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**STREAMLINING PRUDENTIAL  
REGULATION: RESPONSE TO  
'RETHINKING REGULATION'**

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PROPOSALS PAPER

DECEMBER 2006

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## CONSULTATION

The Government is consulting publicly with stakeholders on the proposed refinements put forward in this paper, prior to preparing the necessary legislative changes.

The closing date for submissions is 15 February 2007. Submissions should be sent to:

Streamlining Prudential Regulation Project  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Fax: 02 6263 3866  
SPRsubmissions@treasury.gov.au

The Government is aiming to introduce any refinements to prudential regulation as soon as practicable. It is intended that the reforms be implemented through a Financial Sector (Simplified Regulation and Review) Bill and that an exposure draft will be issued with a view to allowing comments. Inquiries about this paper or the consultation process may be directed to:

André Moore  
Manager  
Prudential Policy – Superannuation and Insurance Unit  
Financial System Division  
The Treasury  
Ph: 02 6263 3067

## CONFIDENTIALITY

It will be assumed that submissions are not confidential and may be made publicly available. If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly on the submission. A request made under the *Freedom of Information Act 1982* (Cth) for a submission marked confidential to be made available will be determined in accordance with that Act.

## FOREWORD



Australia's financial sector plays a vital role in building and sustaining the economic prosperity of individuals and businesses throughout this country. The Australian Government is committed to supporting the financial services sector in your efforts to deliver lasting benefits to your customers and shareholders.

One way this can be achieved is to ensure our prudential regulation system is working efficiently and effectively. Our system should genuinely balance the need to collect information and data by our regulators with the need to minimise the cost and impost on business.

It is pleasing to acknowledge that the hard work of recent years has resulted in Australia's prudential regime being well-regarded both domestically and internationally. We cannot, however, afford to rest on our laurels. The Australian Government is committed to ensuring that our prudential system is continuously reviewed, improved and refined so as maintain public confidence in its design and to support growth and innovation in your sector.

I am pleased to release this discussion paper seeking your comments on proposals to streamline further prudential regulation legislation for authorised deposit-taking institutions, general and life insurers and superannuation entities.

In particular, the Government seeks your views on various issues raised by the Regulation Taskforce on Reducing Regulatory Burdens as well as some related issues which have been raised directly with Government. It also seeks your comments on the Government's proposed implementation of outstanding HHH Royal Commission recommendations.

I believe that the proposals in this paper will address many of the financial services sector concerns by removing regulatory overlaps, providing greater flexibility for APRA to tailor prudential requirements to particular circumstances, removing unnecessary or out of date regulation and improving APRA's independence and accountability for various decisions.

[Streamlining prudential regulation: response to 'Rethinking Regulation'](#)

I encourage you to engage actively in the consultation process by providing feedback on the proposals, including any information that would assist in identifying the implementation costs associated with them.

A handwritten signature in black ink, appearing to read 'Peter Dutton', written in a cursive style.

THE HON PETER DUTTON MP  
Minister for Revenue and Assistant Treasurer

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## PROPOSALS SUMMARY

ISSUE	PROPOSAL
<b>Streamlining breach reporting</b>	
<b>Proposal 1.1 Requirement to report only material breaches</b>	
<p>The costs associated with breach reporting may be unnecessarily high due to inconsistent and excessive reporting of breaches under the prudential and corporate and financial services regulatory regimes.</p>	<p>It is proposed to amend the breach reporting requirements under the prudential Acts to include a materiality test which aligns with the materiality test under section 912D of the Corporations Act. The materiality test would take into consideration:</p> <ul style="list-style-type: none"> <li>▪ the number or frequency of similar previous breaches;</li> <li>▪ the impact of the breach or likely breach on the regulated entity's ability to meet its obligations to depositors, policyholders or superannuation beneficiaries;</li> <li>▪ the extent to which the breach indicates that the regulated entity's arrangements and/or, in the case of superannuation the RSE licensee's arrangements, for ensuring compliance with its regulatory obligations are inadequate;</li> <li>▪ the actual or potential loss to depositors, policyholders or superannuation beneficiaries or the regulated entity itself, arising from the breach or likely breach; and</li> <li>▪ any other matters prescribed by Regulations.</li> </ul>
<b>Proposal 1.2 Streamlining the timeframe for the reporting of breaches</b>	
<p>Inconsistent and ambiguous timing requirements under the prudential Acts and the Corporations Act for the reporting of breaches results in unnecessary costs to industry in the breach reporting process.</p>	<p>It is proposed to amend the breach reporting framework under the prudential Acts to facilitate material breaches being reported to APRA as soon as practicable and in any event, no later than 10 business days after the breach is first notified to a person responsible for compliance.</p> <p>It is also intended that any breach where an entity is, or is unlikely to be able to meet its depositor or policyholder liabilities, or has, or is likely to, breach a minimum capital requirement, would be notified to APRA immediately.</p>

## Streamlining prudential regulation: response to 'Rethinking Regulation'

ISSUE	PROPOSAL
<b>Proposal 1.3 Relationship between reporting requirements of licensees, auditors and actuaries</b>	
<p>Overlapping reporting requirements between responsible persons and officers, actuaries and auditors may be creating the need for multiple reporting of breaches. There is currently no requirement for life companies to report material breaches to APRA.</p>	<p>It is proposed to amend the prudential Acts, where necessary, to ensure that where an actuary or auditor identifies and is required to notify APRA and the regulated entity of a breach, that the ADI, general or life insurer or superannuation trustee is not also required to report the breach to APRA.</p> <p>It is also proposed to require life insurers to report material breaches to APRA.</p>
<b>Proposal 1.4 Relationship between reporting requirements to APRA and ASIC</b>	
<p>There may be unnecessary breach reporting where a breach is required to be reported to both APRA and ASIC.</p>	<p>It is proposed to amend the Acts to ensure that breaches that relate to both a provision of a prudential Act administered by APRA or a prudential standard and a provision of an Act administered by ASIC are only reported to APRA. APRA would provide the information to ASIC.</p>
<b>Proposal 1.5 Responsible persons and officers</b>	
<p>It is important that the responsible officer and responsible person regimes capture the appropriate persons, reflecting the aims of the different regimes.</p>	<p>The Government is seeking comment on whether there is scope to further streamline the responsible officer and responsible person legislation to ensure that only relevant persons are caught by the regime.</p>
<b>Proposal 1.6 Protection for 'whistleblowers'</b>	
<p>Inconsistent protection for breach reporting and whistleblowing may discourage full information sharing with APRA.</p>	<p>It is proposed to amend the Acts to provide protection from self-incrimination (modelled on section 29JE of the SIS Act) and against civil action for voluntary and mandated whistleblowing.</p> <p>It is also proposed to make it an offence to actually cause detriment or to threaten to cause detriment to another person because the person made a disclosure that qualifies for protection under the prudential Acts (modelled on section 1317AC of the Corporations Act).</p>
<b>Enhancing APRA's accountability for administrative decisions</b>	
<b>Proposal 2.1 Removing ministerial consent from appropriate administrative decisions</b>	
<p>APRA's accountability for administrative decisions is reduced in areas where its independence is blurred through ministerial involvement.</p>	<p>It is proposed to remove ministerial consent from APRA administrative decisions where wider policy interests are not involved. A list of the sections where it is proposed to remove ministerial consent is found at Table 2 of the Appendix.</p>
<b>Proposal 2.2 Removing the gap in APRA's investigation triggers which results from the removal of ministerial consent</b>	
<p>APRA's capacity to utilise effectively its investigation powers in relation to a general insurer could be unreasonably restricted following the removal of ministerial consent as a trigger for an investigation under the Insurance Act.</p>	<p>If ministerial consent as a trigger is removed from the Insurance Act, it is proposed that a new trigger modelled on subsection 136(g) of the Life Act, which enables APRA to initiate an investigation of the life insurance business of a life company if it has in its possession information that calls for the investigation, be added to the existing triggers in section 52 of the Insurance Act.</p>

ISSUE	PROPOSAL
<b>Proposal 2.3 Implications of removal of ministerial consent for decisions which affect Lloyd's Insurers</b>	
<p>The removal of ministerial consent from decisions relating to Lloyd's results in no safeguards relating to a direction under section 76 of the Insurance Act.</p> <p>The administration of the Security Deposit is prescriptive and unwieldy.</p>	<p>It is proposed to add a trigger for a direction under section 76 of the Insurance Act, such that APRA can give a direction with respect to the provisions for liabilities if APRA is satisfied that the provisioning for liabilities in the accounts of designated trust funds is insufficient.</p> <p>It is also proposed to:</p> <ul style="list-style-type: none"> <li>▪ clarify that the Security Deposit would be given to APRA;</li> <li>▪ remove the need to seek authority each year to repay any additional interest due to Lloyd's; and</li> <li>▪ quantify the amount of the Security Deposit (\$2 million) under the <i>Insurance Regulations 2002</i> rather than under the Insurance Act.</li> </ul>
<b>Proposal 2.4 Merits review of APRA administrative decisions</b>	
<p>Merits review should be available to persons affected by APRA decisions in accordance with the ARC Guidelines. Fairness, transparency and APRA accountability for its decisions may be reduced by the inconsistent application of merits review to APRA decisions.</p>	<p>It is proposed to apply merits review to appropriate APRA decisions in accordance with the ARC guidelines. Broadly, merits review would be available for licensing decisions, decisions aimed at ensuring that an entity or individual meets minimum standards, such as disqualification powers, and some of APRA's directions powers (see proposal 2.5 for further discussion).</p> <p>Decisions which would not be subject to merits review include monitoring and investigation decisions as these are preliminary in nature, and decisions which are subject to scrutiny by the courts or the Parliament.</p> <p>A full list of APRA decisions to which it is proposed to apply merits review to, is included in Table 3 of the Appendix. Further issues related to specific aspects of merits review are covered in proposals 2.5 and 2.7.</p>
<b>Proposal 2.5 Balancing APRA's capacity to act decisively with expanding the availability of merits review</b>	
<p>In streamlining APRA's powers, it is important to balance the need to ensure that persons affected by a decision receive fair treatment with the need to ensure that APRA can act quickly where beneficiaries' interests or the stability of the financial system are at risk.</p>	<p>It is proposed that merits review would not be available for decisions relating to an entity, where APRA reasonably believes that failure by APRA to act immediately would materially prejudice the interests of beneficiaries or the stability of Australia's financial system. It is proposed that any such decision would not be a delegable decision by APRA.</p>

## Streamlining prudential regulation: response to 'Rethinking Regulation'

ISSUE	PROPOSAL
<b>Proposal 2.6 Ensuring flexibility through exemption powers and clarifying review and scrutiny of these powers</b>	
<p>Lack of flexibility in the prudential regime can lead to outcomes which are inconsistent with the policy intent and which impose unnecessary compliance costs. Decisions which affect persons should be transparent and the regulator should have appropriate accountability.</p>	<p>It is proposed to amend the prudential Acts to provide APRA with a specific exemption power for persons and classes of persons for those sections where flexibility may be appropriate. This proposal would amend section 11 of the Banking Act and section 7 of the Insurance Act and replace sections 125A and 125B of the Life Act. See Table 4 of the Appendix for details. APRA would also have a power to exempt a person or class of persons from the Banking, Life and Insurance Acts.</p> <p>It is proposed to clarify that decisions relating to classes of persons are legislative in nature and that those relating to a particular person are administrative in nature and are merits reviewable decisions, except where APRA reasonably believes that a delay would materially prejudice the interests of beneficiaries or the stability of Australia's financial system.</p>
<b>Proposal 2.7 Streamlining APRA's directions powers</b>	
<p>The Insurance, Life and SIS Acts contain a range of directions powers which make the prudential Acts unnecessarily complex.</p>	<p>It is proposed to consolidate APRA's directions powers in a single general power under each of the Acts. This power would be based on sections 11CA of the Banking Act and 230B of the Life Act.</p>
<b>Proposal 2.8 Confidentiality of Administrative Appeals Tribunal hearings</b>	
<p>Confidential hearings reduce the publicly available information on the rationale for, and the transparency of, APRA's decisions.</p>	<p>It is proposed to replace the general confidentiality provisions in the prudential Acts with public hearings, providing relevant persons with the option to apply to the AAT for a private hearing under subsection 35(2) of the <i>Administrative Appeals Tribunal Act 1975</i>.</p>
<b>Ensuring appropriate flexibility and accountability in making and administering prudential standards</b>	
<b>Proposal 3.1 Discretionary decisions under prudential standards making powers</b>	
<p>APRA has limited flexibility to tailor prudential requirements under prudential standards to particular circumstances under the prudential Acts.</p>	<p>It is proposed to provide APRA with a power under the Banking and Life Acts to make discretionary decisions under its prudential standards, including discretions to approve, impose, adjust or exclude specific prudential requirements in relation to specified ADIs, NOHCs of an ADI, life companies or friendly societies. This power would be based on paragraphs 32(3D)(a) and (b) of the Insurance Act.</p> <p>It is proposed to provide APRA with a power to make a prudential standard for a general insurer or a NOHC of a general insurer under the Insurance Act.</p>

