-ahead decisions

55 Unconditional or conditional go-ahead decision

- (1) The Minister may make a decision (in this Part called a *go-ahead decision*) that the Commonwealth Government has no objection to a trigger proposal, either:
 - (a) unconditionally; or
 - (b) so long as the person or company concerned complies with such conditions as the Minister considers are necessary in order that the proposal, if carried out, will not be contrary to the public interest.
- (2) If the Minister makes a go-ahead decision, the person or company must be given written advice of the decision, and of the conditions (if any) applicable to the decision, before the end of 10 days after the day on which the decision is made.
- (3) If:
 - (a) the person or company is given written advice of the go-ahead decision within the period of 10 days; and
 - (b) the person or company carries out the proposal; and
 - (c) the decision is subject to conditions; and
 - (d) the person or company does not comply with the conditions;the person or company is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.
- (4) If the Minister makes a go-ahead decision in relation to a trigger proposal, the Minister is not empowered to make a permanent restraining order in relation to the trigger proposal.

Division 4—Permanent restraining orders and divestment orders

57 Permanent restraining order

If the Minister is satisfied that the result of a trigger proposal would be contrary to the public interest, the Minister may make an order (in this Part called a *permanent restraining order*) prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be, to which the trigger proposal relates.

58 Divestment order

- (1) If:
 - (a) a person or company carries out a trigger proposal; and
 - (b) the Minister is satisfied that the agreement or alteration is contrary to the public interest;the Minister may, for remedial purposes, make an order (in this Part called a *divestment order*) directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind.
- (2) Before the end of the time specified in a divestment order applicable to a person (including that time as extended under this subsection), the Minister may, by notice in writing served on the person, vary the order by extending or further extending that time.
- (3) If:
 - (a) a person or company is given written advice of a go-ahead decision before the end of 10 days after the day on which the decision is made; and
 - (b) the person or company carries out the proposal concerned; the Minister must not make a divestment order in relation to the proposal unless:
 - (c) the person or company is convicted of a breach of condition offence in relation to the agreement or alteration; or

- (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person or company in respect of a breach of condition offence in relation to the agreement or alteration.

59 Offence of contravening permanent restraining order or divestment order

A person who contravenes a permanent restraining order or divestment order is guilty of an offence punishable on conviction by imprisonment for a period not exceeding 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

60 Publication of orders

A permanent restraining order or divestment order under this Part is to be in writing signed by the Minister and has no effect unless it is published in the *Gazette* within 10 days after the day on which it is made.

61 When orders come into operation

- (1) A permanent restraining order comes into operation on the day on which it is published in the *Gazette*.
- (2) A divestment order comes into operation on such date as is specified in the order, being a date not earlier than 30 days after the date of publication of the order in the *Gazette*.

62 Revocation of orders

- (1) The Minister may, at any time, by notice published in the *Gazette*, revoke a permanent restraining order or a divestment order.
- (2) The Minister must not revoke a permanent restraining order or divestment order if the Minister is satisfied that it would be contrary to the public interest to do so.

Part 5—Judicial enforcement of Ministerial orders

63 Federal Court may enforce Ministerial orders

- (1) If a person (in this section called the *offender*) has contravened an order made under Part 3 or 4, the Federal Court may make such order or orders as it thinks fit to achieve the purpose for which the order was made by the Minister.
- (2) The Federal Court's order:
 - (a) may only be made on the application of the Minister; and
 - (b) may be made whether or not the contravention by the offender continues; and
 - (c) may be made even if other proceedings in respect of that contravention have been or are to be instituted.
- (3) The Federal Court's orders include, but are not limited to:
 - (a) an order restraining the exercise of any rights attached to shares or assets held by the offender; or
 - (b) an order prohibiting or deferring the payment of any sums due to the offender in respect of shares or assets held by the offender; or
 - (c) an order directing the disposal of shares or assets held by the offender; or
 - (d) an order that any exercise of rights attached to shares or assets held by the offender be disregarded; or
 - (e) an order prohibiting a person from acting as a director of an Australian-registered insurance company or from being involved in the management of an Australian-registered insurance company; or
 - (f) an order directing an Australian-registered insurance company to make such alterations of any of its constituent documents as are specified in the order.
- (4) In addition to the powers conferred on the Federal Court by the preceding provisions of this section, the Court:
 - (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order

directing any person to do or refrain from doing a specified act; and

- (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.
- (5) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (6) The Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.
- (7) A reference in this section to an asset includes a reference to any or all of the interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is or was the insurer.

