



Financial Sector (Business Transfer and Group Restructure) Act 1999

Act No. 45 of 1999 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

Contents

Part 1—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Additional operation of Act.....	1
4 Definitions.....	1
5 Act binds the Crown.....	5
6 External Territories.....	5
7 Application of <i>Criminal Code</i>	5
7A Application of sections 8 and 8A of the APRA Act.....	5
Part 2—Overview of Act	6
8 Overview of Act.....	6
Part 3—Voluntary transfers	8
Division 1—Outline of Part	8
9 Outline of Part.....	8
Division 2—Approval of voluntary transfers	9
10 Application for approval of voluntary transfer.....	9
11 Approval of applications.....	9
12 Consultation about approving the application.....	10
13 Adequate adoption.....	11
14 Complementary State or Territory legislation.....	11
15 Minister’s power to decide that his or her consent is not required.....	12
16 Approval may impose conditions.....	12
17 Notice of decision.....	13
Division 3—Process by which voluntary transfers take effect	14
18 Certificate of transfer.....	14
19 Partial transfer—statement of detail to be provided.....	15
20 Agreements about matters connected with the transfer.....	15
21 Notice of decision.....	15
22 Time and effect of voluntary transfer.....	15
23 Employment unaffected.....	18
Part 4—Compulsory transfers	19
Division 1—Outline of Part	19
24 Outline of Part.....	19
Division 2—Compulsory transfer determinations	20
25 Compulsory transfer determinations.....	20
26 Consultation about making the determination.....	22

27	When consent of receiving body is in force.....	22
28	Complementary State or Territory legislation	23
29	Minister's power to decide that his or her consent is not required.....	24
30	Agreements about matters connected with the transfer	24
31	Determination may impose conditions	24
32	Notice of determination	25
Division 3—Process by which compulsory transfers take effect		26
33	Certificate of transfer.....	26
34	Notice of certificate	27
35	Time and effect of compulsory transfer.....	27
36	Employment unaffected.....	29
Part 4A—Restructures		31
Division 1—Outline of Part		31
36A	Outline of Part	31
Division 2—Restructure approvals		32
36B	Restructure approvals—application.....	32
36C	Restructure approvals—issued by Minister	32
36D	Restructure approvals—consultation.....	33
36E	Restructure approvals—conditions.....	33
36F	Restructure approvals—notice of decision	34
Division 3—Restructure instruments		35
36G	What is a <i>restructure instrument</i> ?.....	35
36H	Restructure instruments—coming into force	35
36J	Restructure instruments—legal effect	36
36K	Restructure instruments—amendment.....	36
Division 4—Internal transfer certificates		37
36L	What is an <i>internal transfer certificate</i> ?	37
36M	Internal transfer certificates—issue	37
36N	Internal transfer certificates—notice of decision	38
36P	Internal transfer certificates—amendment.....	38
36Q	Internal transfer certificates—coming into force	40
36R	Internal transfer certificates—legal effect	41
Division 5—Engagements of employees and contractors		42
36S	Employment and contracts for services unaffected	42
Part 5—Evidentiary certificates		43
37	Certificates evidencing operation of Act etc.....	43
38	Certificates in relation to land and interests in land.....	43
39	Certificates in relation to other assets	44
40	Documents purporting to be certificates	44

Part 6—Miscellaneous	45
41 Information gathering powers.....	45
42 Compulsory transfer—APRA may provide information to receiving body	46
43 Relationship of Act with other laws etc.....	46
44 Compensation for acquisition of property	48
45 Review of decisions.....	48
46 Transfer rules.....	49
47 Regulations.....	49
Notes	51

An Act to provide for transfers of business between some kinds of financial institutions, and to make provision in relation to internal restructures within some groups of financial institutions

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

2 Commencement [see Note 1]

This Act commences on the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

3 Additional operation of Act

Without prejudice to its effect apart from this section, this Act also has the effect it would have if each reference to a body corporate were, by express provision, confined to a body corporate that is a corporation to which paragraph 51(xx) of the Constitution applies.

4 Definitions

- (1) In this Act, the following words and expressions have the meanings set out below:

ADI (authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

approved section 20 statement means a statement given to APRA under subsection 20(1) in relation to which an approval under subsection 20(2) is in force.

approved section 30 statement means a statement given to APRA under subsection 30(1) in relation to which an approval under subsection 30(2) is in force.

Section 4

APRA means the Australian Prudential Regulation Authority.

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

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

asset means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any CGT asset within the meaning of the *Income Tax Assessment Act 1997*.

authorised APRA officer, when used in a particular provision of this Act, means a person authorised under subsection (2) to perform or exercise the functions or powers of an authorised APRA officer under that provision.

business in relation to a body, includes the assets and liabilities of the body.

certificate of transfer:

- (a) in relation to a voluntary transfer—means a certificate issued under section 18; and
- (b) in relation to a compulsory transfer—means a certificate issued under section 33.

compulsory transfer determination means a determination made under section 25.

established—a body is established in a State or Territory if:

- (a) it is registered under the *Corporations Act 2001* and is taken, under section 119A or subsection 1378(4) of that Act, to be registered in that State or Territory; or
- (b) it is established by or under a law of that State or Territory.

general insurer has the meaning given by the *Insurance Act 1973*.

holding company, of a body corporate, means another body corporate of which the first body corporate is a subsidiary.

instrument includes a document and an oral agreement.

interest, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land.

internal transfer certificate has the meaning given by section 36L.

liability includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

life insurance company means a body corporate that is registered under the *Life Insurance Act 1995*.

NOHC is short for non-operating holding company.

non-operating holding company, of a body corporate, has the same meaning as in the *Banking Act 1959*.

operating body has the meaning given by section 36B.

partial transfer has the meaning given by subsection 8(2).

receiving body means:

- (a) in relation to a transfer of business under Part 3 or 4—a body corporate to which another body corporate is to transfer, or has transferred, business under that Part; or
- (b) in relation to an internal transfer certificate (see section 36L)—a body corporate to which another body corporate is to transfer, or has transferred, assets or liabilities under the certificate.

regulated body means a body corporate that is:

- (a) an ADI; or
- (b) a life insurance company.

regulated business, in relation to a regulated body, means:

- (a) for a body that is an ADI—the body's banking business (within the meaning of the *Banking Act 1959*); or

Section 4

- (b) for a body that is a life insurance company—the body’s life insurance business (within the meaning of the *Life Insurance Act 1995*).

regulatory legislation, in relation to a regulated body, means:

- (a) for a body that is an ADI—the *Banking Act 1959*, including any regulations or other instruments made under that Act, or conditions imposed under that Act; or
- (b) for a body that is a life insurance company—the *Life Insurance Act 1995*, including any regulations or other instruments made under that Act, or conditions imposed under that Act.

related—a body corporate is **related** to another body corporate if:

- (a) the first body is a holding company of the other body; or
- (b) the first body is a subsidiary of the other body; or
- (c) the first body is a subsidiary of a holding company of the other body.

restructure approval has the meaning given by section 36B.

restructure arrangement has the meaning given by section 36B.

restructure instrument has the meaning given by section 36G.

statement of detail, in relation to a partial transfer, means a statement that satisfies the requirements of section 19.

subsidiary, of a body corporate, means a body corporate that is a subsidiary of the first body by virtue of Division 6 of Part 1.2 of the *Corporations Act 2001*.

total transfer has the meaning given by subsection 8(3).

transferred asset, in relation to a receiving body, means an asset that has become, under this Act, an asset of the receiving body.

transferred liability, in relation to a receiving body, means a liability that has become, under this Act, a liability of the receiving body.

transferring body means:

- (a) in relation to a transfer of business under Part 3 or 4—a body corporate that is to transfer, or that has transferred, business under that Part; or
- (b) in relation to an internal transfer certificate (see section 36L)—a body corporate that is to transfer, or that has transferred, assets or liabilities under the certificate.

transfer rules means rules in force under section 46.

voluntary transfer approval means an instrument of approval under section 11.

