

EXPOSURE DRAFT

2004-2005-2006-2007

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (11/05/2007)

Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007

No. , 2007

(Treasury)

**A Bill for an Act to amend the law relating to
banking, insurance, superannuation and other
matters in the Treasury portfolio, and for related
purposes**

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	
3. Schedule 1, Part 2	1 July 2011.	1 July 2011
3. Schedules 2 and 3	The day on which this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

8

3 Schedule(s)

9

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12

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Streamlining prudential regulation **Schedule 1**
Amendments commencing on Royal Assent **Part 1**

1
2 **Schedule 1—Streamlining prudential**
3 **regulation**

4 **Part 1—Amendments commencing on Royal Assent**

5 *Anti-Money Laundering and Counter-Terrorism Financing*
6 *Act 2006*

7 **1 Section 5 (definition of *Life Insurance Actuarial Standard***
8 **4.02)**

9 Repeal the definition.

10 **2 Section 5 (definition of *life policy*)**

11 Omit “Life Insurance Actuarial Standard 4.02”, substitute “prudential
12 standards made under section 230A of the *Life Insurance Act 1995*”.

13 *Banking Act 1959*

14 **3 Subsection 5(1)**

15 Insert:

16 *business day* means a day that is not a Saturday, a Sunday or a
17 public holiday or bank holiday in the place concerned.

18 **4 Subsections 11(1) and (2)**

19 Repeal the subsections, substitute:

20 (1) APRA may, in writing, determine that any or all of the following
21 provisions of this Act do not apply to a person while the
22 determination is in force:

- 23 (a) a provision of Division 1, 1AA or 1A of Part II;
24 (b) subsection 13A(4);
25 (c) section 66;
26 (d) section 66A;
27 (e) section 67;
28 (f) section 69.

29 (2) The determination:

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1 (a) may be expressed to apply to a particular person or to a class
2 of persons; and

3 (b) may specify the period during which the determination is in
4 force; and

5 (c) may be made subject to specified conditions.

6 (2A) If APRA makes a determination that applies to a particular person,
7 APRA must also give the person written notice of the
8 determination.

9 **5 Paragraph 11(3)(b)**

10 Omit “an order” (wherever occurring), substitute “a determination”.

11 **6 Subsection 11(4)**

12 Repeal the subsection, substitute:

13 (4) APRA may, in writing, vary or revoke a determination under this
14 section.

15 (5) The following instruments made under this section are not
16 legislative instruments:

17 (a) a determination that applies to a particular person;

18 (b) an instrument varying or revoking a determination that
19 applies to a particular person.

20 (6) Otherwise, an instrument made under this section is a legislative
21 instrument.

22 **7 After subsection 11AF(1AA)**

23 Insert:

24 (1B) A standard may provide for APRA to exercise powers and
25 discretions under the standard, including (but not limited to)
26 discretions to approve, impose, adjust or exclude specific
27 prudential requirements in relation to one or more specified ADIs
28 or authorised NOHCs.

29 **8 Subsection 11AF(2)**

30 Repeal the subsection.

31 **9 After subsection 11AF(3)**

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1 Insert:

2 **16BA Requirement for auditors to give information about ADIs**

3 *Persons to whom requirements apply*

- 4 (1) This section applies to a person who is or has been an auditor of a
5 body corporate that is:
6 (a) an ADI; or
7 (b) an authorised NOHC; or
8 (c) a subsidiary of an ADI or an authorised NOHC; or
9 (d) if an ADI is a subsidiary of a foreign corporation (whether or
10 not the ADI is itself a foreign ADI):
11 (i) another subsidiary (a *relevant Australian-incorporated*
12 *subsidiary*) of the foreign corporation (other than a body
13 mentioned in paragraph (a), (b) or (c)), being a
14 subsidiary that is incorporated in Australia; or
15 (ii) another subsidiary (a *relevant foreign-incorporated*
16 *subsidiary*) of the foreign corporation (other than a body
17 mentioned in paragraph (a), (b) or (c)), being a
18 subsidiary that is not incorporated in Australia and
19 carries on business in Australia.