Part 6—Anti-avoidance

64 Anti-avoidance

- (1) If:
- (a) one or more persons enter into, commence to carry out, or carry out a scheme; and
 - (b) it would be concluded that the person, or any of the persons, who entered into, commenced to carry out, or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to any person or persons (whether or not a person or persons who entered into, commenced to carry out, or carried out the scheme or any part of the scheme); and
 - (c) the scheme or part of the scheme has achieved, or apart from this section, would achieve, that purpose;

the Minister may make any order under a provision of Part 3 or 4 that the Minister would have been able to make if the scheme or the part of the scheme had not achieved that purpose.

- (2) This section applies to a scheme entered into after 6 June 1991.
- (3) This section does not authorise the making of an order prohibiting a person from doing anything that has already been done by the person before the order is made.

- (4) In this section:

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Part 7—Decision-making principles

65 Decision-making principles

- (1) The Minister may, by legislative instrument, formulate principles (in this section called *decision-making principles*) to be complied with by him or her in making decisions under Part 3 or 4 (other than section 42 or 56).
- (2) In making a decision under Part 3 or 4 (other than section 42 or 56), the Minister must comply with any relevant decision-making principles.

Part 8—Review of decisions

66 Reconsideration of reviewable decision

- (1) A person who is affected by a reviewable decision may, if dissatisfied with the decision, by notice given to the Minister within:
 - (a) the period of 21 days after the day on which the decision first comes to the notice of the person; or
 - (b) such further period as the Minister allows;request the Minister to reconsider the decision.
- (2) The reasons for making the request must be set out in the request.
- (3) Upon receipt of the request, the Minister must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as the Minister thinks fit.
- (4) If the Minister does not confirm, revoke or vary a decision before the end of the period of 21 days after the day on which the Minister received the request under subsection (1) to reconsider the decision, the Minister is taken, at the end of that period, to have confirmed the decision under subsection (3).
- (5) If the Minister confirms, revokes or varies a decision before the end of the period referred to in subsection (4), the Minister must, by notice served on the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be.

67 Review of decisions by Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister that have been confirmed or varied under subsection 66(3).
- (2) If, because of the operation of subsection 66(4), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application

for review of the decision were the period commencing on the day on which the decision is taken to have been confirmed and ending on the 28th day after that day.

- (3) If a request is made under subsection 66(1) in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.
- (5) A non-presidential member of the Administrative Appeals Tribunal must not sit as a member of the Administrative Appeals Tribunal for the purposes of a review of a reviewable decision, or for the purposes of a request under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of such a decision, if he or she is a director or employee of a company or body carrying on (whether in Australia or elsewhere) life insurance business or insurance business.
- (6) An order must not be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of a reviewable decision except by the Administrative Appeals Tribunal.
- (7) The hearing of a proceeding relating to a reviewable decision must take place in private and the Administrative Appeals Tribunal may, by order:
 - (a) give directions as to the persons who may be present; and
 - (b) give directions of a kind referred to in paragraph 35(2)(b) or
 - (c) of the *Administrative Appeals Tribunal Act 1975*.

68 Statements to accompany notification of decisions

- (1) If written notice is given to a person affected by a reviewable decision that the reviewable decision has been made, that notice must include a statement to the effect that:
 - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with subsection 66(1); and
 - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Minister upon that reconsideration confirming or varying the

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first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

- (2) If the Minister confirms or varies a reviewable decision under subsection 66(3) and gives to the person written notice of the confirmation or variation of the decision, that notice must include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to comply with this section does not affect the validity of a decision.

Part 9—Miscellaneous

69 Delegation

The Minister may, by signed instrument, delegate any or all of the Minister's powers under this Act (other than Part 7) to:

- (a) APRA; or
- (aa) an APRA member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*, or
- (b) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

70 Concurrent operation of State/Territory laws

It is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

71 Validity of acts done in contravention of this Act

An act is not invalidated by the fact that it constitutes an offence against this Act.

72 Minister's consent for criminal proceedings

Proceedings for an offence against, or arising out of, this Act must not be instituted without the written consent of the Minister.

73 Minister may obtain information and documents

- (1) If the Minister has reason to believe that a person is capable of giving information or producing documents about matters that are relevant to the exercise by the Minister of his or her powers under this Act, the Minister may, by notice in writing served on that person, require that person:
 - (a) to give any such information to the Minister within the time and in the manner specified in the notice; or
 - (b) to produce any such documents to the Minister within the time and in the manner specified in the notice; or

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- (c) to make copies of any such documents and to produce those copies to the Minister within the time and in the manner specified in the notice.
- (2) A notice under subsection (1) must set out the effects of subsections (5) and (9) of this section and sections 137.1 and 137.2 of the *Criminal Code*.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required to give information or produce documents under this section.
- (4) A person is entitled to be paid by the Commonwealth reasonable compensation for complying with a requirement covered by paragraph (1)(c).
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a notice under subsection (1).