- (2) APRA may, in writing, authorise a person who is an APRA member, or an APRA staff member, to perform or exercise the functions or powers of an authorised APRA officer under a particular provision of this Act.

5 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.

6 External Territories

This Act extends to every external Territory.

7 Application of *Criminal Code*

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

7A Application of sections 8 and 8A of the APRA Act

To avoid doubt, sections 8 and 8A of the *Australian Prudential Regulation Authority Act 1998* (which deal with APRA's objectives and trans-Tasman cooperation respectively) apply to the performance of functions and the exercise of powers by APRA under this Act.

Part 2—Overview of Act

8 Overview of Act

(1) This Act provides for 2 kinds of transfers of business of regulated bodies:

- (a) *voluntary transfers* (these are transfers under Part 3); and
- (b) *compulsory transfers* (these are transfers under Part 4).

Either kind of transfer may be a partial transfer or a total transfer.

(2) A transfer of business of a regulated body is a *partial transfer* if it relates to some, but not all, of the transferring body's business (including any business that is not regulated business). It cannot however relate only to business that is not regulated business.

(3) A transfer of business of a regulated body is a *total transfer* if it relates to all of the transferring body's business (including any business that is not regulated business).

(4) For a voluntary transfer of business to take effect, APRA must:

- (a) receive an application for the transfer from the regulated bodies concerned (the *transferring body* and the *receiving body*); and
- (b) approve the application in writing (the *voluntary transfer approval*); and
- (c) issue a certificate (the *certificate of transfer*) stating that the transfer is to take effect.

The transfer of business takes effect when the certificate of transfer comes into force.

(5) For a compulsory transfer of business to take effect, APRA must:

- (a) make a determination (the *compulsory transfer determination*) that there is to be a transfer of business between the regulated bodies concerned (the *transferring body* and the *receiving body*); and
- (b) issue a certificate (the *certificate of transfer*) stating that the transfer is to take effect.

The transfer of business takes effect when the certificate of transfer comes into force.

- (6) Business of regulated bodies may also be transferred otherwise than under this Act, for example in accordance with section 63 of the *Banking Act 1959* or Part 9 of the *Life Insurance Act 1995*.
- (7) Part 4A deals with proposals by ADI, general insurer or life insurance company groups to restructure the group (under Part 5.1 of the *Corporations Act 2001*).

Note: For an overview of Part 4A, see section 36A.

Part 3—Voluntary transfers

Division 1—Outline of Part

9 Outline of Part

- (1) For a voluntary transfer of business to take effect, APRA must:
 - (a) receive an application for the transfer from the regulated bodies concerned (the *transferring body* and the *receiving body*) (see section 10); and
 - (b) approve the application in writing (the *voluntary transfer approval*) (see section 11); and
 - (c) issue a certificate (the *certificate of transfer*) stating that the transfer is to take effect (see section 18).
- (2) APRA must make the voluntary transfer approval if specified criteria are met (see section 11).
- (3) The voluntary transfer approval may impose conditions to be complied with by the transferring body or the receiving body either before or after the certificate of transfer is issued (see section 16).
- (4) APRA may only issue the certificate of transfer if specified criteria are met. The certificate must specify when it comes into force (see section 18).
- (5) The transfer of business takes effect when the certificate of transfer comes into force (see section 22).

Division 2—Approval of voluntary transfers

10 Application for approval of voluntary transfer

- (1) 2 regulated bodies of the same kind may apply in writing to APRA for approval of a transfer of business from one of the bodies to the other body. The transfer cannot relate only to business of the transferring body that is not regulated business.
- (2) The application must be in the form prescribed by the transfer rules and must contain or be accompanied by the information required by the transfer rules.

Note: APRA may impose a charge in respect of the application—see section 51 of the *Australian Prudential Regulation Authority Act 1998*.

- (3) For the purposes of this section, 2 regulated bodies are of the same kind if:
 - (a) they are both ADIs; or
 - (b) they are both life insurance companies.

11 Approval of applications

- (1) Subject to subsection (2), APRA must, in writing (the ***voluntary transfer approval***), approve a transfer of business if APRA considers that:
 - (a) application for approval of the transfer has been made in accordance with section 10; and
 - (b) the transfer has been adequately adopted (see section 13) by:
 - (i) the transferring body; and
 - (ii) the receiving body; and
 - (c) the transfer should be approved, having regard to:
 - (i) the interests of the depositors or policy owners of the transferring body when viewed as a group; and
 - (ii) the interests of the depositors or policy owners of the receiving body when viewed as a group; and
 - (iii) the interests of the financial sector as a whole; and
 - (iv) any other matters that APRA considers relevant; and

Section 12

- (d) legislation to facilitate the transfer that satisfies the requirements of section 14 has been enacted in the State or Territory in which the transferring body is established and the State or Territory in which the receiving body is established; and
- (e) either:
 - (i) the Minister has consented to the transfer; or
 - (ii) the Minister's consent to the transfer is not required (see section 15).
- (2) APRA must not approve the transfer of business if it considers that the transfer should not be approved, having regard to provisions of another Act:
 - (a) that are prescribed for the purposes of subsection 43(4); or
 - (b) referred to in subsection 43(5), (6), (7) or (8).
- (3) The voluntary transfer approval must be signed by an authorised APRA officer.

12 Consultation about approving the application

- (1) In deciding whether to approve the transfer of business, APRA may consult with any or all of the following:
 - (a) officers or employees of the States and Territories;
 - (b) the Reserve Bank of Australia;
 - (c) any other person or body that APRA considers should be consulted.
- (2) Subject to subsections (3) and (4), in deciding whether to approve the transfer of business, APRA must consult with:
 - (a) the Australian Competition and Consumer Commission; and
 - (b) the Australian Securities and Investments Commission; and
 - (c) the Commissioner of Taxation.
- (3) APRA does not have to consult with the Australian Competition and Consumer Commission in relation to the transfer of business if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
 - (a) the transfer; or
 - (b) a class of transfers that includes the transfer.

- (4) APRA does not have to consult with the Australian Securities and Investments Commission in relation to the transfer of business if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
 - (a) the transfer; or
 - (b) a class of transfers that includes the transfer.

- (5) APRA does not have to consult with the Commissioner of Taxation in relation to the transfer of business if the Commissioner has notified APRA, in writing, that he or she does not wish to be consulted about:
 - (a) the transfer; or
 - (b) a class of transfers that includes the transfer.

13 Adequate adoption

For the purposes of paragraph 11(1)(b), the transfer of business has been *adequately adopted* by a body if:

- (a) the transfer has been adopted by or on behalf of the body, or by or on behalf of the members or a class of the members of the body, in a way prescribed by the transfer rules; and
- (b) APRA considers that adoption of the transfer in that way adequately takes into account the interests of members of the body.

14 Complementary State or Territory legislation

State or Territory legislation referred to in paragraph 11(1)(d) must include provision to ensure that, when a certificate of transfer comes into force under Division 3, the receiving body is taken to be the successor in law to the transferring body, to the extent of the transfer. In particular, the legislation must provide that:

- (a) assets of the transferring body vest in the receiving body, to the extent of the transfer; and
- (b) liabilities of the transferring body become liabilities of the receiving body, to the extent of the transfer; and
- (c) the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body, to the extent of the transfer; and

Section 15

- (d) if there is an approved section 20 statement in relation to the transfer that specifies:
 - (i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with the statement; or
 - (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

15 Minister’s power to decide that his or her consent is not required

The Minister’s consent to the transfer of business (see paragraph 11(1)(e)) is not required if the Minister has, in writing, determined that his or her consent is not required in relation to:

- (a) the transfer; or
- (b) a class of transfers that includes the transfer.