ISSUE	PROPOSAL
<b>Proposal 3.2 Scrutiny of variations to prudential standards</b>	
<p>Variations to legislative requirements which affect a class of persons should be made transparently, with appropriate consultation and review.</p> <p>The legislation is unclear as to APRA's ability to tailor prudential standards to subclasses of regulated entities.</p>	<p>It is proposed to remove APRA's power to make discretionary decisions with respect to classes of entities under paragraph 32(3D)(c) of the Insurance Act.</p> <p>It is proposed to clarify APRA's power to make, vary or revoke a prudential standard for a class of entities, and to impose different requirements to be complied with by different classes of general insurers or NOHCs of general insurers. The legislation will be clarified, such that all variations or modifications which affect a class of persons are legislative instruments.</p> <p>It is proposed to clarify the definition of classes of entities to ensure that it includes subclasses.</p>
<b>Proposal 3.3 Simplifying legislative requirements relating to consultation on prudential standards</b>	
<p>APRA currently must comply with two sets of legislative requirements with respect to consultation on general insurance prudential standards.</p>	<p>It is proposed that section 33 of the Insurance Act, which sets out requirements for APRA to consult relevant entities and their representative associations and bodies, be removed.</p>
<b>Ensuring flexibility in enforcement</b>	
<b>Proposal 4.1 Flexibility through court-enforceable undertakings</b>	
<p>APRA is unable to enforce cooperative agreements made with entities to address prudential concerns under the Banking and Life Acts.</p>	<p>It is proposed to give APRA the power to accept court-enforceable undertakings under the Banking and Life Acts, consistent with the Insurance and SIS Acts.</p>
<b>Proposal 4.2 Flexibility in the disqualification regime</b>	
<p>APRA and the ATO currently have little flexibility in how they are able to use their disqualification powers, which can lead to harsh outcomes. There are gaps in the regulators' powers to disqualify some individuals on fit and proper grounds.</p>	<p>It is proposed that APRA (and the ATO under the SIS Act) be given explicit powers (modelled on section 25A of the Insurance Act) to disqualify on fit and proper grounds:</p> <ul style="list-style-type: none"> <li>▪ directors or senior managers under the Life Act;</li> <li>▪ auditors under the Banking Act and Life Act; and</li> <li>▪ actuaries under the Life Act and SIS Act.</li> </ul> <p>It is also proposed that under each prudential Act, APRA and the ATO be given a power to specify relevant aspects of a disqualification, including the period of disqualification and the type(s) of position the disqualified person is banned from holding. The regulators would also have the power to revoke a disqualification.</p>
<b>Proposal 4.3 Clarify processes concerning the appointment of actuaries and auditors</b>	
<p>APRA approval of actuaries and auditors is inconsistent with a principles-based legislative framework and Board responsibility for the operation of financial sector entities.</p>	<p>It is proposed that the power for APRA to approve the appointment of an actuary or auditor of a regulated entity be removed from the prudential Acts.</p> <p>It is proposed that a provision allowing APRA to direct a regulated entity to remove an auditor, actuary, director or senior manager who does not meet the fit and proper requirements be introduced into the prudential Acts, where required.</p>

## Streamlining prudential regulation: response to 'Rethinking Regulation'

ISSUE	PROPOSAL
<b>Proposal 4.4 Supporting cooperation between APRA and relevant professional bodies of actuaries and auditors</b>	
APRA does not have the power to share information regarding actuary and auditor conduct with appropriate professional bodies under the Banking and Life Acts and its power under the Insurance Act is limited. This limits cooperation between APRA and the professional bodies.	It is proposed to provide APRA with a power to refer matters relating to actuaries and auditors to their professional bodies under the Banking, Insurance and Life Acts. This power would be based on section 131A of the SIS Act. With respect to the Insurance Act, this would replace the current section 48.
<b>Simplifying the Life Act and SIS Act</b>	
<b>Proposal 5.1 Phase out prudential rules from the Life Act</b>	
Prudential rules add prescription and unnecessary complexity to the prudential framework.	It is proposed that prudential rules be phased out by 30 June 2011. Where necessary, APRA would consider replacing them through its prudential standards and prudential practice guides.
<b>Proposal 5.2 Abolish the Life Insurance Actuarial Standards Board</b>	
Uncertainty with respect to which matters are 'actuarial matters' and which are 'prudential matters' and limited ability for APRA to apply the actuarial standards in a flexible manner.	It is proposed to abolish the LIASB and to remove the concept of actuarial standards from the Life Act. APRA would have the power to make prudential standards under section 230A of the Life Act with respect to prudential matters currently addressed through actuarial standards.
<b>Proposal 5.3 Auditor, audit committee and actuarial requirements under the Life Act</b>	
Requirements with respect to actuaries in the Life Act are prescriptive and inflexible.	<p>It is proposed to remove the eligibility requirements for appointed actuaries from section 93 of the Life Act.</p> <p>It is proposed to replace sections 83, 97 and 113 in the Life Act with more principles-based sections modelled on sections 49J and 49K of the Insurance Act. The new sections would require that the auditor or actuary of a life insurer perform the functions set out in the prudential standards and that the insurer must make the arrangements that are necessary to enable the auditor or actuary to do those things. A transition period may be required to ensure a seamless adjustment.</p> <p>It is proposed to repeal sections 87, 90, 91, 92, 94, 95, 115, 116, 119, 120 and 122 of the Life Act.</p> <p>Note that requirements to approve auditors and actuaries are discussed under proposal 4.3.</p>
<b>Proposal 5.4 Overlaps in reporting requirements between APRA and ASIC</b>	
Duplication in reporting requirements under the Life Act.	It is proposed to repeal sections 16M, 16S, 16W, 122, 238 and 239 of the Life Act. These reporting requirements would be replaced by a process of information sharing between APRA and ASIC according to the existing requirements.

ISSUE	PROPOSAL
<b>Proposal 5.5 Reinsurance arrangements under the Life Act</b>	
Decisions to enter into reinsurance arrangements should be the direct responsibility of the Board, rather than of APRA. Reinsurance reporting requirements under the Life Act are unnecessarily prescriptive.	It is proposed to repeal sections 123 and 125 of the Life Act, relating to reinsurance contracts.
<b>Proposal 5.6 Registration of life insurers</b>	
The Life Act and Life Regulations contain prescriptive requirements with respect to registration of life insurers, and requirements to notify changes to information provided in a registration application. These requirements overlap with other information gathering processes. The 'certificate of registration' and penalty attached is unnecessary and administratively burdensome.	It is proposed to repeal subsections 20(2), (3) and (4), sections 25 and 28 of the Life Act and Part 3 of the Life Regulations. It is proposed to amend section 21 of the Life Act such that APRA would no longer issue a certificate but would provide 'authorisation in writing' as per the Banking and Insurance Acts.
<b>Proposal 5.7 Clarifying reporting obligations under the SIS Act</b>	
The prudential reporting requirements in the SIS Act and SIS Regulations are unnecessarily complex and unclear as a consequence of being divided between Parts 4 and 13 of the SIS Act, and Parts 8 and 11 of the SIS Regulations.	It is proposed to group the reporting requirements for superannuation trustees in one Part of the SIS Act and SIS Regulations. The layout of the prudential reporting requirements would follow the structure outlined in Table 6 of the Appendix.  It is also proposed to identify clearly in the legislation the reporting requirements by type of superannuation entity to which they apply.
<b>Proposal 5.8 Replacing RSE numbers with Australian Business Numbers (ABNs)</b>	
The Government is committed to the long term objective of making the ABN the sole business identifier number for all persons and entities in their dealings with the Government and its agencies.	It is proposed to amend the requirements under the SIS Act to remove the obligation to display RSE licence and registration numbers and introduce a condition for all RSE licensees and superannuation entities to obtain and display an ABN.
<b>Proposal 5.9 Simplification of Acts through removal of obsolete legislation</b>	
Several transitional arrangements in the Life and SIS Acts are possibly obsolete.	It is proposed to repeal obsolete provisions from the Acts. In particular, Part 31 of the SIS Act and sections 256, 257, 258, 260, 261, 262 and 263 of the Life Act.  Comment is also sought on whether section 259 — reinsurance between statutory funds — is obsolete.



## INTRODUCTION

The Government is seeking the views of interested parties on its proposed response to recommendations relating to prudential regulation in the report of the Taskforce on Reducing Regulatory Burdens on Business – *Rethinking Regulation*, chaired by Gary Banks, as well as outstanding recommendations of the HIH Royal Commission relating to removing ministerial consent and reviewing the application of merits review to Australian Prudential Regulation Authority (APRA) decisions. The Government is committed to ensuring that Australians are protected by a strong and effective prudential framework without placing unnecessary regulatory burdens on business. In addition to implementing the recommendations of the various reports, the Government has identified further areas where it considers that the prudential regulation framework can be simplified and its flexibility and effectiveness improved.

The prudential framework within Australia is widely acknowledged as meeting its broad objectives. *Rethinking Regulation* found that ‘Australia’s financial and corporate sectors, and the associated regulatory structures, are highly regarded internationally’ and that the ‘broad policy framework has widespread support within business and the wider community in Australia’.

However, *Rethinking Regulation* also noted that there is scope to improve the regulatory framework in some areas and made recommendations concerning improving the flexibility of the framework, harmonising aspects of the framework with the *Corporations Act 2001* (Corporations Act) and improving coordination between the key financial sector regulators (APRA and Australian Securities and Investment Commission (ASIC)). The Government accepted all the recommendations in *Rethinking Regulation* relevant to prudential regulation. Those which require legislative amendment have been incorporated into this paper.

Recommendation 5.4 of *Rethinking Regulation* stated that the Government should ensure that APRA has sufficient flexibility to tailor requirements to accommodate differing circumstances. It also must be flexible to cater for the diverse range of entities operating within the financial sector. The Government considers that the prudential framework is best able to respond to these challenges if it is principles-based and focused on the outcomes and objectives of prudential regulation. This will also help to ensure that prudential regulation remains relevant, effective and efficient in the face of continuous innovation and evolution of financial markets.

The Government has already made considerable progress in this regard through recent reforms to the prudential framework for both general insurers and superannuation funds, implemented through the *General Insurance Reform Act 2001* and the *Superannuation Safety Amendment Act 2004* and APRA’s

general insurance stage II reforms. In particular, APRA's recently introduced prudential practice guides (PPGs) are designed as pure guidance instruments which outline practices APRA considers prudent. PPGs are not legally enforceable and entities are provided scope to develop alternative arrangements to satisfy the requirements of the prudential standards. The Government is proposing to build on these initiatives through further reforms to streamline and improve the flexibility of the prudential framework.

The prudential Acts administered by APRA (that is, the *Banking Act 1959* (Banking Act), the *Insurance Act 1973* (Insurance Act), the *Life Insurance Act 1995* (Life Act) and the *Superannuation Industry (Supervision) Act 1993* (SIS Act)) and related legislation, such as the Corporations Act, have often evolved separately and in response to industry developments, and there is scope to refine and update the four prudential Acts to make them more consistent. *Rethinking Regulation* highlighted breach reporting and the responsible person and officer regimes (recommendations 5.8 and 5.9) under the prudential Acts and Corporations Act as particular areas where the Government should seek to improve consistency and reduce the compliance burden. This discussion paper includes proposals to address concerns in this area.

*Rethinking Regulation* also highlighted the importance of maintaining confidence in regulatory decision-making through adopting a consistent and transparent approach to decision making and ensuring proper accountability for decisions. The proposals paper addresses this issue, as well as the Government's response to outstanding HIIH recommendations 22 and 23 relating to APRA's independence and accountability, through a range of proposals, including a proposal to ensure that merits review is available for appropriate administrative decisions made by APRA. The proposals are also consistent with recommendations in the recent *Financial System Stability Assessment* (September 2006) undertaken by the International Monetary Fund.

This paper is designed to facilitate discussion on the Government's proposed response to various *Rethinking Regulation* recommendations, outstanding HIIH recommendations and other proposals relating to prudential regulation. The proposals seek to remove unnecessary regulation and ensure the regime is flexible, consistent and transparent. The proposals also seek to simplify the legislation. In particular, the proposals relating to the Life Act, would, if implemented, repeal around one-third of the sections under the Life Act, greatly streamlining the Act.

The Government is also seeking industry input on the costs associated with the proposals in this paper to facilitate the development of the regulation impact statement to inform final Government decisions in relation to the proposals discussed in this paper.

Accordingly, the Government invites written submissions on the proposals outlined in this paper.



## 1. STREAMLINING BREACH REPORTING

The breach reporting regimes under the prudential Acts administered by APRA and the Corporations Act administered by ASIC are different, reflecting differences between the objectives of prudential regulation and corporations and financial services regulation, as well as the independent development of each Act.