Penalty: Imprisonment for 6 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by a court on an individual convicted of the same offence.

- (9) A person is not excused from giving information or producing a document or a copy of a document under this section on the ground that the information or the production of the document or copy might tend to incriminate the person, but:
 - (a) giving the information or producing the document or copy; or
 - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;is not admissible in evidence against the person in any criminal proceedings other than a prosecution for an offence against this section or an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.
- (10) The Minister may inspect a document or copy produced under this section and may make and retain copies of, or take and retain extracts from, such a document or copy.

- (11) The Minister may retain a copy of a document produced in accordance with a requirement covered by paragraph (1)(c).
- (12) The Minister may, for the purposes of this Act, take, and retain for as long as is necessary for those purposes, a document produced under this section.
- (13) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Minister to be a true copy.
- (14) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (15) Until a certified copy is supplied, the Minister must, at such times and places as the Minister thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

75 APRA Act secrecy provisions apply

Section 56 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

76 Conduct by directors, servants and agents

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a company in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, servant or agent of the company within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a company by a director, servant or agent of the company within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the company unless the company establishes that the company took reasonable precautions and exercised due diligence to avoid the conduct.

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- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a company in relation to particular conduct, it is sufficient to show that:
- (a) the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a company (in this subsection called the *employer*) by a servant or agent of the employer within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the employer unless the employer establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
- (a) a person other than a company is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a company includes a reference to a constituent member of a company incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to an offence arising out of this Act.

- (10) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against this Act.

77 Company's financial statements to be prima facie evidence of value of its assets

- (1) This section applies if:
- (a) a company authorised under the *Insurance Act 1973* to carry on insurance business, or a company registered under the *Life Insurance Act 1995*, had, under the *Financial Sector (Collection of Data) Act 2001*, given to APRA copies of financial statements for, or as at the end of, a particular accounting period; and
 - (b) an amount is shown in those statements as the value of an asset of the company as at the end of the accounting period.
- (2) For the purposes of this Act, the financial statements are prima facie evidence of the value of the asset as at the end of the accounting period.
- (3) APRA may certify that a document is a copy of the financial statements.
- (4) This section applies to the certified copy as if it were the original.

78 Company's financial statements to be prima facie evidence of total net liabilities in respect of its contracts of life insurance

- (1) This section applies if:
- (a) a company registered under the *Life Insurance Act 1995* had, under the *Financial Sector (Collection of Data) Act 2001*, given to APRA copies of financial statements for, or as at the end of, a particular accounting period; and
 - (b) an amount is shown in those statements as the total net liabilities in respect of all of the company's contracts of life insurance as at the end of the accounting period.
- (2) For the purposes of this Act, the financial statements are prima facie evidence of the total net liabilities in respect of all of the company's contracts of life insurance as at the end of the accounting period.

Section 79

- (3) APRA may certify that a document is a copy of the financial statements.
- (4) This section applies to the certified copy as if it were the original.

79 Company's financial statements to be prima facie evidence of its unearned premiums provision and its outstanding claims provision

- (1) This section applies if:
 - (a) a company authorised under the *Insurance Act 1973* to carry on insurance business had, under the *Financial Sector (Collection of Data) Act 2001*, given to APRA copies of financial statements for, or as at the end of, a particular accounting period; and
 - (b) either:
 - (i) an amount is shown in those statements as the company's unearned premiums provision as at the end of the accounting period; or
 - (ii) an amount is shown in those statements as the company's outstanding claims provision as at the end of the accounting period.
- (2) For the purposes of this Act, the financial statements are prima facie evidence of:
 - (a) if subparagraph (1)(b)(i) applies—the company's unearned premiums provision as at the end of the accounting period; or
 - (b) if subparagraph (1)(b)(ii) applies—the company's outstanding claims provision as at the end of the accounting period.
- (3) APRA may certify that a document is a copy of the financial statements.
- (4) This section applies to the certified copy as if it were the original.

80 Foreign Acquisitions and Takeovers Act 1975 and this Act to operate independently of each other

- (1) This Act and the *Foreign Acquisitions and Takeovers Act 1975* operate independently of each other.