16 Approval may impose conditions

- (1) The voluntary transfer approval may impose conditions of either or both of the following kinds:
 - (a) conditions to be complied with by the transferring body or the receiving body before a certificate of transfer is issued in relation to the transfer of business;
 - (b) conditions to be complied with by the transferring body or the receiving body after a certificate of transfer has been issued or has come into force in relation to the transfer of business.
- Note 1: Failure to comply with a condition referred to in paragraph (a) will mean that a certificate of transfer cannot be issued (see subsection 18(1)).
- Note 2: Failure to comply with a condition referred to in paragraph (b) will not prevent the issue of a certificate of transfer, but will be an offence under subsection (4).
- (2) The transferring body or the receiving body may apply in writing to APRA to have a condition that applies to it varied or revoked.
 - (3) APRA may, by notice in writing given to the body that made the application, approve the variation or revocation if it is satisfied that

the variation or revocation is appropriate. A variation or revocation that is approved by APRA has effect accordingly.

- (4) The transferring body or the receiving body is guilty of an offence if:
- (a) a condition of a kind referred to in paragraph (1)(b) applies to that body; and
 - (b) that body fails to comply with the condition.

Maximum penalty for contravention of this subsection: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

17 Notice of decision

- (1) If APRA approves the transfer of business, APRA must give a copy of the voluntary transfer approval to the transferring body and the receiving body.
- (2) If APRA refuses to approve the transfer of business, APRA must give written notice of the refusal to the transferring body and the receiving body. The notice must include a statement of the reasons why the approval was refused.

Division 3—Process by which voluntary transfers take effect

18 Certificate of transfer

(1) If APRA:

- (a) has made a voluntary transfer approval; and
- (b) considers that all conditions of a kind referred to in paragraph 16(1)(a) that are imposed by the approval have been complied with; and
- (c) if the transfer is a partial transfer—has been given a statement of detail in relation to the partial transfer (see section 19); and
- (d) is not aware of any reason why the transfer should not go ahead;

APRA must, in writing, issue a certificate (a *certificate of transfer*) stating that the transfer is to take effect.

(2) The certificate must:

- (a) include the names of the transferring body and the receiving body; and
- (b) state whether the transfer is a total transfer or a partial transfer; and
- (c) if it is a partial transfer—include, or have attached to it:
 - (i) the statement of detail (see section 19); and
 - (ii) any approved section 20 statement; and
- (d) subject to subsection (3), state when the certificate is to come into force (either by specifying a date as the date it comes into force, or by specifying that the date it comes into force is a date worked out in accordance with provisions of the certificate); and
- (e) be signed by an authorised APRA officer.

(3) APRA must, in deciding when the certificate is to come into force, take into account the wishes of the transferring body and the receiving body.

(4) The certificate comes into force in accordance with the statement included in the certificate as required by paragraph (2)(d).

19 Partial transfer—statement of detail to be provided

If the transfer is a partial transfer, before APRA issues a certificate of transfer in relation to the transfer, APRA must be provided with a written statement:

- (a) that lists, in detail, the assets and liabilities of the transferring body that are to be transferred to the receiving body; and
- (b) that APRA is satisfied has been agreed to by the transferring body and the receiving body.

20 Agreements about matters connected with the transfer

- (1) The transferring body or the receiving body, or both of those bodies, may provide APRA with a written statement specifying, or specifying a mechanism for determining, things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected.

Note: If the transfer is a partial transfer, the statement may be included with the statement of detail under section 19.

- (2) APRA may, in writing, approve the statement before issuing the certificate of transfer if APRA is satisfied that:
 - (a) the statement has been agreed to by the transferring body and the receiving body; and
 - (b) the matters specified in the statement are appropriate.

21 Notice of decision

- (1) If APRA issues the certificate of transfer, APRA must give a copy of the certificate to the transferring body and the receiving body.
- (2) If APRA refuses to issue the certificate of transfer, APRA must give written notice of the refusal to the transferring body and the receiving body. The notice must include a statement of the reasons why the certificate was not issued.

22 Time and effect of voluntary transfer

- (1) When the certificate of transfer comes into force, the receiving body becomes the successor in law of the transferring body, to the extent of the transfer. In particular:

Part 3 Voluntary transfers

Division 3 Process by which voluntary transfers take effect

Section 22

- (a) if the transfer is a total transfer—all the assets and liabilities of the transferring body, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (b) if the transfer is a partial transfer—all the assets and liabilities of the transferring body that are included in the list of assets and liabilities specified in the statement of detail, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer conveyance or assignment; and
 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.
- (2) If there is an approved section 20 statement in relation to the transfer, then:
- (a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with the statement; and
 - (b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.
- (3) Subject to subsection (2), if:
- (a) the transfer is a total transfer; and
 - (b) immediately before the certificate comes into force, proceedings (including arbitration proceedings) to which the transferring body was a party were pending or existing in any court or tribunal;

the receiving body is, on and after the day when the certificate comes into force, substituted for the transferring body as a party to the proceedings and has the same rights in the proceedings as the transferring body had.

Note: An alternative way of dealing with substitution of parties (which is available for total or partial transfers) is to deal with the matter in an approved section 20 statement (see subsection (2)).

- (4) Subject to subsection (2), if:
- (a) the transfer is a total transfer; and
 - (b) on the day when the certificate comes into force, documentary or other evidence would (disregarding the transfer) have been admissible for or against the interests of the transferring body;
- that evidence is admissible, on or at any time after that day, for or against the interests of the receiving body.

Note: An alternative way of dealing with admissibility of evidence (which is available for total or partial transfers) is to deal with the matter in an approved section 20 statement (see subsection (2)).

- (5) Subject to subsection (2), if the transfer is a total transfer, on and after the day when the certificate comes into force, each translated instrument continues to have effect, according to its tenor, as if a reference in the instrument to the transferring body were a reference to the receiving body. For this purpose:

translated instrument means an instrument (including an Act or other legislative instrument) subsisting immediately before the day when the certificate comes into force:

- (a) to which the transferring body is a party; or
- (b) that was given to, by or in favour of, the transferring body; or
- (c) that refers to the transferring body; or
- (d) under which money is, or may become, payable, or other property is, or may become, liable to be transferred, to or by the transferring body.

Note: An alternative way of dealing with references in instruments (which is available for total or partial transfers) is to deal with the matter in an approved section 20 statement (see subsection (2)).

- (6) Subject to subsection (2), on and after the day when the certificate comes into force, a place that, immediately before that day, was a place of business for the transferring body in relation to business that was transferred to the receiving body is taken to be a place of business for the receiving body.

Note: An alternative way of dealing with places of business is to deal with the matter in an approved section 20 statement (see subsection (2)).

Part 3 Voluntary transfers

Division 3 Process by which voluntary transfers take effect

Section 23

23 Employment unaffected

- (1) This section applies to every person who, immediately before the day when the certificate of transfer comes into force, was performing duty in the transferring body.
- (2) The terms and conditions of employment (including any accrued entitlement to employment benefits) of each person to whom this section applies are not affected by the operation or effect of this Part or of any State or Territory legislation referred to in paragraph 11(1)(d).