20 *Matters requiring immediate notice*

- 21 (2) If the person has reasonable grounds for believing that:
22 (a) the body corporate is insolvent; or
23 (b) an existing or proposed state of affairs may materially
24 prejudice the interests of:
25 (i) if the body corporate is an ADI or a subsidiary of an
26 ADI—the depositors of the ADI; or
27 (ii) if the body corporate is an authorised NOHC or a
28 subsidiary of an authorised NOHC—the depositors of
29 any ADI that is a subsidiary of the authorised NOHC; or
30 (iii) if the body corporate is a relevant
31 Australian-incorporated subsidiary or a relevant
32 foreign-incorporated subsidiary of a foreign
33 corporation—the depositors of any ADI that is a
34 subsidiary of the foreign corporation;
35 the person must immediately notify APRA in writing of the matter.
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1 *Matters requiring notice as soon as practicable*

- 2 (3) If the person has reasonable grounds for believing that the body
3 corporate has materially failed to comply with:
4 (a) a provision of this Act, the regulations or the *Financial*
5 *Sector (Collection of Data) Act 2001*; or
6 (b) if the body corporate is an ADI or authorised NOHC—a
7 prudential standard; or
8 (c) if the body corporate is an ADI or authorised NOHC—a
9 direction under Division 1BA of Part II; or
10 (d) if the body corporate is an ADI—a condition of the body
11 corporate's section 9 authority; or
12 (e) if the body corporate is an authorised NOHC—a condition of
13 the body corporate's NOHC authority;
14 the person must give APRA a written report about the failure as
15 soon as practicable, and in any event no later than 10 business
16 days.
- 17 (4) For the purposes of subsection (3), a failure to comply is **material**
18 if the failure to comply is or will be significant having regard to
19 any one or more of the following:
20 (a) the number or frequency of similar failures;
21 (b) the impact the failure has or will have on the body
22 corporate's ability to conduct its business;
23 (c) the extent to which the failure indicates that the body
24 corporate's arrangements to ensure compliance with this Act,
25 the prudential standards or the regulations might be
26 inadequate;
27 (d) the actual or potential financial loss arising or that will arise
28 from the failure:
29 (i) if the body corporate is an ADI—to the depositors of the
30 body corporate; or
31 (ii) to the body corporate;
32 (e) any matters prescribed by the regulations for the purposes of
33 this paragraph.

34 *Information not required to be given twice*

- 35 (5) Subsections (2) and (3) do not apply to a person in relation to a
36 matter or a failure to comply if:

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- 1 (a) a director or senior manager of the body corporate informs
2 the person that the body corporate has informed APRA in
3 writing of the matter or failure; and
4 (b) the person has no reason to disbelieve the director or senior
5 manager.

6 *Offences*

- 7 (6) A person commits an offence if the person contravenes
8 subsection (2) or (3).

9 Penalty: Imprisonment for 6 months.

- 10 (7) A person commits an offence if the person contravenes
11 subsection (2) or (3). This is an offence of strict liability.

12 Penalty: 60 penalty units.

13 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- 14 (8) A person commits an offence if:

- 15 (a) the person is a director or senior manager of a body corporate
16 referred to in subsection (1); and
17 (b) the person knows that there are reasonable grounds for
18 believing that a matter referred to in subsection (2) or a
19 failure referred to in subsection (3) may have occurred; and
20 (c) the person informs the auditor of the body corporate that the
21 body corporate has informed APRA in writing of the matter
22 or failure; and
23 (d) the body corporate has not done so.

24 Penalty: Imprisonment for 12 months.

25 **16 Section 18**

26 Repeal the section, substitute:

27 **18 Referring matters to professional associations for auditors**

- 28 (1) If APRA is of the opinion that an auditor of a relevant body
29 corporate (see subsection (2)):

- 30 (a) has failed, whether within or outside Australia, to carry out or
31 perform adequately and properly:

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- 1 (i) the duties of an auditor under this Act or the regulations;
2 or
3 (ii) any duties required by a law of the Commonwealth, a
4 State or a Territory to be carried out or performed by an
5 auditor; or
6 (iii) any functions that an auditor is entitled to perform in
7 relation to this Act, the regulations or the *Financial*
8 *Sector (Collection of Data) Act 2001*; or
9 (b) is otherwise not a fit and proper person to be the auditor of a
10 relevant body corporate;
11 APRA may refer the details of the matter to either or both of the
12 following:
13 (c) the Companies Auditors and Liquidators Disciplinary Board
14 established by Division 1 of Part 11 of the *Australian*
15 *Securities and Investments Commission Act 2001*;
16 (d) those members of the professional association of the auditor
17 whom APRA believes will be involved in considering or
18 taking any disciplinary or other action concerning the matter
19 against the auditor.
- 20 (2) For the purposes of this section, each of the following is a **relevant**
21 **body corporate**:
22 (a) an ADI;
23 (b) an authorised NOHC;
24 (c) a subsidiary of an ADI or authorised NOHC;
25 (d) if an ADI is a subsidiary of a foreign corporation (whether or
26 not the ADI is itself a foreign corporation)—a subsidiary of
27 that foreign corporation that is incorporated in, or carries on
28 business in, Australia.
- 29 (3) If APRA refers details of a matter under this section, APRA must
30 also give written notice of the referral (including the nature of the
31 matter) to the auditor.