- (2) In particular, a decision under either Act that the Commonwealth Government has no objection to a proposal has effect only for the purposes of the Act concerned.

81 Transitional—pre-commencement acquisitions etc.

- (1) This section has effect subject to Part 6 (which deals with anti-avoidance).
- (3) Part 3 does not apply in relation to:
- (a) an acquisition of assets that occurred before the commencement of this Act; or
 - (b) an acquisition of interests, rights or benefits of an Australian-registered insurance company under a contract of insurance where the company is the insurer, being an acquisition that occurred before the commencement of this Act; or
 - (c) an arrangement relating to the leasing or letting on hire of, or the granting of other rights to use, assets of an Australian-registered insurance company that was entered into before the commencement of this Act.
- (4) Part 4 does not apply in relation to:
- (a) an agreement in relation to an Australian-registered insurance company that was entered into before the commencement of this Act; or
 - (b) an alteration of a constituent document of an Australian-registered insurance company that occurred before the commencement of this Act.

82 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may exempt specified proposals, acquisitions, arrangements or transactions from the operation of any or all of the provisions of Parts 3 and 4.

Part 10—Consequential amendments

83 Consequential amendments

The Act specified in the Schedule is amended as set out in the Schedule.

Schedule—Consequential amendments

Section 83

Note:

The amendments made by this Schedule are incorporated in the compilations on ComLaw.

Insurance Act 1973

For access to the wording of the amendments made by this Schedule, *see* Act No. 6, 1992.

Table of Acts**Notes to the *Insurance Acquisitions and Takeovers Act 1991*****Note 1**

The *Insurance Acquisitions and Takeovers Act 1991* as shown in this compilation comprises Act No. 6, 1992 amended as indicated in the Tables below.

For all 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>Insurance Acquisitions and Takeovers Act 1991</i>	6, 1992	6 Jan 1992	15 Mar 1992 (see <i>Gazette</i> 1992, No. S72)	
<i>Life Insurance (Consequential Amendments and Repeals) Act 1995</i>	5, 1995	23 Feb 1995	1 July 1995 (see s. 2 and <i>Gazette</i> 1995, No. GN24)	—
<i>Financial Laws Amendment Act 1997</i>	107, 1997	30 June 1997	Schedule 6: Royal Assent (a)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i>	54, 1998	29 June 1998	Schedule 8: 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (b)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1-3 and Schedule 1 (items 1, 4, 6, 7, 9-11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001</i>	31, 2001	28 Apr 2001	Schedule 1 (item 29): 15 Dec 2001 (c)	—
<i>General Insurance Reform Act 2001</i>	119, 2001	19 Sept 2001	Schedules 1 and 3: 1 July 2002 Remainder: Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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. 2 (item 160)
<i>Financial Sector Legislation Amendment Act (No. 1) 2002</i>	37, 2002	26 June 2002	Schedule 5: 27 June 2002 (<i>d</i>)	—
<i>Australian Prudential Regulation Authority Amendment Act 2003</i>	42, 2003	24 June 2003	Ss. 1–3: Royal Assent Remainder: 1 July 2003 (see s. 2(1) and <i>Gazette</i> 2003, No. S230)	Sch. 3
<i>Administrative Appeals Tribunal Amendment Act 2005</i>	38, 2005	1 Apr 2005	Schedule 1 (item 218): 16 May 2005	—
<i>Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007</i>	154, 2007	24 Sept 2007	Schedule 4 (items 41, 42): Royal Assent	—