Part 4—Compulsory transfers

Division 1—Outline of Part

24 Outline of Part

- (1) For a compulsory transfer of business to take effect, APRA must:
 - (a) make a determination (the *compulsory transfer determination*) that there is to be a transfer of business between the regulated bodies concerned (the *transferring body* and the *receiving body*) (see section 25); and
 - (b) issue a certificate (the *certificate of transfer*) stating that the transfer is to take effect (see section 33).
- (2) APRA may only make the compulsory transfer determination if specified criteria are met (including that APRA is satisfied that the board of directors of the receiving body has consented to the transfer) (see section 25).
- (3) The compulsory transfer determination may impose conditions to be complied with by the transferring body or the receiving body either before or after the certificate of transfer is issued (see section 31).
- (4) APRA may only issue the certificate of transfer if specified criteria are met. The certificate must specify when it comes into force (see section 33).
- (5) The transfer of business takes effect when the certificate of transfer comes into force (see section 35).

Division 2—Compulsory transfer determinations

25 Compulsory transfer determinations

- (1) APRA may, in writing, make a determination (the *compulsory transfer determination*) that there is to be a transfer of business from one regulated body to another regulated body. The transfer cannot relate only to business of the transferring body that is not regulated business.
- (2) APRA may only make the determination if:
 - (a) APRA is satisfied that:
 - (i) the transferring body has contravened a provision of its regulatory legislation; or
 - (ii) if the transferring body is an ADI—the body has informed APRA under subsection 13(3) of the *Banking Act 1959* that it considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment; or
 - (iii) if the transferring body is an ADI—APRA has appointed a person, under subsection 13A(1) of the *Banking Act 1959*, to investigate the affairs of the body, or to take control of the body's business; or
 - (iv) if the transferring body is an ADI—APRA has appointed an administrator, under subsection 13A(1) of the *Banking Act 1959*, to take control of the body's business; or
 - (v) if the transferring body is an ADI—APRA has appointed a person to investigate and report on prudential matters in relation to the body under subsection 61(1) of the *Banking Act 1959*; or
 - (vi) if the transferring body is a life insurance company—APRA has given the body a written notice under subsection 139(1) of the *Life Insurance Act 1995* stating that APRA proposes to investigate life insurance business of the body; or
 - (vii) if the transferring body is a life insurance company—a judicial manager of the body has recommended, in accordance with subsection 175(2) of the *Life Insurance*

Act 1995, that a compulsory transfer determination be made in relation to the body; and

- (b) APRA has considered the interests of depositors or policy owners of the transferring body (when viewed as a group) and considers that, having regard to their interests, it would be appropriate for the transfer to be made; and
 - (c) APRA is satisfied that the transferring body and the receiving body are regulated bodies of the same kind; and
 - (d) APRA is satisfied that the board of directors of the receiving body has consented to the transfer; and
 - (e) APRA is satisfied that the transfer is appropriate, having regard to:
 - (i) the interests of depositors or policy owners of the receiving body when viewed as a group; and
 - (ii) the interests of the financial sector as a whole; and
 - (iii) any other matters that APRA considers relevant; and
 - (f) APRA is satisfied that legislation to facilitate the transfer that satisfies the requirements of section 28 has been enacted in the State or Territory in which the transferring body is established and the State or Territory in which the receiving body is established; and
 - (g) either:
 - (i) the Minister has consented to the transfer; or
 - (ii) the Minister's consent to the transfer is not required (see section 29).
- (3) The determination must include particulars of the transfer, including:
- (a) the names of the transferring body and the receiving body; and
 - (b) whether it will be a total transfer or a partial transfer; and
 - (c) if it will be a partial transfer—an identification of the part of the transferring body's business that is to be transferred.
- (4) The determination must include a statement of the reasons why the determination has been made.
- (5) The determination must be signed by an authorised APRA officer.

Section 26

- (6) For the purposes of this section, 2 regulated bodies are of the same kind if:
- (a) they are both ADIs; or
 - (b) they are both life insurance companies.

26 Consultation about making the determination

- (1) In deciding whether to make the compulsory transfer determination, APRA may consult with any or all of the following:
- (a) officers or employees of the States and Territories;
 - (b) the Reserve Bank of Australia;
 - (c) any other person or body that APRA considers should be consulted.
- (2) Subject to subsections (3) and (4), in deciding whether to make the compulsory transfer determination, APRA must consult with:
- (a) the Australian Competition and Consumer Commission; and
 - (b) the Australian Securities and Investments Commission.
- (3) APRA does not have to consult with the Australian Competition and Consumer Commission in relation to the making of the compulsory transfer determination if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
- (a) the transfer concerned; or
 - (b) a class of transfers that includes that transfer.
- (4) APRA does not have to consult with the Australian Securities and Investments Commission in relation to the making of the compulsory transfer determination if the Commission has notified APRA, in writing, that it does not wish to be consulted about:
- (a) the transfer concerned; or
 - (b) a class of transfers that includes that transfer.

27 When consent of receiving body is in force

- (1) The consent referred to in paragraph 25(2)(d) remains in force until it is withdrawn by the receiving body's board of directors with the agreement of APRA.

- (2) APRA may agree to the consent being withdrawn if APRA considers it appropriate to allow the consent to be withdrawn having regard to:
- (a) circumstances that have arisen since the consent was given; or
 - (b) circumstances that were in existence at or before the time when the consent was given but which were not known to the receiving body's board when it gave its consent; or
 - (c) any other relevant matter.

28 Complementary State or Territory legislation

State or Territory legislation referred to in paragraph 25(2)(f) must include provision to ensure that, when a certificate of transfer comes into force under Division 3, the receiving body is taken to be the successor in law to the transferring body, to the extent of the transfer. In particular, the legislation must provide that:

- (a) assets of the transferring body vest in the receiving body, to the extent of the transfer; and
- (b) liabilities of the transferring body become liabilities of the receiving body, to the extent of the transfer; and
- (c) the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body, to the extent of the transfer; and
- (d) if the certificate of transfer includes provisions of a kind referred to in subsection 33(3) specifying:
 - (i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with those provisions; or
 - (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism; and
- (e) if there is an approved section 30 statement in relation to the transfer that specifies:
 - (i) that particular things are to happen or are taken to be the case—those things are taken to happen, or to be the case, in accordance with the statement; or

Section 29

- (ii) a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

29 Minister’s power to decide that his or her consent is not required

The Minister’s consent to the transfer of business (see paragraph 25(2)(g)) is not required if the Minister has, in writing, determined that his or her consent is not required in relation to:

- (a) the transfer; or
- (b) a class of transfers that includes the transfer.

30 Agreements about matters connected with the transfer

- (1) The transferring body or the receiving body, or both of those bodies, may provide APRA with a written statement specifying, or specifying a mechanism for determining, things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected.
- (2) APRA may, in writing, approve the statement before issuing the certificate of transfer if APRA is satisfied that:
 - (a) the statement has been agreed to by the transferring body and the receiving body; and
 - (b) the matters specified in the statement are appropriate.

31 Determination may impose conditions

- (1) The compulsory transfer determination may impose conditions of either or both of the following kinds:
 - (a) conditions to be complied with by the transferring body or the receiving body before a certificate of transfer is issued in relation to the transfer of business;
 - (b) conditions to be complied with by the transferring body or the receiving body after a certificate of transfer has been issued or has come into force in relation to the transfer of business.

Note: Failure to comply with a condition referred to in paragraph (a) or (b) will not prevent the issue of a certificate of transfer, but will be an offence under subsection (4).

- (2) The transferring body or the receiving body may apply in writing to APRA to have a condition of a kind referred to in paragraph (1)(b) that applies to it varied or revoked.
- (3) APRA may, by notice in writing given to the body that made the application, approve the variation or revocation if it is satisfied that the variation or revocation is appropriate. A variation or revocation that is approved by APRA has effect accordingly.
- (4) The transferring body or the receiving body is guilty of an offence if:
 - (a) a condition of a kind referred to in paragraph (1)(a) or (b) applies to that body; and
 - (b) that body fails to comply with the condition.