Recommendation 5.8 of *Rethinking Regulation* identified breach reporting to APRA and ASIC as an area where the regulatory burden could be reduced by achieving greater consistency in the requirements. The Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP, in his consultation paper *Corporate and Financial Services Regulation Review* released in April 2006, sought industry comments on the most appropriate way to address this issue. Comments from industry focused on removing overlap in reporting of breaches under the prudential Acts and the Corporations Act, ensuring that only material breaches should be reported, and on providing a consistent timeframe for reporting breaches under both regimes.

The Government is proposing to streamline breach reporting requirements for entities subject to both prudential regulation and corporations and financial services regulation.

The proposals in this paper seek to address breach reporting under the prudential Acts. Together with breach reporting proposals released by the Parliamentary Secretary to the Treasurer in his proposals paper *Corporate and Financial Services Regulation Review Proposals Paper*, these proposals should result in a harmonised breach reporting framework for financial entities.

### 1.1 REQUIREMENT TO REPORT ONLY MATERIAL BREACHES

Currently, under the prudential Acts, all breaches of prudential requirements must be brought to the attention of APRA. In contrast, under section 912D of the Corporations Act, only material breaches are required to be reported to ASIC by Australian Financial Service licensees.

The absence of materiality in breach reporting to APRA, coupled with material breach reporting to ASIC results in unnecessary additional costs as entities must operate two breach reporting regimes in order to satisfy both regulators.

The harmonisation of a materiality threshold across the prudential Acts and the Corporations Act should assist in streamlining the breach reporting process and reduce the regulatory costs associated with breach reporting. It is

envisaged that APRA and ASIC would provide some guidance with respect to specific processes relating to breach recording and reporting.

<b>Requirement to report only material breaches</b>	
<b>Issue</b>	The costs associated with breach reporting may be unnecessarily high due to inconsistent and excessive reporting of breaches under the prudential and corporate and financial services regulatory regimes.
<b>Proposal 1.1</b>	<p>It is proposed to amend the breach reporting requirements under the prudential Acts to include a materiality test which aligns with the materiality test under section 912D of the Corporations Act. The materiality test would take into consideration:</p> <ul style="list-style-type: none"> <li>• the number or frequency of similar previous breaches;</li> <li>• the impact of the breach or likely breach on the regulated entity's ability to meet its obligations to depositors, policyholders or superannuation beneficiaries;</li> <li>• the extent to which the breach indicates that the regulated entity's arrangements and/or, in the case of superannuation the RSE licensee's arrangements, for ensuring compliance with its regulatory obligations are inadequate;</li> <li>• the actual or potential loss to depositors, policyholders or superannuation beneficiaries or the regulated entity itself, arising from the breach or likely breach; and</li> <li>• any other matters prescribed by Regulations.</li> </ul>
<b>Intended Outcome</b>	Reduce the regulatory costs associated with maintaining multiple breach reporting arrangements to comply with different legislation.

## **1.2 STREAMLINING THE TIMEFRAME FOR THE REPORTING OF BREACHES**

It is important that the timeframe for reporting breaches is transparent, provides clarity and balances the need for entities to identify, analyse and address breaches with the timely reporting of breaches. There is currently a wide range of reporting timeframes under the prudential Acts and the Corporations Act. The timing requirements for the reporting of breaches under the prudential Acts generally include the reporting of a breach 'immediately after' or 'as soon as practicable' after the entity becomes aware of the breach, or in any case within a time period ranging from 3 business days to 28 days.

Industry feedback has indicated that the current timing requirements create ambiguity as to when an entity is considered to be aware of the breach and hence when the clock begins to run for breach reporting. By clearly establishing a trigger and consistent timeframe for the reporting of breaches to APRA, entities would be provided with certainty as to their responsibilities and adequate time to effect the timely reporting of material breaches to APRA.

The existence of a range of time periods also creates additional costs in complying with different regulatory requirements. Provision of a consistent timeframe would assist industry by enabling a single process to be used for all breach reporting.

It is intended that, under the streamlined arrangements, material breaches would be required to be reported to APRA as soon as possible, and in any event within 10 business days, after a person in the entity who is responsible for compliance first becomes aware of the breach which may be before the breach is determined to be material. It is expected that entities will have appropriate systems in place to ensure that breaches are raised with the person who is responsible in a timely manner.

Implementation of the streamlined breach reporting framework would be achieved through the legislative frameworks for both APRA and ASIC, including prudential standards and guidance from the regulators. It is envisaged that both APRA and ASIC will work together to harmonise, as much as possible, guidance on the timeframe for the breach reporting process to provide clarity about entities' breach reporting obligations.

It is also intended that any breach where an entity is, or is unlikely to be able to meet its depositor, policyholder liabilities, or has, or is likely to, breach a minimum capital requirement, would be notified to APRA immediately.

<b>Streamlining the timeframe for the reporting of breaches</b>	
<b>Issue</b>	Inconsistent and ambiguous timing requirements under the prudential Acts and the Corporations Act for the reporting of breaches results in unnecessary costs to industry in the breach reporting process.
<b>Proposal 1.2</b>	<p>It is proposed to amend the breach reporting framework under the prudential Acts to facilitate material breaches being reported to APRA as soon as practicable and in any event, no later than 10 business days after the breach is first notified to a person responsible for compliance.</p> <p>It is also intended that any breach where an entity is, or is unlikely to be able to meet its depositor or policyholder liabilities, or has, or is likely to, breach a minimum capital requirement, would be notified to APRA immediately.</p>
<b>Intended Outcome</b>	Encourage timely and accurate reporting of breaches to APRA and improve the efficiency of the breach reporting process.

### **1.3 RELATIONSHIP BETWEEN REPORTING REQUIREMENTS OF LICENSEES, AUDITORS AND ACTUARIES**

Auditors and actuaries (where appropriate) are required under all the prudential Acts to report breaches to APRA. In addition, under the Banking Act, Insurance Act and SIS Act, the ADI, general insurer and Registrable Superannuation Entity (RSE) licensee are required to report breaches to APRA. There is currently no requirement for life insurers to report breaches to APRA.

The Government is concerned that there may be unnecessary breach reporting occurring as a result of the same breach being reported multiple times by different persons.

For example, under section 129 of the SIS Act, there is an obligation on actuaries and auditors to inform both the RSE licensee and APRA of a contravention of the SIS Act, the Regulations or the *Financial Sector (Collection of Data) Act 2001*. Under section 29JA of the SIS Act, an RSE licensee must give APRA a notice setting out the particulars of a breach by the RSE licensee of a condition imposed on its RSE license. Where the breach is first identified by an actuary or auditor (and notified to the RSE licensee and APRA) these two breach reporting sections operate together effectively to require the same breach to be reported twice by both the actuary or auditor and the trustee. The RSE licensee would still be required to inform APRA with respect to its progress in correcting the breach.

Where an actuary or auditor identifies and is required to notify APRA and a RSE licensee of a breach, it is proposed to remove the RSE licensee’s obligation to also report the breach to APRA if the RSE licensee has been told by the actuary or auditor that the report has been made. A similar outcome would be proposed in any similar situations existing within the Acts. This should ensure that the breach is brought to the attention of APRA, but that this duty is able to be discharged with only one report being made.

It is proposed that life insurers also be required to report material breaches to APRA. However, as outlined above, where an auditor or actuary has reported a breach to APRA and the life insurer has been told that the report has been made, a life insurer will not be required to report the breach to APRA.

<b>Relationship between reporting requirements of licenses auditors and actuaries</b>	
<b>Issue</b>	Overlapping reporting requirements between responsible persons and officers, actuaries and auditors may be creating the need for multiple reporting of breaches. There is currently no requirement for life companies to report material breaches to APRA.
<b>Proposal 1.3</b>	It is proposed to amend the prudential Acts, where necessary, to ensure that where an actuary or auditor identifies and is required to notify APRA and the regulated entity of a breach, that the ADI, general or life insurer or superannuation trustee is not also required to report the breach to APRA.  It is also proposed to require life insurers to report material breaches to APRA.
<b>Intended Outcome</b>	Streamline breach reporting by all regulated financial sector entities by ensuring that all material breaches are brought to the attention of APRA and that the duty to inform is discharged by needing only one report to be made.

## **1.4 RELATIONSHIP BETWEEN REPORTING REQUIREMENTS TO APRA AND ASIC**

There may be unnecessary breach reporting occurring where an entity is required to report the same breach to both APRA and ASIC where that breach relates to requirements under a prudential Act and the Corporations Act. It is proposed that such breaches need only be reported to a single regulator.

Under this proposal, where a breach is only required to be reported to one regulator, it would still be reported to that regulator. Where a breach relates to

a provision of the prudential Acts which is administered by APRA or a prudential standard and a provision of an Act administered by ASIC, it would only need to be reported to APRA. For example, if a general insurer was insolvent, it would only need to report this breach to APRA. APRA would be required to provide the relevant information to ASIC.

<b>Relationship between reporting requirements to APRA and ASIC</b>	
<b>Issue</b>	There may be unnecessary breach reporting where a breach is required to be reported to both APRA and ASIC.
<b>Proposal 1.4</b>	It is proposed to amend the Acts to ensure that breaches that relate to both a provision of a prudential Act administered by APRA or a prudential standard and a provision of an Act administered by ASIC are only reported to APRA. APRA would provide the information to ASIC.
<b>Intended Outcome</b>	Streamline breach reporting by financial sector entities by ensuring that financial sector entities only need to report breaches to one regulator.

## 1.5 RESPONSIBLE PERSONS AND OFFICERS

Responsible persons under the prudential regulation frameworks for banking, general and life insurance, and responsible officers under the SIS Act play an important role in ensuring that regulated entities are managed in a prudent manner and that breaches are brought to APRA's attention. As such, it is expected that the prudential regimes would capture directors, auditors, actuaries and senior managers including those responsible for policy implementation, risk identification and assessment, fraud control and compliance.

In contrast, responsible officers under the Corporations Act are directly responsible for the significant day-to-day business decisions relating to the provision of financial services. It is expected that the corporate and financial services regimes would capture those persons in a position to determine how the financial services are provided and supervise the provision of those services.

Given the different focus of prudential regulation and corporate and financial services regulation it is expected that the respective responsible person and responsible officer regimes may capture different persons.

However, the Government is seeking comment on whether there is scope to further streamline the responsible officer and responsible person legislation to ensure that only the relevant people are captured.

<b>Responsible persons and officers</b>	
<b>Issue</b>	It is important that the responsible officer and responsible person regimes capture the appropriate persons, reflecting the aims of the different regimes.
<b>Proposal 1.5</b>	The Government is seeking comment on whether there is scope to further streamline the responsible officer and responsible person legislation to ensure that only relevant persons are caught by the regime.
<b>Intended Outcome</b>	Possible streamlining of the responsible officer and responsible person legislation to reduce the duplication of regulation while recognising the need to ensure appropriate persons are included when assessing prudential risk management in entities.

## 1.6 PROTECTION FOR ‘WHISTLEBLOWERS’

Protection for whistleblowing is inconsistent between the prudential Acts. In particular, while protection against criminal prosecution is usually available for mandated breach reporting, protection is less consistently available against civil actions. Protection for voluntary whistleblowing is often not available under the Acts or available only on request.

In order to encourage information flows to APRA, directors, senior management, auditors and actuaries of an entity, ‘whistleblowers’ (whether they act voluntarily or by mandate) should be protected from self-incrimination, defamation actions, actions relating to breach of employment contracts or agreements such as confidentiality agreements, and be free from harassment or victimisation. These protections may make it easier for individuals or entities to provide APRA and/or senior members of an entity with information.

It is proposed that the prudential Acts be amended to protect any individual or entity from self-incrimination, (modelled on section 29JE of the SIS Act), defamation actions, actions relating to breach of employment contracts or agreements such as confidentiality agreements, where the individual or entity:

- has a duty to notify APRA under the Acts;
- provides information under a requirement of the Acts; or

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- voluntarily and in good faith provides information to directors, senior management, auditors or actuaries of an entity, or to APRA where they consider that this information may assist it in performing its functions under the prudential Acts.

It is also proposed that the prudential Acts be amended to make it an offence to actually cause detriment or to threaten to cause detriment to another person because the person made a disclosure that qualifies for protection under the Act. The proposed amendments would be modelled on section 1317AC of the Corporations Act.

<b>Protection for 'whistleblowers'</b>	
<b>Issue</b>	Inconsistent protection for breach reporting and whistleblowing may discourage full information sharing with APRA.
<b>Proposal 1.6</b>	<p>It is proposed to amend the Acts to provide protection from self-incrimination (modelled on section 29JE of the SIS Act) and against civil action for voluntary and mandated whistleblowing.</p> <p>It is also proposed to make it an offence to actually cause detriment or to threaten to cause detriment to another person because the person made a disclosure that qualifies for protection under the prudential Acts (modelled on section 1317AC of the Corporations Act).</p>
<b>Intended Outcome</b>	Encourage relevant information flows to APRA and senior management of entities to assist in the prudential management of regulated financial entities.