Act Notes

- (a) The *Insurance Acquisitions and Takeovers Act 1991* was amended by Schedule 6 only of the *Financial Laws Amendment Act 1997*, 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.
- (b) The *Insurance Acquisitions and Takeovers Act 1991* was amended by Schedule 8 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsection 2(2)(f) of which provides as follows:
- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (f) Schedule 8;
- (c) The *Insurance Acquisitions and Takeovers Act 1991* was amended by Schedule 1 (item 29) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001*, subsection 2(4) of which provides as follows:
- (4) The remaining items of Schedule 1 to this Act commence on the day specified in subsection 2.2(2) of the *Criminal Code*.
- (d) The *Insurance Acquisitions and Takeovers Act 1991* was amended by Schedule 5 only of the *Financial Sector Legislation Amendment Act (No. 1) 2002*, subsection 2(1) (item 5) 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
5. Schedules 5 to 9	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
Title	am. No. 54, 1998
Part 1	
S. 3.....	am. No. 54, 1998; No. 37, 2002
S. 4	am. No. 5, 1995; No. 54, 1998; Nos. 119 and 121, 2001; No. 37, 2002
S. 19.....	am. No. 54, 1998
Part 2.....	rep. No. 54, 1998
Ss. 20–23	rep. No. 54, 1998
S. 24	am. No. 107, 1997 rep. No. 54, 1998
Note to s. 24	ad. No. 107, 1997 rep. No. 54, 1998
S. 25	rep. No. 54, 1998
S. 26	am. No. 107, 1997 rep. No. 54, 1998
Note to s. 26	ad. No. 107, 1997 rep. No. 54, 1998
S. 27	am. No. 107, 1997 rep. No. 54, 1998
Note to s. 27	ad. No. 107, 1997 rep. No. 54, 1998
Ss. 28–30	rep. No. 54, 1998
S. 31	am. No. 107, 1997 rep. No. 54, 1998
Note to s. 31	ad. No. 107, 1997 rep. No. 54, 1998
Ss. 32–34	rep. No. 54, 1998
Part 3	
Division 1	
S. 35	am. No. 37, 2002
S. 36	am. No. 5, 1995
Division 2	
Heading to Div. 2 of Part 3	rs. No. 37, 2002
S. 38	am. No. 107, 1997
Note to s. 38	ad. No. 107, 1997
S. 39	rep. No. 37, 2002
S. 40	am. No. 107, 1997 rs. No. 37, 2002
Note to s. 40	ad. No. 107, 1997 rs. No. 37, 2002

Table of Amendments

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

Provision affected	How affected
Division 3	
S. 41	am. No. 107, 1997; No. 37, 2002
Note to s. 41	ad. No. 107, 1997
Division 4	
Heading to Div. 4 of Part 3	rs. No. 37, 2002
S. 42	rep. No. 37, 2002
Heading to s. 45	am. No. 37, 2002
S. 45	am. No. 107, 1997; No. 37, 2002
Note to s. 45	ad. No. 107, 1997
Ss. 46–48	am. No. 37, 2002
Part 4	
Division 1	
S. 49	am. No. 37, 2002
Division 2	
Heading to Div. 2 of Part 4	rs. No. 37, 2002
S. 52	am. No. 107, 1997
Note to s. 52	ad. No. 107, 1997
S. 53	rep. No. 37, 2002
S. 54	am. No. 107, 1997 rs. No. 37, 2002
Note to s. 54	ad. No. 107, 1997 rs. No. 37, 2002
Division 3	
S. 55	am. No. 107, 1997; No. 37, 2002
Note to s. 55	ad. No. 107, 1997
Division 4	
Heading to Div. 4 of Part 4	rs. No. 37, 2002
S. 56	rep. No. 37, 2002
Heading to s. 59	am. No. 37, 2002
S. 59	am. No. 107, 1997; No. 37, 2002
Note to s. 59	ad. No. 107, 1997
Ss. 60–62	am. No. 37, 2002
Part 5	
S. 63	am. No. 54, 1998
Part 6	
S. 64	am. No. 54, 1998
Part 7	
S. 65	am. No. 54, 1998; No. 154, 2007
Part 8	
S. 67	am. No. 38, 2005
Part 9	
S. 69	am. No. 54, 1998; No. 42, 2003

Table of Amendments

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

Provision affected	How affected
S. 73	am. No. 107, 1997; No. 137, 2000
Note to s. 73	ad. No. 107, 1997
S. 74	am. No. 107, 1997; No. 54, 1998 rep. No. 137, 2000
Note to s. 74	ad. No. 107, 1997 rep. No. 137, 2000
S. 75	am. No. 5, 1995 rs. No. 107, 1997; No. 54, 1998
S. 76	am. No. 31, 2001
Heading to s. 77	am. No. 5, 1995
S. 77	am. No. 5, 1995; No. 54, 1998 rs. No. 121, 2001
Heading to s. 78	am. No. 5, 1995 rs. No. 121, 2001
S. 78	am. No. 5, 1995; No. 54, 1998 rs. No. 121, 2001
S. 79.....	am. No. 54, 1998 rs. No. 121, 2001
Ss. 81, 82.....	am. No. 54, 1998

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

Table A

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

Schedule 2

160 Application

The amendments made by items 158 and 159 apply to financial sector entities (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) that are companies authorised under the *Insurance Act 1973* to carry on insurance business, or companies registered under the *Life Insurance Act 1995*, only on and after the day on which the reporting standards determined under section 13 of the *Financial Sector (Collection of Data) Act 2001* begin to apply under section 15 of that Act to the financial sector entities concerned.

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.

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.

Table A

- (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.

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.