Maximum penalty for contravention of this subsection: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

32 Notice of determination

APRA must give a copy of the compulsory transfer determination to the transferring body and the receiving body.

Division 3—Process by which compulsory transfers take effect

33 Certificate of transfer

(1) If:

- (a) APRA has made a compulsory transfer determination; and
- (b) APRA considers that the transfer should go ahead; and
- (c) the consent referred to in paragraph 25(2)(d) is still in force (see section 27);

APRA must, in writing, issue a certificate (a *certificate of transfer*) stating that the transfer is to take effect.

(2) The certificate must:

- (a) include the names of the transferring body and the receiving body; and
 - (b) state whether the transfer is a total transfer or a partial transfer; and
 - (c) if it is a partial transfer—include, or have attached to it:
 - (i) a list of the assets and liabilities of the transferring body that are being transferred to the receiving body; and
 - (ii) any approved section 30 statement; and
 - (d) state when the certificate is to come into force (either by specifying a date as the date it comes into force, or by specifying that the date it comes into force is a date worked out in accordance with provisions of the certificate); and
 - (e) be signed by an authorised APRA officer.
- (3) The certificate may include provisions specifying, or specifying a mechanism for determining, other things that are to happen, or that are taken to be the case, in relation to assets and liabilities that are to be transferred, or in relation to the transfer of business that is to be effected, whether the transfer is total or partial.
- (4) The certificate comes into force in accordance with the statement included in the certificate as required by paragraph (2)(d).

34 Notice of certificate

APRA must give a copy of the certificate of transfer to the transferring body and the receiving body.

35 Time and effect of compulsory transfer

- (1) When the certificate of transfer comes into force, the receiving body becomes the successor in law of the transferring body, to the extent of the transfer. In particular:
 - (a) if the transfer is a total transfer—all the assets and liabilities of the transferring body, wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer, conveyance or assignment; and
 - (b) if the transfer is a partial transfer—all the assets and liabilities of the transferring body that are included in the list referred to in paragraph 33(2)(c), wherever those assets and liabilities are located, become (respectively) assets and liabilities of the receiving body without any transfer conveyance or assignment; and
 - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.
- (2) If the certificate includes provisions of a kind referred to in subsection 33(3):
 - (a) if the provisions specify that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with those provisions; and
 - (b) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.
- (3) If there is an approved section 30 statement in relation to the transfer, then:
 - (a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this

Part 4 Compulsory transfers

Division 3 Process by which compulsory transfers take effect

Section 35

section, taken to happen, or to be the case, in accordance with the statement; and

- (b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.

- (4) Subject to subsections (2) and (3), if:

- (a) the transfer is a total transfer; and
- (b) immediately before the certificate comes into force, proceedings (including arbitration proceedings) to which the transferring body was a party were pending or existing in any court or tribunal;

the receiving body is, on and after the day when the certificate comes into force, substituted for the transferring body as a party to the proceedings and has the same rights in the proceedings as the transferring body had.

Note: Alternative ways of dealing with substitution of parties (which are available for total or partial transfers) are:

- (a) to deal with the matter in the certificate of transfer (see subsection (2)); or
- (b) to deal with the matter in an approved section 30 statement (see subsection (3)).

- (5) Subject to subsections (2) and (3), if:

- (a) the transfer is a total transfer; and
- (b) on the day when the certificate comes into force, documentary or other evidence would (disregarding the transfer) have been admissible for or against the interests of the transferring body;

that evidence is admissible, on or at any time after that day, for or against the interests of the receiving body.

Note: Alternative ways of dealing with admissibility of evidence (which are available for total or partial transfers) are:

- (a) to deal with the matter in the certificate of transfer (see subsection (2)); or
- (b) to deal with the matter in an approved section 30 statement (see subsection (3)).

- (6) Subject to subsections (2) and (3), if the transfer is a total transfer, on and after the day when the certificate comes into force, each translated instrument continues to have effect, according to its tenor, as if a reference in the instrument to the transferring body were a reference to the receiving body. For this purpose:

translated instrument means an instrument (including a legislative instrument other than this Act) subsisting immediately before the day when the certificate comes into force:

- (a) to which the transferring body is a party; or
- (b) that was given to, by or in favour of, the transferring body; or
- (c) that refers to the transferring body; or
- (d) under which money is, or may become, payable, or other property is, or may become, liable to be transferred, to or by the transferring body.

Note: Alternative ways of dealing with references in instruments (which are available for total or partial transfers) are:

- (a) to deal with the matter in the certificate of transfer (see subsection (2)); or
- (b) to deal with the matter in an approved section 30 statement (see subsection (3)).

- (7) Subject to subsections (2) and (3), on and after the day when the certificate comes into force, a place that, immediately before that day, was a place of business for the transferring body in relation to business that was transferred to the receiving body is taken to be a place of business for the receiving body.

Note: Alternative ways of dealing with places of business are:

- (a) to deal with the matter in the certificate of transfer (see subsection (2)); or
- (b) to deal with the matter in an approved section 30 statement (see subsection (3)).

36 Employment unaffected

- (1) This section applies to every person who, immediately before the day when the certificate of transfer comes into force, was performing duty in the transferring body.
- (2) The terms and conditions of employment (including any accrued entitlement to employment benefits) of each person to whom this section applies are not affected by the operation or effect of this

Part 4 Compulsory transfers

Division 3 Process by which compulsory transfers take effect

Section 36

Part or of any State or Territory legislation referred to in paragraph 25(2)(f).

Part 4A—Restructures

Division 1—Outline of Part

36A Outline of Part

- (1) This Part deals with proposals by an ADI, general insurer or life insurer (the *operating body*) for a restructure arrangement (under Part 5.1 of the *Corporations Act 2001*) that would make the operating body a subsidiary of a non-operating holding company (*NOHC*).
- (2) The operating body may apply (under section 36B) to the Minister for a restructure approval, including a restructure instrument (see section 36G).
- (3) A restructure instrument gives relief to the operating body, the *NOHC* and related bodies corporate (and some other persons) from certain requirements of the *Corporations Act 2001*, as specified in the instrument (see section 36G).
- (4) The Minister must issue the restructure approval if specified criteria are met (see section 36C). The approval may be issued subject to conditions (see section 36E).
- (5) After the Minister issues the restructure approval, APRA may issue internal transfer certificates for the purpose of giving effect to the restructure arrangement.
- (6) An internal transfer certificate enables the transfer of assets or liabilities (or both) between 2 bodies corporate (the *transferring body* and the *receiving body*) that are part of the company group (see section 36L).
- (7) The restructure instrument comes into force when the court order providing for the restructure comes into force, if any applicable conditions of the restructure approval have been satisfied (see sections 36E and 36H).
- (8) Any transfer provided for by an internal transfer certificate comes into force as specified in the certificate (see section 36Q).

Division 2—Restructure approvals

36B Restructure approvals—application

- (1) This section applies if:
 - (a) any of the following bodies (the *operating body*) proposes to enter into an arrangement (a *restructure arrangement*) to be approved by an order of the Court under subsection 411(4) of the *Corporations Act 2001*:
 - (i) an ADI;
 - (ii) a life insurance company;
 - (iii) a general insurer; and
 - (b) the arrangement would result in the operating body becoming a subsidiary of a NOHC.
- (2) The operating body may apply in writing to the Minister for an approval (the *restructure approval*):
 - (a) that includes a restructure instrument (see section 36G); and
 - (b) that authorises APRA to issue one or more internal transfer certificates under section 36M.
- (3) The application must be in the form prescribed by the transfer rules, and must contain or be accompanied by the information required by the transfer rules.
- (4) The operating body must give a copy of the application to APRA.