## 2 ENHANCING APRA'S ACCOUNTABILITY FOR ADMINISTRATIVE DECISIONS

In performing its role as the prudential regulator of financial entities, it is important that APRA has appropriate powers to gather information, investigate entities and enforce the prudential framework. It is also important that APRA is accountable for its decisions. Appropriate accountability promotes confidence in the regulator and the regulatory framework.

APRA's accountability for its decisions is enhanced through external scrutiny. To this end, APRA's administrative decisions are subject to various forms of review, including judicial review and merits review, and its legislative decisions (primarily prudential standards and modification declarations) are subject to review by the Parliament as disallowable instruments. This section implements the Government's response to recommendation 5.7 of *Rethinking Regulation* and recommendation 23 of the HIH Royal Commission Report with respect to ensuring that APRA-administrative decisions are subject to administrative review on their merits. In applying merits review to APRA decisions, the Government also aims to ensure that merits review does not unintentionally constrain the supervisor from taking prompt and decisive actions to deal with problem institutions. This is consistent with a recommendation by the International Monetary Fund (IMF) in the *Financial System Stability Assessment (FSSA)* of Australia.

This section also seeks to ensure that APRA's exemption powers are sufficient to enable it to tailor prudential requirements to accommodate differing circumstances, specifically by reviewing APRA's exemption powers (see specific issues raised with respect to recommendation 5.4 of *Rethinking Regulation*). The Government also considers it necessary to balance this exemption power with appropriate accountability.

The imposition of the Minister in day-to-day prudential decisions made by APRA runs the risk of blurring the lines of accountability for those decisions. It is important to balance the need for effective accountability by APRA for the performance of its functions against the desirability of autonomy in its execution of administrative powers. This section implements the Government's response to recommendation 22 of the HIH Royal Commission report. Specifically, the Government agreed in its response to the HIH Royal Commission report to remove ministerial consent from APRA decisions where these did not involve wider policy issues. The implementation of these proposals would also be consistent with the recommendation of the IMF in the FSSA to clearly establish the independence of APRA.

The proposals contained in this section seek to ensure that APRA has appropriate independence and accountability. They also seek to ensure, where the prudential Acts are being altered to provide greater independence or accountability, that APRA's ability to undertake its functions as prudential regulator is not being restricted or affected in a manner which inappropriately impacts on the prudential framework and APRA's ability to administer the prudential regime.

## 2.1 REMOVING MINISTERIAL CONSENT FROM APPROPRIATE ADMINISTRATIVE DECISIONS

While APRA currently has independence for most of its day-to-day decisions in the administration of the prudential Acts, there are several administrative decisions for which APRA requires ministerial consent.

The removal of ministerial consent from operational decisions would enhance APRA's operational independence, through clarifying its accountability for day-to-day decisions, and hence its credibility. It would also improve the timeliness and effectiveness of the supervisory process. It allows accountabilities to be clearly allocated to the responsible decision-maker. It also allows APRA to undertake and enforce its prudential powers without giving rise to the perception that it is influenced by external political or commercial interference.

<b>Removing ministerial consent from appropriate administrative decisions</b>	
<b>Issue</b>	APRA's accountability for administrative decisions is reduced in areas where its independence is blurred through ministerial involvement.
<b>Proposal 2.1</b>	It is proposed to remove ministerial consent from APRA administrative decisions where wider policy interests are not involved. A list of the sections where it is proposed to remove ministerial consent is found at Table 2 of the Appendix.
<b>Intended Outcome</b>	Enhance and clarify APRA's accountability for its decisions and remove ministerial involvement in APRA administrative decisions.

## 2.2 REMOVING THE GAP IN APRA'S INVESTIGATION TRIGGERS WHICH RESULTS FROM THE REMOVAL OF MINISTERIAL CONSENT

The proposed removal of ministerial consent as a trigger (see proposal 2.1) from the Insurance Act would limit APRA's ability to use its investigation

powers in some situations to ensure financial system stability. Should ministerial consent be removed as a trigger, APRA would only be able to initiate an investigation under the Insurance Act if:

- a regulated entity is, or is likely to become, unable to meet its liabilities; or
- a regulated entity has contravened or failed to comply with a provision of the Insurance Act or a condition or direction applicable to it under the Insurance Act; or
- it appears to APRA that there is, or there may be, a risk to the security of a regulated entity's assets; or
- it appears to APRA that there is, or there may be, a sudden deterioration in a regulated entity's financial condition.

These triggers are specific and have proven to be insufficient in allowing APRA to investigate all situations in which APRA has concerns that warrant investigation. In the past, APRA has used ministerial consent to trigger investigations where other triggers have not been available. A recent example is APRA's investigation into certain reinsurance practices involving General Reinsurance Australia Limited in April 2005.

It is therefore proposed to address issues that may arise as a result of removing ministerial consent by introducing an additional trigger based on subsection 136(g) of the Life Act into the Insurance Act should ministerial consent as a trigger be removed (proposal 2.1). This trigger would allow APRA to initiate an investigation into an insurer where it holds information that it considers calls for an investigation, ensuring that, where necessary, APRA has an effective power to initiate an investigation in a timely manner. It would also enhance consistency with other prudential Acts, particularly the Banking Act and Life Act.

<b>Removing the gap in APRA's investigation triggers which results from the removal of ministerial consent</b>	
<b>Issue</b>	APRA's capacity to utilise effectively its investigation powers in relation to a general insurer could be unreasonably restricted following the removal of ministerial consent as a trigger for an investigation under the Insurance Act.
<b>Proposal 2.2</b>	If ministerial consent as a trigger is removed from the Insurance Act, it is proposed that a new trigger modelled on subsection 136(g) of the Life Act, which enables APRA to initiate an investigation of the life insurance business of a life company if it has in its possession information that calls for the investigation, be added to the existing triggers in section 52 of the Insurance Act.
<b>Intended Outcome</b>	APRA would be able to use its investigation powers under the Insurance Act in situations where APRA considers it has cause for an investigation. This is consistent with the Banking and Life Acts.

### **2.3 IMPLICATIONS OF REMOVAL OF MINISTERIAL CONSENT FOR DECISIONS WHICH AFFECT LLOYD'S INSURERS**

Under section 76 of the Insurance Act, APRA is able to direct the trustee of a designated security trust fund with respect to its provisions for liabilities. Following the removal of the Minister's consent, there is no trigger or review mechanism for this power. It is therefore proposed that a trigger be added such that APRA can give a direction with respect to the provisions for liabilities if it appears to APRA that the provisioning for liabilities in the Accounts of designated trust funds is insufficient.

It is proposed that the administration of Lloyd's \$2 million Security Deposit be transferred from the Treasurer to APRA as part of proposal 2.1. The legal and beneficial interest in the securities would remain with the Commonwealth. The current administration of the Security Deposit is prescriptive and unwieldy. It is therefore also proposed that the requirements under the Act be made more principles-based and simpler in various areas. In particular it is proposed to:

- clarify that the Security Deposit be given to APRA;
- remove the need to seek authority each year to repay any additional interest due to Lloyd's; and
- quantify the amount of the Security Deposit (\$2 million) under the *Insurance Regulations 1973* rather than under the Insurance Act.

It is not proposed to alter the amount of the Security Deposit.

<b>Implications of removal of ministerial consent for decisions which affect Lloyd's Insurers</b>	
<b>Issue</b>	<p>The removal of ministerial consent from decisions relating to Lloyd's results in no safeguards relating to a direction under section 76 of the Insurance Act.</p> <p>The administration of the Security Deposit is prescriptive and unwieldy.</p>
<b>Proposal 2.3</b>	<p>It is proposed to add a trigger for a direction under section 76 of the Insurance Act, such that APRA can give a direction with respect to the provisions for liabilities if APRA is satisfied that the provisioning for liabilities in the accounts of designated trust funds is insufficient.</p> <p>It is also proposed to:</p> <ul style="list-style-type: none"> <li>• clarify that the Security Deposit would be given to APRA;</li> <li>• remove the need to seek authority each year to repay any additional interest due to Lloyd's; and</li> <li>• quantify the amount of the Security Deposit (\$2 million) under the <i>Insurance Regulations 2002</i> rather than under the Insurance Act.</li> </ul>
<b>Intended Outcome</b>	<p>Ensure an appropriate trigger for APRA's ability to give a direction in relation to provisioning for liabilities without the need for ministerial consent. Simplify the administration of the Security Deposit.</p>

## 2.4 MERITS REVIEW OF APRA ADMINISTRATIVE DECISIONS

In its responses to recommendations 23 of the HIH Royal Commission and 5.7 of the Banks Report, the Government agreed respectively to review the application of merits review and to apply merits review to APRA decisions consistently with Administrative Review Council (ARC) guidelines<sup>1</sup> and the objectives of the prudential regulation framework. Merits review aims to ensure that all persons affected by a decision receive fair treatment. It also improves the transparency of APRA's decisions and, where APRA is seen to make consistent, well-formulated decisions, should engender greater public confidence in APRA.

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1 Administrative Review Council 1999, 'What decisions should be subject to merits review?', July.

Merits review is currently available for most decisions which affect individuals. However, there is inconsistent application of merits review for decisions which may impact substantially on entities.

Not all decisions made by APRA are appropriate for merits review. The ARC guidelines have been taken into account in determining which decisions are appropriate for merits review. In particular, the Government is concerned that the availability of merits review for APRA decisions be balanced with its need to act quickly to address prudential concerns (see proposal 2.5).

A summary of proposed sections with which merits review would be made available is included in Table 3 of the Appendix.

<b>Merits review of APRA administrative decisions</b>	
<b>Issue</b>	Merits review should be available to persons affected by APRA decisions in accordance with the ARC Guidelines. Fairness, transparency and APRA accountability for its decisions may be reduced by the inconsistent application of merits review to APRA decisions.
<b>Proposal 2.4</b>	<p>It is proposed to apply merits review to appropriate APRA decisions in accordance with the ARC guidelines. Broadly, merits review would be available for licensing decisions, decisions aimed at ensuring that an entity or individual meets minimum standards, such as disqualification powers, and some of APRA's directions powers (see proposal 2.5 for further discussion).</p> <p>Decisions which would not be subject to merits review include monitoring and investigation decisions as these are preliminary in nature, and decisions which are subject to scrutiny by the courts or the Parliament.</p> <p>A full list of APRA decisions to which it is proposed to apply merits review to, is included in Table 3 of the Appendix. Further issues related to specific aspects of merits review are covered in proposals 2.5 and 2.7.</p>
<b>Intended Outcome</b>	Improve the transparency and accountability of APRA for its decisions by making merits review available to appropriate APRA administrative decisions.

## **2.5 BALANCING APRA'S CAPACITY TO ACT DECISIVELY WITH EXPANDING THE AVAILABILITY OF MERITS REVIEW**

APRA's powers may be exercised in situations where it must act decisively to address a prudential concern or where it has exhausted cooperative means of

working with an entity. For example, a direction ultimately enables APRA, to override the Board and make decisions about the way in which the affairs of the entity are to be conducted or not to be conducted.

However, it is important that regulatory powers are balanced with appropriate accountability mechanisms. In order to balance ensuring fair treatment for persons affected by a decision with ensuring that APRA can act decisively where it is necessary in the public interest, it is proposed that merits review be available (see proposal 2.4) except where APRA reasonably believes that failure by APRA to act immediately would materially prejudice the interests of beneficiaries or the stability of Australia's financial system. In administering this test, APRA must consider:

- the seriousness of circumstances necessitating immediate action by APRA, such as the extent to which those circumstances indicate that a regulated entity is, or is likely to be, unable to meet its deposit or policyholder liabilities;
- the actual or potential financial loss to beneficiaries arising from those circumstances;
- the extent to which no appropriate remedy would be available following review;
- the extent to which the circumstances may not be able to be rectified if the decision is not implemented;
- the extent to which not implementing the decision may adversely affect the stability of Australia's financial system or reputation, or the integrity of the prudential framework; and
- any other matters prescribed by Regulations for this purpose.

It is proposed that any such decision would not be a delegable decision by APRA. Further, any decision by APRA which would remove the availability of merits review would be judicially reviewable.

It is also proposed that this exception only be applied to APRA decisions relating to the entity (for example, licensing decisions, exemption decisions and directions). It is proposed that merits review will always be available for decisions which affect a natural person (for example, disqualification decisions).

<b>Balancing APRA's capacity to act decisively with expanding the availability of merits review</b>	
<b>Issue</b>	In streamlining APRA's powers, it is important to balance the need to ensure that persons affected by a decision receive fair treatment with the need to ensure that APRA can act quickly where beneficiaries' interests or the stability of the financial system are at risk.
<b>Proposal 2.5</b>	It is proposed that merits review would not be available for decisions relating to an entity, where APRA reasonably believes that failure by APRA to act immediately would materially prejudice the interests of beneficiaries or the stability of Australia's financial system. It is proposed that any such decision would not be a delegable decision by APRA.
<b>Intended Outcome</b>	Ensuring broad access to merits review where APRA exercises a power, except where a delay would place unacceptable risks on the interests of beneficiaries or the stability of the financial system.