17 After Division 2B of Part II

32 Insert:
33

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1 **Division 2C—Enforceable undertakings**

2 **18A Enforceable undertakings**

- 3 (1) APRA may accept a written undertaking given by a person in
4 connection with a matter in relation to which APRA has a power or
5 function under this Act.
- 6 (2) The person may, with APRA's consent, vary or withdraw the
7 undertaking.
- 8 (3) If APRA considers that a person who has given an undertaking has
9 breached any of the terms of the undertaking, APRA may apply to
10 the Federal Court of Australia for an order under subsection (4).
- 11 (4) If the Court is satisfied that a person who has given an undertaking
12 has breached any of the terms of the undertaking, the Court may
13 make any or all of the following orders:
- 14 (a) an order directing the person to comply with the undertaking;
15 (b) an order directing the person to pay to the Commonwealth an
16 amount up to the amount of any financial benefit that the
17 person obtained (whether directly or indirectly) and that is
18 reasonably attributable to the breach;
- 19 (c) any order that the Court considers appropriate directing the
20 person to compensate any other person who has suffered loss
21 or damage as a result of the breach;
- 22 (d) any other order that the Court considers appropriate.

23 **18 After Part VI**

24 Insert:

25 **Part VIA—Protections in relation to information**

26 **Division 1—Protection for whistleblowers**

27 **52A Disclosures qualifying for whistleblower protection**

- 28 (1) This section applies to a disclosure of information made by a
29 person (the *discloser*) who is, in relation to a body corporate that is
30 an ADI, an authorised NOHC or a subsidiary of an ADI or
31 authorised NOHC, any of the following:
-

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- 1 (a) an officer of the body corporate;
2 (b) an employee of the body corporate;
3 (c) a person who has a contract for the supply of services or
4 goods to the body corporate;
5 (d) an employee of a person who has a contract for the supply of
6 services or goods to the body corporate.
- 7 (2) The disclosure of the information by the discloser qualifies for
8 protection under this Division if:
9 (a) the disclosure is made to any of the following:
10 (i) APRA;
11 (ii) the auditor, or a member of an audit team conducting an
12 audit, of the body corporate or a related body corporate;
13 (iii) a director or senior manager of the body corporate or a
14 related body corporate;
15 (iv) a person authorised by the body corporate to receive
16 disclosures of the kind made; and
17 (b) the discloser informs the person to whom the disclosure is
18 made of the discloser's name before making the disclosure;
19 and
20 (c) either or both of the following apply:
21 (i) the discloser considers that the information may assist a
22 person referred to in paragraph (a) to perform the
23 person's functions or duties in relation to the body
24 corporate or a related body corporate;
25 (ii) the discloser is required under this Act or the *Financial*
26 *Sector (Collection of Data) Act 2001* to make the
27 disclosure; and
28 (d) the discloser makes the disclosure in good faith.
- 29 (3) For the purposes of this section, a body corporate is a ***related body***
30 ***corporate*** of another body corporate if:
31 (a) in the case of an ADI—the other body corporate is the
32 authorised NOHC of the ADI or a subsidiary of the ADI or
33 authorised NOHC; or
34 (b) in the case of an authorised NOHC of an ADI—the other
35 body corporate is the ADI or a subsidiary of the ADI or
36 authorised NOHC; or

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1 (c) in the case of a subsidiary of an ADI or authorised NOHC—
2 the other body corporate is the ADI, the authorised NOHC or
3 another subsidiary of the ADI or authorised NOHC.

4 (4) For the purposes of this section, *officer* has the same meaning as it
5 has in the *Corporations Act 2001*.

6 **52B Whistleblower protection for disclosures that qualify**

7 (1) If a person makes a disclosure that qualifies for protection under
8 this Division:

9 (a) the person is not subject to any civil or criminal liability for
10 making the disclosure; and

11 (b) no contractual or other remedy may be enforced, and no
12 contractual or other right may be exercised, against the
13 person on the basis of the disclosure.

14 (2) Without limiting subsection (1):

15 (a) the person has qualified privilege in respect of the disclosure;
16 and

17 (b) a contract to which the person is a party must not be
18 terminated on the basis that the disclosure constitutes a
19 breach of the contract.

20 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied
21 that:

22 (a) a person (the *employee*) is employed in a particular position
23 under a contract of employment with another person (the
24 *employer*); and

25 (b) the employee makes a disclosure that qualifies for protection
26 under this Division; and

27 (c) the employer purports to terminate the contract of
28 employment on the basis of the disclosure;

29 the court may order that the employee be reinstated in that position
30 or a position at a comparable level.