36C Restructure approvals—issued by Minister

- (1) The Minister must, in writing, issue a restructure approval if the Minister is satisfied that:
 - (a) application for the approval has been made by an operating body in accordance with section 36B; and
 - (b) the restructure arrangement would improve the operating body's ability to meet its prudential requirements; and
 - (c) the approval should be issued, having regard to:
 - (i) the interests of the depositors or policy owners of the operating body; and
 - (ii) the interests of the financial sector as a whole; and

- (iii) any other matters considered relevant.
- (2) The approval must include the following:
 - (a) a statement describing the restructure arrangement;
 - (b) the restructure instrument;
 - (c) any conditions imposed under section 36E.
- (3) The approval authorises APRA to issue one or more internal transfer certificates under section 36M.
- (4) In this section:

prudential requirements, in relation to an operating body, means requirements applying to the body under the following prudential standards determined by APRA:

- (a) if the body is an ADI—standards in force under section 11AF of the *Banking Act 1959*;
- (b) if the body is a life insurance company—standards in force under section 360A of the *Life Insurance Act 1995*;
- (c) if the body is a general insurer—standards in force under section 32 of the *Insurance Act 1973*.

36D Restructure approvals—consultation

In deciding whether to issue a restructure approval, the Minister may consult with any or all of the following:

- (a) APRA;
- (b) the Australian Securities and Investments Commission;
- (c) any other person or body the Minister considers should be consulted.

36E Restructure approvals—conditions

Imposition of conditions

- (1) A restructure approval may impose conditions of any of the following kinds, to be satisfied by the operating body or any related body corporate, or any body corporate that is to be a related body corporate pursuant to the arrangement (for example, the body that is to become the NOHC):
 - (a) conditions to be satisfied before the restructure instrument comes into force (see section 36H);

Section 36F

- (b) conditions to be satisfied before any transfer pursuant to an internal transfer certificate comes into force in respect of any particular asset or liability (see section 36Q).

Amendment or revocation of conditions

- (2) The operating body may apply in writing to the Minister to have a condition that applies to it (or any other body corporate) amended or revoked.
- (3) The Minister may, by notice in writing given to the operating body, approve the amendment or revocation if it is satisfied that the amendment or revocation is appropriate, having regard to the matters mentioned in paragraphs 36C(1)(b) and (c).
- (4) An amendment or revocation that is approved by the Minister has effect in accordance with the notice under subsection (3).

36F Restructure approvals—notice of decision

- (1) If the Minister issues a restructure approval, the Minister must give a copy of the approval to the operating body and to APRA.
- (2) If the Minister refuses to issue a restructure approval, the Minister must give written notice of the refusal to the operating body and to APRA. The notice must include a statement of the reasons why the approval was refused.

Division 3—Restructure instruments

36G What is a *restructure instrument*?

- (1) A *restructure instrument* included in a restructure approval is an instrument in relation to an operating body that gives relief (as mentioned in subsection (2)) to any or all of the following, as specified in the instrument:
 - (a) the NOHC that is the subject of the restructure approval;
 - (b) any body corporate related to that NOHC;
 - (c) if the instrument specifies a requirement in Division 1 of Part 2J.1 of the *Corporations Act 2001*—any other person involved in complying with the requirement.
- (2) The Minister may specify in the instrument:
 - (a) that the bodies and persons specified in the instrument are given relief from specified requirements of Division 1 of Part 2J.1, or Part 2J.2, of the *Corporations Act 2001*, in accordance with the instrument; and
 - (b) the extent (if any) to which the bodies specified in the instrument are given relief from the requirement in section 254T of that Act.

Note 1: Division 1 of Part 2J.1 of the *Corporations Act 2001* deals with restrictions in share capital. Part 2J.2 of that Act deals with self-acquisition and control of shares.

Note 2: Section 254T of that Act provides that dividends may only be paid out of the profits of a company.

Note 3: For the legal effect of the instrument, see section 36J.
- (3) A restructure instrument is not a legislative instrument.

36H Restructure instruments—coming into force

- (1) A restructure instrument comes into force only if:
 - (a) a court makes an order under subsection 411(4) of the *Corporations Act 2001* approving the restructure arrangement; and
 - (b) the arrangement (as ordered) is in accordance with the restructure approval; and

Section 36J

- (c) any conditions mentioned in paragraph 36E(1)(a) to which the restructure approval is subject have been satisfied by the time the court order comes into force.
- (2) A restructure instrument comes into force at the time the court order mentioned in subsection (1) comes into force.

36J Restructure instruments—legal effect

A restructure instrument gives relief, in accordance with the instrument, from the requirements of the *Corporations Act 2001* specified in the instrument.

Note: Section 36G specifies the requirements of the *Corporations Act 2001* that may be covered by the instrument.

36K Restructure instruments—amendment

- (1) This section applies if a restructure instrument in relation to an operating body has come into force.
- (2) The Minister may, by notice in writing to the operating body, amend the restructure instrument, if the Minister is satisfied that the amendment is necessary or desirable to take into account changes in the requirements of the *Corporations Act 2001* mentioned in the instrument.
- (3) The notice must include:
 - (a) a copy of the amended instrument; and
 - (b) a statement of the reasons why it is made; and
 - (c) a statement of when the amendment is to come into force.
- (4) The Minister must give a copy of the notice to APRA.
- (5) The amendment comes into force at the time stated in the notice.
- (6) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to any amendment or variation of the restructure instrument.

Division 4—Internal transfer certificates

36L What is an *internal transfer certificate*?

An *internal transfer certificate* is a certificate, issued by APRA under section 36M for the purpose of giving effect to a restructure arrangement described in a restructure approval, giving effect to the transfer of specified assets and liabilities between any 2 of the following bodies (including a transfer between any 2 subsidiaries of the NOHC):

- (a) the NOHC that is the subject of the restructure arrangement;
- (b) the operating body;
- (c) any other subsidiary of the NOHC.

Note: The assets or liabilities may be specified by reference to a class or classes of assets or liabilities—see subsection 33(3A) of the *Acts Interpretation Act 1901*.

36M Internal transfer certificates—issue

- (1) This section applies if the Minister issues a restructure approval.
- (2) APRA may, in writing, issue an internal transfer certificate if it is satisfied that the transfer is, and the terms of the transfer are, appropriate for the purpose of giving effect to the restructure arrangement (as described in the approval), having regard to:
 - (a) the application for the restructure approval; and
 - (b) any additional information given by the operating body; and
 - (c) the matters mentioned in paragraphs 36C(1)(b) and (c) (restructure approvals—issue).
- (3) The certificate must:
 - (a) include the names of the transferring body and the receiving body; and
 - (b) include a statement of all the assets and liabilities of the transferring body that are to be transferred to the receiving body; and
 - (c) if the certificate is to come into force (in any respect) after the restructure instrument comes into force (see section 36H)—state a time or a method for working out when

Section 36N

it comes into force in respect of each asset and liability to be transferred; and

(d) be signed by an authorised APRA officer.

- (4) APRA must, in deciding when the certificate is to come into force in respect of each asset and liability to be transferred, take into account the wishes of the transferring body and the receiving body.

Note 1: For when the certificate comes into force, see section 36Q.

Note 2: APRA may impose a charge in respect of the issue of the certificate—see section 51 of the *Australian Prudential Regulation Authority Act 1998*.

36N Internal transfer certificates—notice of decision

- (1) If APRA issues an internal transfer certificate, it must give a copy of the certificate to each of the following:
- (a) the transferring body;
 - (b) the receiving body;
 - (c) the operating body (unless the operating body is the transferring body or the receiving body);
 - (d) the Minister.
- (2) If APRA refuses to issue an internal transfer certificate applied for in the application for restructure approval, or decides to issue an internal transfer certificate in terms that are different from those applied for, it must give written notice to each person mentioned in subsection (1). The notice must include a statement of the reasons for the refusal, or for the decision.