## **2.6 ENSURING FLEXIBILITY THROUGH EXEMPTION POWERS AND CLARIFYING REVIEW AND SCRUTINY OF THESE POWERS**

APRA currently has the ability to exempt a person or class of persons from the Banking and Insurance Acts or from most sections of these Acts. APRA can only exempt persons or classes of persons from specified sections of the Life and SIS Acts.

APRA's exemptions power enables APRA to tailor prudential requirements to accommodate differing circumstances, thus providing greater flexibility in the prudential regulation regime, consistent with recommendation 5.4 of *Rethinking Regulation*. Exemptions are generally used to reduce the compliance burden for entities where the law would lead to outcomes which are inconsistent with the policy intent and, therefore, lead to unnecessary compliance costs.

It is proposed to amend the prudential Acts to provide APRA with a specific exemption power for persons and classes of persons for those sections where flexibility may be appropriate. This proposal would amend section 11 of the Banking Act and section 7 of the Insurance Act and replace sections 125A and 125B of the Life Act (see Table 4 of the Appendix). APRA would also have a power to exempt a person or class of persons from the Banking, Life and Insurance Acts.

It is proposed that amendments be made to clarify that decisions by APRA to exempt a class of entities from the prudential Acts or a particular section of the

Acts are legislative in character. As legislative instruments, the decisions are subject to the requirements of the *Legislative Instruments Act 2003* (LIA), including consultation and Parliamentary scrutiny.

Decisions to exempt individuals from the prudential Acts would continue to be administrative decisions, not legislative instruments. Consequently, merits review would continue to be available for decisions by APRA where a particular person has requested an exemption under the prudential Acts. This is consistent with section 7 of the LIA which provides that exemption decisions under the SIS Act in relation to an individual are not legislative instruments. However, consistent with proposed access to merits review where APRA makes a decision affecting an entity (proposal 2.5), merits review would not be available where APRA reasonably believes that failure by APRA to act immediately would materially prejudice the interests of beneficiaries or the stability of Australia's financial system.

<b>Ensuring flexibility through exemption powers and clarifying review and scrutiny of these powers</b>	
<b>Issue</b>	Lack of flexibility in the prudential regime can lead to outcomes which are inconsistent with the policy intent and which impose unnecessary compliance costs. Decisions which affect persons should be transparent and the regulator should have appropriate accountability.
<b>Proposal 2.6</b>	It is proposed to amend the prudential Acts to provide APRA with a specific exemption power for persons and classes of persons for those sections where flexibility may be appropriate. This proposal would amend section 11 of the Banking Act and section 7 of the Insurance Act and replace sections 125A and 125B of the Life Act. See Table 4 of the Appendix for details. APRA would also have a power to exempt a person or class of persons from the Banking, Life and Insurance Acts.  It is proposed to clarify that decisions relating to classes of persons are legislative in nature and that those relating to a particular person are administrative in nature and are merits reviewable decisions, except where APRA reasonably believes that a delay would materially prejudice the interests of beneficiaries or the stability of Australia's financial system.
<b>Intended Outcome</b>	Make certain that APRA has the flexibility to ensure that the legislation operates as intended. Clarify which decisions are legislative decisions and ensure merits review is available for administrative decisions, where appropriate.

## 2.7 STREAMLINING APRA'S DIRECTIONS POWERS

APRA currently has a range of directions powers throughout the prudential Acts. While directions under section 62 of the Insurance Act are currently subject to merits review, very few other directions powers are merits reviewable. To simplify the legislation and streamline APRA's directions powers it is proposed to provide APRA with a general directions power under the Insurance Act and SIS Act, based on section 11CA of the Banking Act and section 230B of the Life Act, and to revoke APRA's various specific directions powers under the Insurance, Life and SIS Acts.

However, APRA would retain a separate directions power relating to directions to remove a person (proposal 4.3).

<b>Streamlining APRA's directions powers</b>	
<b>Issue</b>	The Insurance, Life and SIS Acts contain a range of directions powers which make the prudential Acts unnecessarily complex.
<b>Proposal 2.7</b>	It is proposed to consolidate APRA's directions powers in a single general power under each of the Acts. This power would be based on sections 11CA of the Banking Act and 230B of the Life Act.
<b>Intended Outcome</b>	A single simplified directions power for APRA, reducing the complexity of the legislation.

The Government intends also to review the structure and size of penalties under the prudential framework, including where penalties are available for decisions which are merits reviewable. The review will ensure that penalties are fair, consistent with similar offences both within the prudential framework and with related regulatory frameworks, and that the prudential regimes contain appropriate incentives to comply with prudential requirements.

## 2.8 CONFIDENTIALITY OF ADMINISTRATIVE APPEALS TRIBUNAL HEARINGS

Currently all Administrative Appeals Tribunal (AAT) hearings of APRA decisions are confidential under each of the prudential Acts. This reduces the publicly available information on the rationale for, and the transparency of, APRA's decisions.

The removal of the automatic confidentiality provisions from each prudential Act would give the AAT discretion to determine the appropriateness of

confidentiality through a private hearing under subsection 35(2) of the *Administrative Appeals Tribunal Act 1975* on a case by case basis.

<b>Confidentiality of Administrative Appeals Tribunal hearings</b>	
<b>Issue</b>	Confidential hearings reduce the publicly available information on the rationale for, and the transparency of, APRA's decisions.
<b>Proposal 2.8</b>	It is proposed to replace the general confidentiality provisions in the prudential Acts with public hearings, providing relevant persons with the option to apply to the AAT for a private hearing under subsection 35(2) of the <i>Administrative Appeals Tribunal Act 1975</i> .
<b>Intended Outcome</b>	The promotion of greater transparency in prudential decision-making, while giving the AAT the discretion to grant private hearings where this is appropriate.



### **3 ENSURING APPROPRIATE FLEXIBILITY AND ACCOUNTABILITY IN MAKING AND ADMINISTERING PRUDENTIAL STANDARDS**

Prudential standards help improve the clarity and certainty of prudential regulation by providing additional detail on prudential matters set out in the enabling legislation. Standards complement and reinforce the prudential requirements set out in the Banking Act, Insurance Act and Life Act by specifying how the regulatory framework is intended to operate in practice and APRA's expectations in overseeing that framework. Standards enable key minimum requirements to be articulated at a level of detail that would not be appropriate within principles-based enabling legislation.

Standards introduce greater flexibility into the prudential framework as they can be more readily adjusted to respond to developments in both domestic and international conditions, industry best practice and broader structural changes in the market. This enhances the effectiveness of prudential regulation by ensuring that regulation remains relevant over time.

Consistent with recommendation 5.4 of *Rethinking Regulation*, the Government has identified several options for enhancing flexibility within prudential standards.

#### **3.1 DISCRETIONARY DECISIONS UNDER PRUDENTIAL STANDARDS MAKING POWERS**

The Banking Act and Life Act currently provide APRA with limited flexibility to exercise discretion under prudential standards. Flexibility under these Acts could be enhanced by providing APRA with a specific discretionary power, including discretion to approve, impose, adjust or exclude specific prudential requirements in relation to a particular ADI or non-operating holding companies (NOHC), life company or friendly society. Flexibility could also be improved by providing APRA with a power under the Insurance Act to make prudential standards for an individual entity.

Addressing these gaps in the regulatory framework should help to ensure that entities are not unnecessarily burdened by inflexible requirements which are not appropriate to their situations.

<b>Discretionary decisions under prudential standards making powers</b>	
<b>Issue</b>	APRA has limited flexibility to tailor prudential requirements under prudential standards to particular circumstances under the prudential Acts.
<b>Proposal 3.1</b>	<p>It is proposed to provide APRA with a power under the Banking and Life Acts to make discretionary decisions under its prudential standards, including discretions to approve, impose, adjust or exclude specific prudential requirements in relation to specified ADIs, NOHCs of an ADI, life companies or friendly societies. This power would be based on paragraphs 32(3D)(a) and (b) of the Insurance Act.</p> <p>It is proposed to provide APRA with a power to make a prudential standard for a general insurer or a NOHC of a general insurer under the Insurance Act.</p>
<b>Intended Outcome</b>	This proposal would improve APRA's ability to tailor prudential requirements to specific circumstances, thus ensuring that the regulatory burden is appropriate in all circumstances.

### 3.2 SCRUTINY OF VARIATIONS TO PRUDENTIAL STANDARDS

APRA has the ability to vary prudential standards for any class of entities under the Banking and Life Acts. Although not specified under the Insurance Act, this power also exists under this Act as a result of subsection 33(3) of the *Acts Interpretation Act 1901*. APRA also has the power to make discretionary decisions relating to a class of entities under a prudential standard under paragraph 32(3D)(c) of the Insurance Act.

While it is important that APRA has appropriate flexibility to tailor requirements to particular circumstances, it is also important to ensure that there are appropriate processes and controls where APRA exercises these powers. In particular, it is important that any changes which affect classes of persons are made in a transparent manner, including through appropriate consultation.

As such, it is proposed that amendments be made to clarify that all variations or modifications to prudential standards which affect a class of persons are legislative instruments and are subject to the requirements of the LIA.

It is proposed to clarify APRA's power to make, vary or revoke a prudential standard for a class of entities, and to impose different requirements to be complied with by different classes of general insurers or NOHCs of general insurers. It is also proposed to remove APRA's 'discretionary power' under paragraph 32(3D)(c) of the Insurance Act with respect to a class of entities. This

Ensuring appropriate flexibility and accountability in making and administering prudential standards

would balance flexibility to tailor requirements appropriately with respect to a class of entities, with appropriate scrutiny through the Parliamentary process. This approach is also consistent with proposal 2.6.

In addition, there may be uncertainty as to whether the definition of ‘classes of entities’ under the prudential Acts also includes ‘subclasses’. It is proposed to clarify this definition to ensure that it includes subclasses.

<b>Scrutiny of variations to prudential standards</b>	
<b>Issue</b>	<p>Variations to legislative requirements which affect a class of persons should be made transparently, with appropriate consultation and review.</p> <p>The legislation is unclear as to APRA’s ability to tailor prudential standards to subclasses of regulated entities.</p>
<b>Proposal 3.2</b>	<p>It is proposed to remove APRA’s power to make discretionary decisions with respect to classes of entities under paragraph 32(3D)(c) of the Insurance Act.</p> <p>It is proposed to clarify APRA’s power to make, vary or revoke a prudential standard for a class of entities, and to impose different requirements to be complied with by different classes of general insurers or NOHCs of general insurers. The legislation will be clarified, such that all variations or modifications which affect a class of persons are legislative instruments.</p> <p>It is proposed to clarify the definition of classes of entities to ensure that it includes subclasses.</p>
<b>Intended Outcome</b>	<p>These changes would promote transparency and accountability, while ensuring APRA has the flexibility to ensure that prudential standards cater for particular circumstances.</p>

### **3.3 SIMPLIFYING LEGISLATIVE REQUIREMENTS RELATING TO CONSULTATION ON PRUDENTIAL STANDARDS**

Currently, APRA must comply with legislative requirements relating to consultation under both section 33 of the Insurance Act (subsection 71(5) of the Insurance Act with respect to Lloyd’s) and Part 3 of the LIA. The requirements under each Act are essentially the same. Sections 33 and 71 were included in the Insurance Act prior to the enactment of the LIA. However, these requirements are no longer necessary as the LIA provides a universal regime for consultation on all Commonwealth legislative instruments. It is therefore proposed to remove section 33 of the Insurance Act. This proposal will not

alter the obligation on APRA to consult with industry in respect of prudential standards.

<b>Simplifying legislative requirements relating to consultation on prudential standards</b>	
<b>Issue</b>	APRA currently must comply with two sets of legislative requirements with respect to consultation on general insurance prudential standards.
<b>Proposal 3.3</b>	It is proposed that section 33 of the Insurance Act, which sets out requirements for APRA to consult relevant entities and their representative associations and bodies, be removed.
<b>Intended Outcome</b>	APRA would continue to consult with industry in accordance with consultation requirements under the LIA. There would be no changes to APRA's consultative practices as a result of this change.

## 4 ENSURING FLEXIBILITY IN ENFORCEMENT

The prudential framework establishes the minimum standards of conduct, resourcing and systems (including risk management) that are consistent with the prudent management of a financial sector entity. Enforcement powers provide the means by which APRA is able to ensure that entities comply with those minimum standards.

The regulatory response in any enforcement action should be proportionate to the problem which it is addressing. Thus it is important that APRA has the flexibility to tailor its enforcement actions to a particular situation. This outcome aligns with the objectives outlined in recommendation 5.4 of *Rethinking Regulation*. As part of its response to the issues raised in *Rethinking Regulation*, the Government considers there is scope to enhance flexibility in the prudential regime by ensuring APRA has a variety of enforcement tools as well as providing flexibility within enforcement tools.