31 **52C Victimisation of whistleblowers prohibited**

32 *Actually causing detriment to another person*

33 (1) A person commits an offence if:

34 (a) the person engages in conduct; and

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- 1 (b) the person's conduct causes any detriment to another person;
2 and
3 (c) the person intends that his or her conduct cause detriment to
4 the other person; and
5 (d) the person engages in his or her conduct because the other
6 person made a disclosure that qualifies for protection under
7 this Division.

8 Penalty: 25 penalty units or imprisonment for 6 months, or both.

9 *Threatening to cause detriment to another person*

- 10 (2) A person (the **first person**) commits an offence if:
11 (a) the first person makes a threat to another person (the **second**
12 **person**) to cause any detriment to the second person or to a
13 third person; and
14 (b) the first person:
15 (i) intends the second person to fear that the threat will be
16 carried out; or
17 (ii) is reckless as to causing the second person to fear that
18 the threat will be carried out; and
19 (c) the first person makes the threat because a person:
20 (i) made a disclosure that qualifies for protection under this
21 Division; or
22 (ii) may make a disclosure that would qualify for protection
23 under this Division.

24 Penalty: 25 penalty units or imprisonment for 6 months, or both.

25 *Officers and employees involved in offence*

- 26 (3) If a body corporate commits an offence under subsection (1) or (2),
27 any officer or employee of the body corporate who is involved in
28 the offence contravenes this subsection.

29 *Threats*

- 30 (4) For the purposes of subsection (2), a threat may be:
31 (a) express or implied; or
32 (b) conditional or unconditional.

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- 1 (5) In a prosecution for an offence under subsection (2), it is not
2 necessary to prove that the person threatened actually feared that
3 the threat would be carried out.

4 **52D Right to compensation**

- 5 If:
6 (a) a person:
7 (i) commits an offence under subsection 52C(1) or (2); or
8 (ii) contravenes subsection 52C(3); and
9 (b) another person suffers damage because of the conduct
10 constituting the offence or because of the contravention;
11 the person is liable to compensate the other person for the damage.

12 **52E Confidentiality requirement for company, company officers and** 13 **employees and auditors**

- 14 (1) A person (the *offender*) commits an offence under this subsection
15 if:
16 (a) a person (the *discloser*) makes a disclosure of information
17 that qualifies for protection under this Division; and
18 (b) the disclosure relates to a contravention or possible
19 contravention of a provision of this Act or the *Financial*
20 *Sector (Collection of Data) Act 2001* by:
21 (i) a body corporate that is an ADI, an authorised NOHC or
22 a subsidiary of an ADI or authorised NOHC; or
23 (ii) an officer or employee of such a body corporate; and
24 (c) the disclosure is made to:
25 (i) the auditor of, or a member of an audit team conducting
26 an audit of, the body corporate or a related body
27 corporate within the meaning of subsection 52A(3); or
28 (ii) a director or senior manager of the body corporate or a
29 related body corporate within the meaning of subsection
30 52A(3); or
31 (iii) a person authorised by the body corporate to receive
32 disclosures of that kind; and
33 (d) the offender is:
34 (i) the auditor, or a member of an audit team conducting an
35 audit, of the body corporate or a related body corporate;
36 or
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- 1 (ii) a director or senior manager of the body corporate or a
2 related body corporate; or
3 (iii) a person authorised by the body corporate to receive
4 disclosures of that kind; or
5 (iv) the body corporate or a related body corporate; or
6 (v) an officer or employee of the body corporate or a related
7 body corporate; and
8 (e) the offender discloses any of the following information (the
9 **confidential information**):
10 (i) the information referred to in paragraph (a);
11 (ii) the identity of the discloser;
12 (iii) information that is likely to lead to the identification of
13 the discloser; and
14 (f) the confidential information is information that the offender
15 obtained directly or indirectly because of the disclosure
16 referred to in paragraph (a); and
17 (g) either:
18 (i) the offender is the person to whom the disclosure
19 referred to in paragraph (a) is made; or
20 (ii) the offender is a person to whom the confidential
21 information is disclosed in contravention of this section
22 and the offender knows that the disclosure of the
23 confidential information to the offender was unlawful or
24 made in breach of confidence; and
25 (h) the disclosure referred to in paragraph (e) is not authorised
26 under subsection (2).
27
28 Penalty: 25 penalty units.
29
30 (2) The disclosure referred to in paragraph (1)(e) is authorised under
31 this subsection if:
32 (a) it is made to APRA; or
33 (b) it is made to a member of the Australian Federal Police
34 (within the meaning of the *Australian Federal Police Act*
1979); or
(c) it is made to someone else with the consent of the discloser.