36P Internal transfer certificates—amendment

- (1) This section applies if:
- (a) the Minister has issued a restructure approval to an operating body; and
 - (b) APRA has issued an internal transfer certificate for the purpose of giving effect to the restructure arrangement; and
 - (b) the restructure instrument issued with the approval has not yet come into force (see section 36H).

Application for amendment of certificate

- (2) The operating body may apply in writing to APRA for an amendment of the certificate.
- (3) An application may be made only for the following amendments:
 - (a) to change the nature (or amount) of the assets and liabilities to be transferred;
 - (b) to change the identity of the receiving body;
 - (c) to change the identity of the transferring body.
- (4) The application must be in the form prescribed by the transfer rules, and must contain or be accompanied by the information required by the transfer rules.

Note: APRA may impose a charge in respect of the application—see section 51 of the *Australian Prudential Regulation Authority Act 1998*.

Decision to amend certificate

- (5) APRA may, in writing, amend the certificate if it is satisfied that:
 - (a) the application has been made in accordance with subsections (2), (3) and (4); and
 - (b) the amendment is appropriate for the purpose of giving effect to the restructure arrangement, having regard to the matters mentioned in paragraphs 36C(1)(b) and (c) (restructure approvals—issue).

Notice of decision

- (6) If APRA amends a certificate under this section, it must give a copy of the amended certificate to each of the following:
 - (a) the transferring body;
 - (b) the receiving body;
 - (c) if the amendment changes the identity of the receiving body—the former receiving body;
 - (d) if the amendment changes the identity of the transferring body—the former transferring body;
 - (e) the operating body (unless the operating body is a body mentioned above);
 - (f) the Minister.

Section 36Q

- (7) If APRA refuses to amend a certificate, it must give written notice of the refusal to each person mentioned in subsection (6). The notice must include a statement of the reasons why the amendment was refused.

If certificate previously amended

- (8) For the purposes of this section, a reference to a certificate includes a reference to the certificate as amended under a previous application of this section.

36Q Internal transfer certificates—coming into force

Time for coming into force

- (1) An internal transfer certificate issued in accordance with a restructure approval comes into force, in respect of each asset and liability to be transferred:
- (a) at the time (the **restructure time**) the restructure instrument included in the approval comes into force (see section 36H); or
 - (b) if the certificate states that it is to come into force (in any respect) after the restructure time—at the earlier of the following times:
 - (i) the time stated in (or worked out under) the certificate for the asset or liability; or
 - (ii) the time that is 12 months after the restructure time; or
 - (c) at a time approved under this section.

Satisfaction of restructure approval conditions

- (2) However, an internal transfer certificate comes into force, in respect of any particular asset or liability to be transferred, only if any conditions mentioned in paragraph 36E(1)(b) to which the restructure approval is subject have been satisfied in relation to the transfer of that asset or liability before the time mentioned in subsection (1) in relation to that asset or liability.

Approval of a later time

- (3) On a written application by the transferring body and the receiving body, APRA may, in writing, approve a time later than the time

worked out under subsection (1) for the internal transfer certificate to come into force in respect of any specified asset or liability, if APRA considers the variation appropriate.

- (4) APRA cannot approve a time under subsection (3) for the internal transfer certificate to come into force (in any respect) that is later than the time that is 12 months after the restructure time.
- (5) APRA must give a copy of the approval under subsection (3) to each of the following:
 - (a) the transferring body;
 - (b) the receiving body;
 - (c) the operating body (unless the operating body is the transferring body or the receiving body);
 - (d) the Minister.
- (6) If APRA refuses an application under subsection (3), it must give written notice to each person mentioned in subsection (5). The notice must include a statement of the reasons why the application was refused.

36R Internal transfer certificates—legal effect

- (1) When an internal transfer certificate comes into force in respect of a particular asset or liability, the receiving body becomes the successor in law of the transferring body, to the extent of the transfer.
- (2) In particular:
 - (a) the asset or liability, wherever it is located, becomes an asset or liability (as applicable) of the receiving body without any transfer, conveyance or assignment; and
 - (b) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring body apply to the receiving body.

Division 5—Engagements of employees and contractors

36S Employment and contracts for services unaffected

- (1) This section applies to an individual who, immediately before the time when a restructure instrument comes into force in relation to an operating body, was:
 - (a) employed by a body corporate (the *original body*) that is the operating body or any related body corporate; or
 - (b) engaged under a contract for services by a body corporate (the *original body*) that is the operating body or any related body corporate.
- (2) If the individual was employed, the terms and conditions of employment (including any accrued entitlement to employment benefits) are not affected by the operation or effect of this Part.
- (3) If the individual was engaged under a contract for services, the terms and conditions of the contract (including any accrued entitlement to benefits under the contract) are not affected by the operation or effect of this Part.

Transfer of employment or contracts for services permitted

- (4) Despite subsections (2) and (3), this section is not taken to prevent an arrangement under which the individual would become employed, or engaged under a contract for services, by a body corporate that is related to the original body.

Part 5—Evidentiary certificates

37 Certificates evidencing operation of Act etc.

- (1) An authorised APRA officer may, by signed writing, make a certificate certifying any matter in relation to the operation or effect of this Act and, in particular, may certify that:
 - (a) a specified matter or thing relevant to a receiving body is an aspect of the operation or effect of this Act; or
 - (b) a specified thing was done for a purpose connected with, or arising out of, the operation or effect of this Act in relation to that receiving body; or
 - (c) a specified asset of the transferring body has become a transferred asset of that receiving body; or
 - (d) a specified liability of the transferring body has become a transferred liability of the receiving body.
- (2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except to the extent that the contrary is established.

38 Certificates in relation to land and interests in land

If:

- (a) a receiving body becomes, under this Act, the owner of land, or of an interest in land, that is situated in a State or Territory; and
 - (b) there is lodged with the Registrar of Titles or other appropriate officer of the State or Territory in which the land is situated a certificate that:
 - (i) is signed by an authorised APRA officer; and
 - (ii) identifies the land or interest; and
 - (iii) states that the receiving body has, under this Act, become the owner of that land or interest;
- the officer with whom the certificate is lodged may:
- (c) register the matter in the same manner as dealings in land or interests in land of that kind are registered; and
 - (d) deal with, and give effect to, the certificate.

Section 39

39 Certificates in relation to other assets

- (1) If:
- (a) an asset (other than land or an interest in land) becomes, under this Act, an asset of a receiving body; and
 - (b) there is lodged with the person or authority who has, under a law of the Commonwealth, a State or a Territory, responsibility for keeping a register in respect of assets of that kind a certificate that:
 - (i) is signed by an authorised APRA officer; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Act, become an asset of the receiving body;
- that person or authority may:
- (c) register the matter in the same manner as transactions in relation to assets of that kind are registered; and
 - (d) deal with, and give effect to, the certificate.
- (2) This section does not affect the operations of the *Corporations Act 2001*.

40 Documents purporting to be certificates

A document purporting to be a certificate given under this Part is, unless the contrary is established, taken to be such a certificate and to have been properly given.