### 4.1 FLEXIBILITY THROUGH COURT-ENFORCEABLE UNDERTAKINGS

Court-enforceable undertaking powers can provide a flexible enforcement tool which allows entities to work cooperatively with APRA in developing a mutually agreed solution to an enforcement issue, but which APRA can enforce through the courts in the event that such action becomes necessary. This power allows the Board and senior management of an entity to maintain full responsibility for decisions made by the entity and to arrive at solutions which suit both the needs of the entity and meet APRA's requirements.

Currently, APRA only has the power to accept court-enforceable undertakings under the Insurance and SIS Acts. APRA does not have a power to accept court-enforceable undertakings under the Banking and Life Acts. As a result, APRA must rely on its directions power under these Acts to direct an entity as to how to address a prudential concern. While APRA's directions power also allows APRA to tailor its enforcement action to the situation, use of this power directly overrides the Board and senior management with respect to the issue under direction and could also have reputational effects for the entity involved.

<b>Flexibility through court-enforceable undertakings</b>	
<b>Issue</b>	APRA is unable to enforce cooperative agreements made with entities to address prudential concerns under the Banking and Life Acts.
<b>Proposal 4.1</b>	It is proposed to give APRA the power to accept court-enforceable undertakings under the Banking and Life Acts, consistent with the Insurance and SIS Acts.
<b>Intended Outcome</b>	Increase flexibility in the operation of prudential regulation by providing APRA with an enforcement tool which allows APRA to formalise and, if necessary, enforce an agreement that is reached cooperatively between itself and a regulated entity.

## 4.2 FLEXIBILITY IN THE DISQUALIFICATION REGIME

The disqualification regime plays a critical role in ensuring individuals holding important positions in prudentially-regulated entities have the appropriate technical skills and are of good fame and character and meet these requirements on a continuing basis.

Under all prudential Acts, provision is made for the automatic disqualification of responsible persons, auditors and actuaries under certain circumstances, for example, if the individual has been declared bankrupt or found guilty of certain offences. In addition, some prudential Acts enable APRA or the ATO to disqualify these persons if it is satisfied that the individual is not 'fit and proper'. However, the regulators' ability to disqualify responsible persons, auditors and actuaries on fit and proper grounds is not consistent across prudential Acts.<sup>2</sup> In particular, the regulator is unable to disqualify on fit and proper grounds:

- directors or senior managers under the Life Act;
- auditors under the Banking Act and Life Act; and
- actuaries under the Life Act and SIS Act.

It is proposed that both APRA and the ATO's disqualification regime could be enhanced by increasing its flexibility across industries. Currently, a disqualification under APRA-administered legislation is permanent unless revoked by the regulator. However, this may not be appropriate in all situations. It is also inconsistent with the disqualification regime administered

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<sup>2</sup> See Table 5 for a summary of APRA's current powers to disqualify relevant persons on fit and proper grounds.

by ASIC, under which a person is generally disqualified for five years and may be disqualified for a maximum of 15 additional years on ASIC’s application and if the court so approves (Part 2D.6 of the Corporations Act).

In addition, an individual disqualified from one responsible person position within an industry is unable to hold any other responsible person position within that industry. This may not always be appropriate.

These aspects prohibit the disqualification mechanism from being used in a manner that reflects the nature and severity of the contravention that led to the disqualification.

<b>Flexibility in the disqualification regime</b>	
<b>Issue</b>	APRA and the ATO currently have little flexibility in how they are able to use their disqualification powers, which can lead to harsh outcomes. There are gaps in the regulators’ powers to disqualify some individuals on fit and proper grounds.
<b>Proposal 4.2</b>	<p>It is proposed that APRA (and the ATO under the SIS Act) be given explicit powers (modelled on section 25A of the Insurance Act) to disqualify on fit and proper grounds:</p> <ul style="list-style-type: none"> <li>• directors or senior managers under the Life Act;</li> <li>• auditors under the Banking Act and Life Act; and</li> <li>• actuaries under the Life Act and SIS Act.</li> </ul> <p>It is also proposed that under each prudential Act, APRA and the ATO be given a power to specify relevant aspects of a disqualification, including the period of disqualification and the type(s) of position the disqualified person is banned from holding. The regulators would also have the power to revoke a disqualification.</p>
<b>Intended Outcome</b>	APRA (and the ATO under the SIS Act) would have the flexibility to tailor disqualification actions under each prudential Act to address the particular concerns of the situation.

### **4.3 CLARIFY PROCESSES CONCERNING THE APPOINTMENT OF ACTUARIES AND AUDITORS**

Under the prudential Acts, APRA has various powers that enable it to approve, vary or revoke the appointment of an actuary or auditor of an APRA-regulated entity.

Such an approach is inconsistent with the principle that the ultimate responsibility for the prudent management of a regulated entity, including ensuring that actuaries and auditors appointed to the entity meet, on a continuing basis, prescribed standards of fitness and propriety, resides with the Board of the entity. It is also inconsistent with a principles-based regime for prudential regulation that the Regulator be involved in such business decision-making. It is proposed that the power for APRA to approve the appointment of an actuary or auditor of a regulated entity be removed from the prudential Acts.

Given the critical role auditors and actuaries play in prudential regulation, particularly in ensuring the accuracy of data provided by regulated entities and monitoring compliance with regulatory requirements of regulated entities, it is important that an effective mechanism is in place to ensure continuing compliance with minimum fit and proper standards by auditors and actuaries of APRA-regulated entities. A robust principles-based mechanism allowing APRA to establish minimum fit and proper standards, with responsibility for complying with those standards being placed in the hands of the entity, should be supported by robust enforcement powers. These enforcement powers should include the power to disqualify and the power to direct an entity to remove a disqualified person (see proposal 4.2).

Currently, APRA is only able to direct a regulated entity to remove an auditor under the Banking Act, and a director or senior manager under the Banking and Insurance Acts. Under the Banking Act, APRA may direct an ADI to remove a person if APRA is satisfied that the person has failed to perform adequately and properly the functions and duties of the position or does not meet one or more of the fitness and propriety requirements in the prudential standards. APRA is unable to direct a regulated entity to remove an auditor or actuary, director or senior manager on fit and proper grounds under any other prudential Act. It is proposed to insert a provision allowing APRA to direct a regulated entity to remove an auditor or actuary who does not meet the fit and proper requirements into the Insurance Act, Life Act and SIS Act.

<b>Clarify processes concerning the appointment of actuaries and auditors</b>	
<b>Issue</b>	APRA approval of actuaries and auditors is inconsistent with a principles-based legislative framework and Board responsibility for the operation of financial sector entities.
<b>Proposal 4.3</b>	<p>It is proposed that the power for APRA to approve the appointment of an actuary or auditor of a regulated entity be removed from the prudential Acts.</p> <p>It is proposed that a provision allowing APRA to direct a regulated entity to remove an auditor, actuary, director or senior manager who does not meet the fit and proper requirements be introduced into the prudential Acts, where required.</p>
<b>Intended Outcome</b>	<p>The legislation would clarify that the appointment of a fit and proper actuary, auditor, director or senior manager is the responsibility of the Board. Accountability and responsibility for decision-making would reside appropriately with the Board. APRA would have the power to direct the entity to remove a person who does not meet the fit and proper requirements.</p>

#### **4.4 SUPPORTING COOPERATION BETWEEN APRA AND RELEVANT PROFESSIONAL BODIES OF ACTUARIES AND AUDITORS**

The professional bodies for actuaries and auditors play an important role in promoting adherence to minimum standards of conduct for the professions as a whole. APRA is currently limited in its ability to work with professional bodies to foster appropriate conduct of professionals with respect to banking and insurance.

It is proposed that APRA have a power to refer matters in relation to an actuary or auditor to their relevant professional body under all prudential Acts. This power could be based on APRA's power under section 131A of the SIS Act (and would replace section 48 of the Insurance Act). This would also foster greater cooperation and sharing of information between APRA and the professional body and would assist in self-regulation of professionals.

<b>Supporting cooperation between APRA and relevant professional bodies of actuaries and auditors</b>	
<b>Issue</b>	APRA does not have the power to share information regarding actuary and auditor conduct with appropriate professional bodies under the Banking and Life Acts and its power under the Insurance Act is limited. This limits cooperation between APRA and the professional bodies.
<b>Proposal 4.4</b>	It is proposed to provide APRA with a power to refer matters relating to actuaries and auditors to their professional bodies under the Banking, Insurance and Life Acts. This power would be based on section 131A of the SIS Act. With respect to the Insurance Act, this would replace the current section 48.
<b>Intended Outcome</b>	APRA would have a broad power to refer matters relating to actuaries and auditors to their professional bodies, fostering greater cooperation with those responsible for conduct of the profession as a whole and supporting self-regulation.

## 5 SIMPLIFYING THE LIFE ACT AND SIS ACT

The legislative framework for prudential regulation of the life industry was modernised significantly through the creation of the *Life Insurance Act 1995*. This Act increased the accountability of the industry to both consumers and the Government by increasing the responsibilities of directors, auditors and actuaries. At the same time, the legislation improved the protection granted to policyholders by modernising solvency and capital adequacy powers, consistent with a risk-based approach. It also increased the powers of the then regulator, the Insurance and Superannuation Commission, to investigate and intervene to protect the interests of policyholders.

Since the introduction of this legislation, both the life insurance industry and the broader prudential regulation framework have evolved significantly. Following the Wallis Inquiry, APRA was created and given the responsibility for prudentially regulating the life insurance industry and friendly societies, which were also brought under the Life Act. APRA's approach to prudential regulation has also changed significantly in recent years.

The Life Act itself has not been significantly modernised to reflect APRA's approach to prudential regulation over recent years, and particularly through its General Insurance Stage 2 reforms. The Act remains more prescriptive and less flexible than the Banking and Insurance Acts. For example, APRA is not responsible for actuarial standards under the Life Act and is therefore less able to tailor prudential requirements to prudential risks and tailor the system to particular situations.

The Government, in considering recommendation 5.4 of *Rethinking Regulation*, has identified further areas where it considers that the Life Act can be simplified, and in so doing, ensuring that APRA has appropriate flexibility to tailor regulatory requirements for life insurers. In particular, the removal of prescriptive requirements from the Life Act and the *Life Insurance Regulations 1995* (Life Regulations) and, where necessary, the replacement of such requirements within prudential standards or prudential practice guides, should provide greater flexibility with respect to these requirements and greater flexibility for requirements to be rescinded or adjusted with changes to the industry and prudential regulation. The Government estimates that these proposals would, if implemented, reduce the number of sections within the Life Act by around one-third.

The SIS Act gives effect to policy with respect to both prudential regulation of superannuation and retirement income policy. As a result of the dual purposes of the Act, it is arguably more complex than the other Acts administered by APRA. Prudential regulation of superannuation was modernised through the *Superannuation Safety Amendment Act 2004*. However, the Government has

identified further areas where greater clarity can be achieved and where obsolete requirements can be removed.

## 5.1 PHASE OUT PRUDENTIAL RULES FROM THE LIFE ACT

Life company prudential requirements are currently provided for under prudential rules, actuarial standards, prudential standards, Life Regulations and the Life Act itself. Prudential rules were the main tool used by the Regulator to prescribe requirements of life insurers under the Act, prior to APRA obtaining a prudential standards-making power. Prudential rules tend to be more prescriptive than the prudential standards and prudential practice guides released by APRA.

It is proposed to simplify and remove prescription from the prudential regime for life companies by replacing prudential rules with principles-based prudential standards over time.

<b>Phase out prudential rules from the Life Act</b>	
<b>Issue</b>	Prudential rules add prescription and unnecessary complexity to the prudential framework.
<b>Proposal 5.1</b>	It is proposed that prudential rules be phased out by 30 June 2011. Where necessary, APRA would consider replacing them through its prudential standards and prudential practice guides.
<b>Intended Outcome</b>	Simplify the prudential framework for life insurers.

## 5.2 ABOLISH THE LIFE INSURANCE ACTUARIAL STANDARDS BOARD

The Life Act provides that APRA may determine standards on prudential matters for life companies under section 230A but grants actuarial standards making powers to the Life Insurance Actuarial Standards Board (LIASB) under section 101. While actuarial matters are a subset of prudential matters, the distinction between the two under the legislation is not always clear.

The LIASB has a general power to do whatever is necessary, or in connection with, or reasonably incidental to, the performance of its function of making prudential standards. Given the breadth of the LIASB's powers, APRA has limited, if any, ability to tailor actuarial standards to particular situations.

At the time the LIASB was created, it was considered that the regulator did not have adequate actuarial capacity to develop actuarial standards for life companies. APRA provides full secretariat support to the LIASB and has

developed its own capacity to determine standards dealing with actuarial matters.

It is proposed to abolish the LIASB and the concept of actuarial standards, thus simplifying the Act and better integrating actuarial standards into the broader prudential framework administered by APRA. A transitional period may be required to ensure a seamless transfer from the LIASB to APRA.

<b>Abolish the Life Insurance Actuarial Standards Board</b>	
<b>Issue</b>	Uncertainty with respect to which matters are 'actuarial matters' and which are 'prudential matters' and limited ability for APRA to apply the actuarial standards in a flexible manner.
<b>Proposal 5.2</b>	It is proposed to abolish the LIASB and to remove the concept of actuarial standards from the Life Act. APRA would have the power to make prudential standards under section 230A of the Life Act with respect to prudential matters currently addressed through actuarial standards.
<b>Intended Outcome</b>	Remove confusion as to which matters are 'prudential matters' and which matters should be covered by 'actuarial standards', and ensure that APRA has appropriate flexibility and discretion to tailor requirements to particular situations.

### **5.3 AUDITOR, AUDIT COMMITTEE AND ACTUARIAL REQUIREMENTS UNDER THE LIFE ACT**

Requirements with respect to auditors and actuaries under the Life Act are unnecessarily prescriptive and inflexible. For example, section 93 sets out eligibility criteria for appointment as an actuary and section 113 details requirements of actuarial investigations. Where detailed requirements are necessary, they are better addressed through prudential standards or prudential practice guides. This approach would also align the Life Act with the Banking and Insurance Acts.

<b>Auditor, audit committee and actuarial requirements under the Life Act</b>	
<b>Issue</b>	Requirements with respect to actuaries in the Life Act are prescriptive and inflexible.
<b>Proposal 5.3</b>	<p>It is proposed to remove the eligibility requirements for appointed actuaries from section 93 of the Life Act.</p> <p>It is proposed to replace sections 83, 97 and 113 in the Life Act with more principles-based sections modelled on sections 49J and 49K of the Insurance Act. The new sections would require that the auditor or actuary of a life insurer perform the functions set out in the prudential standards and that the insurer must make the arrangements that are necessary to enable the auditor or actuary to do those things. A transition period may be required to ensure a seamless adjustment.</p> <p>It is proposed to repeal sections 87, 90, 91, 92, 94, 95, 115, 116, 119, 120 and 122 of the Life Act.</p> <p>Note that requirements to approve auditors and actuaries are discussed under proposal 4.3.</p>
<b>Intended Outcome</b>	The regulatory framework for auditors and actuaries would become more principles-based, resulting in greater flexibility in the role and requirements of actuaries and auditors. More detailed requirements removed from the Act could be considered for inclusion within prudential standards.

## **5.4 OVERLAPS IN REPORTING REQUIREMENTS BETWEEN APRA AND ASIC**

Various sections within the Life Act may result in life companies and/or friendly societies having to provide information to both APRA and ASIC. It is proposed that this duplication in reporting requirements be removed and replaced by a process of information sharing between the Regulators according to the existing reporting requirements. For example, it is proposed to repeal the requirement under section 16M of the Life Act for the insurer to lodge a copy of APRA-approved benefit fund rules with ASIC. This would be replaced with a process by which APRA would provide a copy of the approved benefit fund rules to ASIC.

<b>Overlaps in reporting requirements between APRA and ASIC</b>	
<b>Issue</b>	Duplication in reporting requirements under the Life Act.
<b>Proposal 5.4</b>	It is proposed to repeal sections 16M, 16S, 16W, 122, 238 and 239 of the Life Act. These reporting requirements would be replaced by a process of information sharing between APRA and ASIC according to the existing requirements.
<b>Intended Outcome</b>	The legislative requirements to report to both APRA and ASIC would be removed and replaced with a process of information sharing between the regulators where appropriate.

## 5.5 REINSURANCE ARRANGEMENTS UNDER THE LIFE ACT

The Life Act requires companies to provide a reinsurance report to APRA every financial year (section 123) and requires APRA to approve certain limited types of reinsurance contracts before a life company can enter into such a contract (section 125). Decisions to enter into reinsurance contracts are fundamentally business decisions and, as such, are more appropriately the responsibility of the Board of the company rather than of APRA. APRA has various powers, such as the ability to accept court-enforceable undertakings or use of directions powers, to address any prudential concerns it has regarding reinsurance contracts.

It is proposed to repeal sections 123 and 125 of the Life Act. Similar requirements for APRA to approve certain reinsurance contracts for general insurers were removed from the Insurance Act through the *General Insurance Reform Act 2001*. Where APRA considers such requirements are necessary, it may more appropriately deal with these issues through prudential standards, as has been done for the general insurance industry. If necessary, a transition period may be considered.

<b>Reinsurance arrangements under the Life Act</b>	
<b>Issue</b>	Decisions to enter into reinsurance arrangements should be the direct responsibility of the Board, rather than of APRA. Reinsurance reporting requirements under the Life Act are unnecessarily prescriptive.
<b>Proposal 5.5</b>	It is proposed to repeal sections 123 and 125 of the Life Act, relating to reinsurance contracts.
<b>Intended Outcome</b>	Promote Board responsibility for business decisions and simplify the Life Act.

## 5.6 REGISTRATION OF LIFE INSURERS

The Life Act and Life Regulations contain detailed and prescriptive requirements in relation to the registration of life insurers. In many cases, these requirements also duplicate requirements contained more appropriately elsewhere within the legislative framework. Where necessary, a transition period may be considered to allow for a seamless process.

Life Regulation 3.01 sets out a detailed list of requirements for a registration application. A more flexible approach could be achieved by providing this level of prescription within APRA's non-binding prudential practice guides or within binding prescribed forms.

Section 25 of the Life Act requires authorised life insurers to notify APRA of any changes to the information contained in its original licensing application (under Life Regulation 3.01) within 14 days. Most of this information is already gathered by APRA through alternative processes.

Life insurers are also currently issued with a 'certificate of registration' which must be returned to APRA within seven days following a cancellation of registration. There is a strict liability penalty of 10 penalty units for failure to return the certificate. This section creates an administrative burden on life insurers which is not present in the case of general insurers or authorised deposit-taking institutions.

<b>Registration of life insurers</b>	
<b>Issue</b>	The Life Act and Life Regulations contain prescriptive requirements with respect to registration of life insurers, and requirements to notify changes to information provided in a registration application. These requirements overlap with other information gathering processes. The 'certificate of registration' and penalty attached is unnecessary and administratively burdensome.
<b>Proposal 5.6</b>	It is proposed to repeal subsections 20(2), (3) and (4), sections 25 and 28 of the Life Act and Part 3 of the Life Regulations. It is proposed to amend section 21 of the Life Act such that APRA would no longer issue a certificate but would provide 'authorisation in writing' as per the Banking and Insurance Acts.
<b>Intended Outcome</b>	Simplify the Life Act and Life Regulations with respect to registration requirements. This would also decrease the ongoing reporting requirements with respect to licensing for existing life companies.

## 5.7 CLARIFYING REPORTING OBLIGATIONS UNDER THE SIS ACT

The prudential reporting requirements for ‘superannuation entities’ are located in four Parts of the SIS Act and *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). This has the effect of creating unnecessary complexity and potential confusion as to reporting obligations. In addition, the terminology used in the SIS legislation can make it difficult to determine which reporting obligations relate to self managed superannuation funds (SMSFs) and which relate to APRA-regulated superannuation entities, as both are ‘superannuation entities’. The reporting obligations for SMSFs (regulated by the Australian Taxation Office) differ slightly from those requirements imposed on APRA-regulation entities.

Clarification and simplification of the legislation with respect to reporting requirements would promote ease of compliance by superannuation entities, particularly SMSFs.

<b>Clarifying reporting obligations under the SIS Act</b>	
<b>Issue</b>	The prudential reporting requirements in the SIS Act and SIS Regulations are unnecessarily complex and unclear as a consequence of being divided between Parts 4 and 13 of the SIS Act, and Parts 8 and 11 of the SIS Regulations.
<b>Proposal 5.7</b>	It is proposed to group the reporting requirements for superannuation trustees more logically in one Part of the SIS Act and SIS Regulations. The layout of the prudential reporting requirements would follow the structure outlined in Table 6 of the Appendix.  It is also proposed to identify clearly in the legislation the reporting requirements by type of superannuation entity to which they apply.
<b>Intended Outcome</b>	Ensure that reporting requirements for SMSFs and APRA-regulated superannuation entities are clear and unambiguous.

## 5.8 REPLACING RSE LICENSE NUMBERS WITH AUSTRALIAN BUSINESS NUMBERS (ABNs)

Under the SIS Act, APRA is responsible for the allocation of Registrable Superannuation Entity (RSE) licence numbers to bodies corporate and groups of individual trustees as well as RSE registration numbers for superannuation entities. These numbers are used to identify entities and licensees that have met APRA requirements for obtaining a licence and there are provisions in the SIS Act as to when these numbers must be displayed on documents.

The Government is committed to the long term objective of making the Australian Business Number (ABN) the sole business identifier number for all persons and entities in their dealings with the Government and its agencies. As such, the Government is examining the possibility of using the ABN as the identifier number for RSE licensees and superannuation entities.

In relation to RSE licensees, this proposal would involve replacing the requirement under the SIS Act for RSE licensees to have a RSE licence number and show this number on documentation with the requirement to obtain and display the ABN.

It is also proposed to amend the SIS Act to make it a licence condition for an RSE licensee to obtain an ABN which would be used as the sole identifier for RSE licensees. The Australian Business Register (ABR) would include a field confirming a trustee's status as an RSE licensee. The information as to the RSE licensee's details would primarily be on the ABR, but APRA may host some information on its own website. While there would be no legislative requirement for trustees to identify themselves to members as an RSE licensee, it would still be an offence to operate as a trustee without an RSE licence. Members would be able to confirm the status of their fund and its trustee by checking the ABR.

Similar arrangements would apply to the provisions relating to RSE registration numbers. It is proposed to amend the SIS Act in a way as to remove the requirement to display the registration number on documentation and replace it with an ABN. Information would be provided on the ABR relating to the status of the superannuation entity.

<b>Replacing RSE numbers with Australian Business Numbers (ABNs)</b>	
<b>Issue</b>	The Government is committed to the long term objective of making the ABN the sole business identifier number for all persons and entities in their dealings with the Government and its agencies.
<b>Proposal 5.8</b>	It is proposed to amend the requirements under the SIS Act to remove the obligation to display RSE licence and registration numbers and introduce a condition for all RSE licensees and superannuation entities to obtain and display an ABN.
<b>Intended Outcome</b>	Make it simpler for superannuation trustees and entities to conduct their business by having just one number (the ABN) for all their dealings with the Australian Government.

## 5.9 SIMPLIFICATION OF ACTS THROUGH REMOVAL OF OBSOLETE LEGISLATION

The Government has identified several sections of prudential legislation which are possibly obsolete and therefore could be removed from the legislation.

The sections identified as possibly being obsolete are:

- part 31 of the SIS Act relating to management companies of superannuation funds;
- sections 256 and 257 relating to transitional arrangements for approved actuaries and auditors under the Life Act (obsolete as a result of proposal 4.3 to remove APRA approvals of auditors and actuaries); and
- sections 258, 260, 261, 262 and 263 of the Life Act relating to transitional arrangements under the *Life Insurance Act 1995*, for life companies which were registered under the Life Insurance Act 1945.

<b>Simplification of Acts through removal of obsolete legislation</b>	
<b>Issue</b>	Several transitional arrangements in the Life and SIS Acts are possibly obsolete.
<b>Proposal 5.9</b>	It is proposed to repeal obsolete provisions from the Acts. In particular, Part 31 of the SIS Act and sections 256, 257, 258, 260, 261, 262 and 263 of the Life Act. Comment is also sought on whether section 259 — reinsurance between statutory funds — is obsolete.
<b>Intended Outcome</b>	Ensure the legislation remains relevant to today's financial system.