Part 6—Miscellaneous

41 Information gathering powers

- (1) For the purposes of deciding whether or how to perform or exercise functions or powers under this Act in relation to a transfer of business, or a proposed or possible transfer of business, from or to an ADI, or in relation to the restructure, or the possible restructure, of an ADI and one or more related bodies corporate, each of the following provisions:
 - (a) section 62 of the *Banking Act 1959*;
 - (b) any other provision of that Act, or of another Act, prescribed by the regulations;has effect as if this Act were part of the Act that contains the provision.
- (2) For the purpose of deciding whether or how to perform or exercise functions or powers under this Act in relation to a transfer of business, or a proposed or possible transfer of business, from or to a life insurance company, or in relation to the restructure, or the possible restructure, of a life insurance company and one or more related bodies corporate, each of the following provisions:
 - (a) section 131, 132 or 133 of the *Life Insurance Act 1995*;
 - (b) any other provision of that Act, or of another Act, prescribed by the regulations;has effect as if this Act were part of the Act that contains the provision.
- (3) For the purpose of deciding whether or how to perform or exercise functions or powers under this Act in relation to the restructure, or the possible restructure, of a general insurer and one or more related bodies corporate, each of the following provisions:
 - (a) section 115 of the *Insurance Act 1973*;
 - (b) any other provision of that Act, or of another Act, prescribed by the regulations;has effect as if this Act were part of the Act that contains the provision.

Section 42

42 Compulsory transfer—APRA may provide information to receiving body

APRA may, in connection with a compulsory transfer, or a proposed or possible compulsory transfer, provide information (including personal information or confidential commercial information) to the receiving body, or to the possible or proposed receiving body, about the business that is to be, or that may be, transferred.

Note: Subsection 56(9) of the *Australian Prudential Regulation Authority Act 1998* allows an officer of APRA who (on APRA's behalf) provides information to a body under this section to impose conditions to be complied with by the body in relation to that information.

43 Relationship of Act with other laws etc.

- (1) Subject to subsections (4), (5), (6), (7), (8), (9) and (10), this Act has effect in spite of anything in any law of the Commonwealth or of a State or Territory, or in any contract, deed, undertaking, agreement or other instrument.

Note: For the effect of a certificate of transfer, see sections 22 and 35.

- (2) Subject to subsections (4), (5), (6), (7), (8), (9) and (10), nothing done by or under this Act:
- (a) places a receiving body, a transferring body or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
 - (b) places a receiving body, a transferring body or another person in breach of:
 - (i) any law of the Commonwealth or of a State or Territory; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
 - (c) releases any surety, wholly or partly, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), but subject to subsections (4), (5), (6), (7), (8), (9) and (10), if, apart from this Act, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given, as the case requires.

- (4) The regulations may provide that some or all of the provisions of another Act (not being provisions referred to in subsection (5), (6), (7) or (8)) apply in relation to a transfer of business that takes effect or may take effect under this Act, or in relation to a restructure that takes effect or may take effect under this Act, with the modifications (if any) specified in the regulations. The regulations have effect accordingly. Nothing in this section limits the operation of those provisions (as they have effect subject to any modifications specified in the regulations).
- (5) Nothing in this Act limits the operation of any of the provisions of the *Privacy Act 1988*.
- (6) Nothing in this Act limits the operation of any of the provisions of the *Trade Practices Act 1974*.
- (7) Nothing in this Act limits the operation of any of the provisions of the *Workplace Relations Act 1996*.
- (8) Nothing in this Act limits the operation of section 63 of the *Banking Act 1959*.
- (9) For the purposes of section 50 and related provisions of the *Trade Practices Act 1974* a transfer of business (whether voluntary or compulsory), or a transfer pursuant to an internal transfer certificate, that takes effect under this Act is taken to be:
 - (a) to the extent that the transfer is of shares in the capital of a body corporate—an acquisition of the shares by the receiving body; and
 - (b) to the extent that the transfer is of other assets—an acquisition of those assets by the receiving body.
- (10) The provisions of this Act and the provisions:
 - (a) prescribed for the purposes of subsection (4); or
 - (b) referred to in subsection (5), (6), (7) or (8);operate independently of each other. In particular, a decision under one of those provisions has effect only for the purpose of that provision, unless express provision is made to the contrary.

Section 44

44 Compensation for acquisition of property

(1) If:

- (a) apart from this section, the operation of this Act in relation to a particular receiving body would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the receiving body is liable to pay to the person compensation of a reasonable amount as agreed on between the receiving body and the person. If the receiving body and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the receiving body of such reasonable amount of compensation as the Court determines.

(2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

(3) In this section:

acquisition of property and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

45 Review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of any of the following decisions:

- (a) a decision under section 11 to refuse to approve an application;
- (b) a decision under subsection 16(1) to impose conditions;
- (c) a decision under subsection 16(3) to refuse to vary or revoke conditions;
- (d) a decision under section 18 to refuse to issue a certificate of transfer;
- (e) a decision under subsection 20(2) to refuse to approve a statement provided under subsection 20(1);
- (f) a decision under subsection 27(2) to refuse to agree to a consent being withdrawn;

- (g) a decision under subsection 31(3) to refuse to vary or revoke conditions;
- (h) a decision under section 33 to refuse to issue a certificate of transfer;
- (i) a decision under section 36M:
 - (i) to refuse to issue an internal transfer certificate applied for in an application for a restructure approval; or
 - (ii) to issue an internal transfer certificate in terms that are different from those applied for in an application for a restructure approval;
- (j) a decision under section 36P to refuse to amend an internal transfer certificate;
- (k) a decision under subsection 36Q(3) to refuse to approve a later time for an internal transfer certificate to come into force.

46 Transfer rules

APRA may, by legislative instrument, make rules prescribing all matters required or permitted by this Act to be prescribed by transfer rules.

47 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.

Table of Acts

Notes to the *Financial Sector (Business Transfer and Group Restructure) Act 1999*

Note 1

The *Financial Sector (Business Transfer and Group Restructure) Act 1999* as shown in this compilation comprises Act No. 45, 1999 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 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>Financial Sector (Transfers of Business) Act 1999</i>	45, 1999	17 June 1999	1 July 1999 (see s. 2)	
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 192–194): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (a)	Ss. 4–14 [see Note 1]
<i>Financial Sector Legislation Amendment Act (No. 1) 2002</i>	37, 2002	26 June 2002	Schedule 3: 27 June 2002 (b)	—
<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>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (item 80) 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	—

Notes to the *Financial Sector (Business Transfer and Group Restructure) Act 1999*

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Legislation Amendment (Restructures) Act 2007</i>	117, 2007	28 June 2007	28 June 2007	—
<i>Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007</i>	154, 2007	24 Sept 2007	Schedule 4 (items 35, 36): Royal Assent	—

Act Notes

- (a) The *Financial Sector (Business Transfer and Group Restructure) Act 1999* was amended by Schedule 3 (items 192–194) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides 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*.
- (b) The *Financial Sector (Business Transfer and Group Restructure) Act 1999* was amended by Schedule 3 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
Title	am. No. 117, 2007
Part 1	
S. 1.....	rs. No. 117, 2007
S. 4.....	am. No. 55, 2001; No. 42, 2003; No. 101, 2006; No. 117, 2007
S. 7A	ad. No. 147, 2006
Part 2	
S. 8.....	am. No. 117, 2007
Part 3	
Division 2	
S. 12.....	am. No. 37, 2002
Part 4A	
Part 4A	ad. No. 117, 2007
Division 1	
S. 36A	ad. No. 117, 2007
Division 2	
Ss. 36B–36F	ad. No. 117, 2007
Division 3	
Ss. 36G, 36H.....	ad. No. 117, 2007
Ss. 36J, 36K.....	ad. No. 117, 2007
Division 4	
Ss. 36L–36N	ad. No. 117, 2007
Ss. 36P–36R	ad. No. 117, 2007
Division 5	
S. 36S	ad. No. 117, 2007
Part 5	
S. 39.....	am. No. 55, 2001
Part 6	
S. 41	am. No. 117, 2007
S. 43.....	am. No. 117, 2007
S. 45.....	am. No. 117, 2007
S. 46.....	am. No. 154, 2007

Table A

Table A

Application, saving or transitional provisions

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.

- (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.

Table A

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*

Table A

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.

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.

Table A

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*.