## APPENDIX

**Table 1: Breach reporting requirements which are proposed to be amended (relates to proposal 1.1)**

<b><i>Superannuation Industry (Supervision) Act 1993</i></b>	
Section 29JA	Failing to notify breach of licence condition
Section 106	Duty to notify the regulator of significant adverse events
Section 129	Obligations of actuaries and auditors — compliance
Section 130	Obligations of actuaries and auditors — solvency
<b><i>Insurance Act 1973</i></b>	
Section 35A	Notice of breach of prudential standard
Section 49A	Additional duty of auditors and actuaries to give information
<b><i>Life Insurance Act 1995</i></b>	
Section 88	Auditor's obligation to report to company and APRA
Section 98	Actuary's obligation to report to APRA
<b><i>Banking Act 1959</i></b>	
Section 16C	Auditor may provide information to APRA
Section 62A	Notices to APRA

**Table 2: Decisions which it is proposed to remove ministerial consent from (relates to proposal 2.1)<sup>(a)</sup>**

<b>Insurance Act 1973</b>	
Section 15 <sup>(b)</sup>	To revoke the authorisation of a general insurance company
Section 21 <sup>(b)</sup>	To revoke the authorisation of a NOHC of a general insurance company
Section 32	To modify a prudential standard to cater for an in-house capital adequacy model proposed by an insurer (or with the insurer's agreement) and to make certain variations/revocations to prudential standards
Section 52	To conduct an investigation of a general insurer, authorised NOHC or subsidiary
Section 63	To review reviewable decisions made by the Treasurer, and for the AAT to review reviewable decisions made by Treasurer
Section 64	Reconsideration of decision, merits review of decision, notification of decision
Section 65	Outline of Part — Security deposit of Lloyd's to be lodged with Treasurer
Section 74	To give a direction to a Lloyd's underwriter to not issue or renew policies
Section 76	To give a direction to Lloyd's as to the provision of liabilities in the accounts of designated security trust funds
Section 78	To give a direction to Lloyd's not to deal with certain assets
Section 92Q	Relates to the deposit of securities made by Lloyd's
Section 92R	Relates to the application of securities lodged to discharge the expenses of the judicial trusteeship of a designated security trust fund
Section 92S	Relates to the return of a security deposit
Section 93	Relates to the authorisation of a Lloyd's underwriter
<b>Life Insurance Act 1995</b>	
Section 21 <sup>(b)</sup>	To refuse to register a life company
Section 40 <sup>(b)</sup>	To grant approval to a life company to mortgage or charge an asset of a statutory fund
Section 49	To give notice for a life company to take action to remedy a contravention of the duties of directors in relation to statutory funds
Section 62 <sup>(b)</sup>	To refuse to agree to the distribution of the retained profits of a statutory fund
Section 63 <sup>(b)</sup>	To refuse to agree to the distribution of shareholder's capital in relation to a statutory fund
<b>Superannuation Industry (Supervision) Act 1993</b>	
Section 29G <sup>(b)</sup>	To cancel an RSE licence
Section 133 <sup>(b)</sup>	To suspend or remove a trustee of a superannuation entity
Section 146	To transfer benefits of members and beneficiaries
Section 264 <sup>(b)</sup>	To give direction to freeze assets

(a) Ministerial consent is also currently required for decisions under sections 33, 47, 49M, 49N, 51, and 62 of the Insurance Act, and sections 68, 73, 73D, 73F, 134 and 150 of the Life Act. It is proposed that these sections be removed from the various Acts (see proposals 2.7, 3.3 and 5.2).

(b) It is proposed that ministerial consent be replaced with merits review with respect to these sections.

**Table 3: Decisions where it is proposed that merits review should be made available (relates to proposals 2.4, 2.5 and 2.7)<sup>(a)(b)</sup>**

<b>Banking Act 1959<sup>(c)</sup></b>	
Section 9	Authority to carry on banking business
Section 9A(2)	Revocation of authority to carry on banking business
Section 11	APRA may determine that provisions of this Act do not apply (decisions relating to a particular person only)
Section 11AA	Authority to be a NOHC
Section 11AB	Revocation of Authority to be a NOHC
Section 11AF	APRA may make prudential standards for ADIs and authorised NOHCs(standards relating to a particular person only)
Section 11CA	APRA may give directions in certain circumstances
Section 11CB	APRA may certify an industry support contract
Section 11CC	APRA may direct parties to an industry support contract to comply with the contract
Section 66	Restriction on use of certain words and expressions (decisions relating to a particular person only)
Section 67	Restriction on establishment or maintenance of representative offices of overseas banks
<b>Insurance Act 1973<sup>(c)</sup></b>	
Section 7	Determination that certain provisions do not apply (decisions relating to a particular person only)
Section 13	Conditions on an authorisation
Section 15	When APRA may revoke an authorisation
Section 17	Assignment of liabilities to enable revocation
Section 19	Conditions on an NOHC authorisation
Section 21	When APRA may revoke a NOHC authorisation
Section 49H	Delegate's decision to extend time for providing actuary's report
Section 116A	Assets and liabilities in Australia
<b>Life Insurance Act 1995<sup>(c)</sup></b>	
Section 16C	What is a friendly society?
Section 16E	Restriction on use of expression friendly society
Section 16V	Consequential amendments of constitution as required by APRA
Section 21	Decision on application for registration
Section 27	Voluntary deregistration
Section 40	Mortgages etc. of assets
Section 43	Investment of statutory funds
Section 48	Duty of directors in relation to statutory funds
Section 62	Distribution of retained profits
Section 63	Distribution of shareholders' capital

**Table 3: Decisions where it is proposed that merits review should be made available (relates to proposals 2.4, 2.5 and 2.7) <sup>(a)(b)</sup> (continued)**

<b>Life Insurance Act 1995<sup>(c)</sup> (continued)</b>	
Section 208	Relaxation of company's obligations to surrender
Section 230A	APRA may make prudential standards for life companies (standards relating to a particular person only)
Section 230B	APRA may give directions
<b>Superannuation Industry (Supervision) Act 1993<sup>(c)</sup></b>	
Section 29G	Cancel an RSE licence
Section 29HB	Modifications etc. to risk management strategies
Section 29PB	Modifications etc. to risk management plans
Section 62	Sole purpose test
Section 133	Suspension or removal of trustee of superannuation entity
Section 264	To freeze assets
Section 334	Regulator's powers of modification — general issues
<b>Superannuation Industry (Supervision) Regulations 1994</b>	
Regulation 1.05(2)(c)	Meaning of Annuity
Regulation 1.06(2)(c)	Meaning of Pension
Regulation 1.08(2)	Restriction on factors for converting
Regulation 4.08A	Operating Standard — member representation for certain regulated superannuation funds where a declaration under subsection 18(7) of the Act applies
Regulation 6.19A	Release of benefits on compassionate grounds
Regulation 6.22B	When benefits in regulated superannuation funds may be cashed in favour of persons except members
Regulation 6.36	Suspension or variation of obligation to roll over or transfer amounts by APRA
Regulation 6.37	Suspension or variation of obligation to roll over or transfer amounts by APRA — application by trustee
Regulation 7A.03J(2)(a)(ii)	Rolling over or transferring the non-member spouse's interest
Regulation 7A.03K(2)(b)	Paying a lump sum
Regulation 7A.12(4)(a)(ii)	Rolling over or transferring transferable benefits
Regulation 7A.13(7)(b)	Paying a lump sum
Regulation 7A.16(3)(b)	Preservation of non-member spouse entitlements
Regulation 9.09(1A)	Funding and solvency certificates — operating standard
Regulation 9.24(2)	Alternative programs approved by the regulator
Regulation 9.44(2)	Alternative programs approved by the regulator for accumulation funds
Regulation 12.05(5) and (6)	Value A of accrued benefits
Regulation 12.06(5)	Value B of accrued benefits
Regulation 13.16(2)(a)(ii) and d(ii)	Accrued benefits — restriction on alteration

**Table 3: Decisions where it is proposed that merits review should be made available (relates to proposals 2.4, 2.5 and 2.7) <sup>(a)</sup> (continued)**

<b>Financial Sector (Collection of Data) Act 2001<sup>(c)</sup></b>	
Section 7	Decision to exempt a corporation from the obligation to register under this Act
Section 9	Obligations of corporations
Section 11	List of names and categories of registered entities
Section 13	APRA may determine reporting standards for and require provision of, certain documents (standards for a particular person only)

- (a) The table does not include decisions which are already merits reviewable.
- (b) As a result of proposal 2.7 that specific directions powers be removed and replaced with a broad directions power which would be merits reviewable and proposal 5.2 to abolish the Life Insurance Actuarial Standards Board and the actuarial standards, sections 36, 49M, 49N, 51 and 62 of the Insurance Act and sections 68, 73, 73F, 134 and 150 of the Life Act are proposed to be repealed and replaced with a broad directions power. It is proposed that merits review would be available for the broad directions power.
- (c) It is proposed that merits review would not be available for decisions relating to an entity, where APRA reasonably believes that a delay would, or would be likely to materially prejudice the interests of beneficiaries. This exception would apply to APRA decisions relating to the entity (for example, licensing decisions, exemption decisions and directions).

**Table 4: Proposal to provide APRA with the flexibility to exempt persons where an unintended outcome would result otherwise (relates to proposal 2.6)**

<b>Banking Act 1959</b>	
Part II Division 1	Authority to carry on banking business
Part II Division 1AA	Authority to be a NOHC of an ADI
Part II Division 1A	Prudential supervision and monitoring of ADIs and authorised NOHCs
Subsection 13A(4)	Consequences of inability or failure of ADI to meet obligations
Section 66	Restriction on use of certain words and expressions
Section 66A	Restriction on use of expressions authorised deposit-taking institution and ADI
Section 67	Restriction on establishment or maintenance of representative offices of overseas banks
Section 69	Unclaimed moneys
<b>Insurance Act 1973</b>	
Part III Division 1	Need to be authorised
Part III Division 2	Authorisation to carry on insurance business
Part III Division 3	Revocation of an authorisation
Part III Division 4	Authorisation to be a NOHC of a general insurer
Part III Division 5	Directors, senior managers and other representatives of general insurers and authorised NOHCs
Part III Division 6	Other matters
Section 35	Obligation to comply with the prudential standard
Section 39	Requirement for general insurers to have an auditor and actuary
Section 41	Compliance with prudential standards
Part IV Division 3	Actuarial investigation required by APRA
Part IV Division 4	Role of auditor and actuary of a general insurer
Section 49Q	Keeping of accounting records
Section 117	Address for service in Australia
Section 118	Agent in Australia
Section 120	Saving if section 93 ceases to have effect
Section 121	Service of documents and notices
<b>Life Insurance Act 1995</b>	
Part 2	Explanation of key concepts
Part 2A	Special provisions relating to life companies that are friendly societies
Part 2B	Special provisions relating to Australian branches of foreign life insurance companies
Part 3	Registration of life companies
Part 4 Division 1	Statutory funds of life companies — General requirements
Part 4 Division 3	Restructure and termination of statutory funds
Part 4 Division 4	Additional requirements for transfer of policies between statutory funds by endorsement
Part 4 Division 5	Allocation of profits and losses and capital payments
Part 4 Division 6	Distribution of retained profits and shareholders' capital
Section 75	Financial records — Australian and Australian/overseas funds

**Table 4: Proposal to provide APRA with the flexibility to exempt persons where an unintended outcome would result otherwise (relates to proposal 2.6) (continued)**

<b><i>Life Insurance Act 1995 (continued)</i></b>	
Section 76	Financial records — overseas funds
Section 78	Treatment of income and outgoings relating to mixed business
Section 79	Treatment of income or outgoings relating to 2 or more categories of business etc
Section 80	Basis of apportionment
Section 81	Treatment of appreciation and depreciation of assets
<b><i>Superannuation Industry (Supervision) Act 1993</i></b>	
Part 2A	Licensing trustees
Part 2B	Registration of entities
Section 36	Trustee to give copy of audit report to APRA
Section 113 <sup>(a)</sup>	Audit of accounts and statements

(a) With respect to section 113 of the SIS Act, the exemption power will relate to APRA's power to exempt APRA-regulated entities. It is not proposed to give the ATO a similar power with respect to SMSFs.

**Table 5: APRA's current power to disqualify a responsible person, an auditor or an actuary on the grounds of fitness and propriety (relates to proposal 4.2)**

	Banking Act	Insurance Act	Life Act	SIS Act
Power to disqualify a director or senior manager (or a trustee, investment manager or custodian in the case of superannuation)	Yes	Yes	No	Yes
Power to revoke the disqualification of a director or senior manager (or a trustee, investment manager or custodian in the case of superannuation)	Yes	Yes	No	Yes
Power to disqualify an actuary	N/A	Yes	No	No
Power to revoke the disqualification of an actuary	N/A	Yes	No	No
Power to disqualify an auditor	No	Yes	No	Yes
Power to revoke the disqualification of an auditor	No	Yes	No	Yes

**Table 6: Proposed structure for prudential reporting requirements in the SIS Act and SIS Regulations (relates to proposal 5.7)**

Obligation	APRA-regulated superannuation entities	SMSFs
1. Keep accounting records	SIS Act, Part 13, Section 111	SIS Act, Part 13, section 111
2. Prepare reporting documents/accounts and statements	Include a reference to FSCoDA. <sup>(a)</sup>	SIS Act, Part 13, Section 112 SIS Regulations, Part 8, Regulations 8.01, 8.01A and 8.02
3. Rules about audits	SIS Act, Part 13, Section 113 SIS Regulations, Part 8, Regulation 8.03	SIS Act, Part 13, Section 113 SIS Regulations, Part 8, Regulation 8.03
4. Lodge annual returns	Include a reference to FSCoDA. <sup>(b)</sup>	SIS Act Part 4, Section 36A
5. Lodge audit reports	SIS Act, Part 4, Section 36	No requirement

(a) As these obligations are contained within the *Financial Sector (Collection of Data) Act 2001* (FSCoDA), the SIS Act would include a reference to FSCoDA.

(b) As these obligations are contained within the FSCoDA, the SIS Act would include a reference to FSCoDA.