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1 **Division 2—Self-incrimination**

2 **52F Self-incrimination**

3 (1) An individual is not excused from complying with a requirement
4 under this Act or the *Financial Sector (Collection of Data) Act*
5 *2001* to give information on the ground that doing so would tend to
6 incriminate the individual or make the individual liable to a
7 penalty.

8 (2) Information given by the individual in compliance with a
9 requirement under this Act or the *Financial Sector (Collection of*
10 *Data) Act 2001* is not admissible in evidence against the individual
11 in a criminal proceeding or a proceeding for the imposition of a
12 penalty, other than a proceeding in respect of the falsity of the
13 information, if:

14 (a) before giving the information, the individual claims that
15 giving the information might tend to incriminate the
16 individual or make the individual liable to a penalty; and

17 (b) giving the information might in fact tend to incriminate the
18 individual or make the individual liable to a penalty.

19 **19 Subsections 62(3) and (4)**

20 Repeal the subsections.

21 **20 Paragraph 62A(1)(a)**

22 Repeal the paragraph, substitute:

23 (a) it becomes aware that it, another member of the group, or the
24 group as a whole, may not be in a sound financial position;
25 and

26 **21 Paragraph 62A(1)(b)**

27 After “notify APRA”, insert “in writing”.

28 **22 After subsection 62A(1)**

29 Insert:

30 (1A) Subsection (1) does not apply in relation to a matter if, before the
31 member of the group becomes aware of the matter, the auditor of
32 the member notifies APRA in writing of the matter.

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- 1 (1B) A member of a relevant group of bodies corporate commits an
2 offence if:
3 (a) it becomes aware that:
4 (i) it or another member of the group has materially
5 breached a prudential standard applying to it or the
6 other member; or
7 (ii) another member of the group has materially breached a
8 provision of this Act or the regulations, or a direction
9 under Division 1BA of Part II or a condition of any
10 authority granted under this Act to the other member;
11 and
12 (b) it fails to give APRA a written report about the breach as
13 soon as practicable, and in any case no later than 10 business
14 days, after becoming aware of the breach.

15 Penalty: 200 penalty units.

- 16 (1C) For the purposes of subsection (1B), a breach is *material* if the
17 breach is or will be significant having regard to any one or more of
18 the following factors:
19 (a) the number or frequency of similar breaches;
20 (b) the impact the breach has or will have on the member's or
21 other member's ability to conduct its business;
22 (c) the extent to which the breach indicates that the member's or
23 other member's arrangements to ensure compliance with this
24 Act, the regulations, the prudential standards or a direction or
25 condition might be inadequate;
26 (d) the actual or potential financial loss arising or that will arise
27 from the breach:
28 (i) to the depositors of the ADI or any ADI that is a
29 member of the relevant group of bodies corporate; or
30 (ii) to the member or other member;
31 (e) any matters prescribed by the regulations for the purposes of
32 this paragraph.

- 33 (1D) Subsection (1B) does not apply in relation to a breach if:
34 (a) the auditor of the member of the group gives APRA a written
35 report about the breach; and
36 (b) the report is given within 10 business days after the member
37 becomes aware of the breach.

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1 **23 Paragraphs 62A(2)(a) and (b)**

2 After “subsection (1)”, insert “or (1B)”.

3 **24 Subsection 62A(3)**

4 After “notification”, insert “or report”.

5 **25 Subsection 62A(3)**

6 After “paragraph (1)(a)”, insert “or (1B)(a)”.

7 ***Corporations Act 2001***

8 **26 Subsection 912D(1)**

9 Omit “If”, substitute “A financial services licensee must comply with
10 subsection (1B) if”.

11 **27 Paragraph 912D(1)(a)**

12 Omit “a financial services licensee”, substitute “the licensee”.

13 **28 Subparagraph 912D(1)(b)(v)**

14 Omit “paragraph;”, substitute “paragraph.”.

15 **29 Subsection 912D(1)**

16 Omit all the words after subparagraph 912D(1)(b)(v).

17 **30 Subsection 912D(1) (note)**

18 Repeal the note.

19 **31 After subsection 912D(1A)**

20 Insert:

21 (1B) The financial services licensee must, as soon as practicable and in
22 any case within 10 business days after becoming aware of the
23 breach or likely breach mentioned in subsection (1), lodge a
24 written report on the matter with ASIC.

25 Note: Failure to comply with this subsection is an offence (see subsection
26 1311(1)).

27 (1C) A report that a licensee is required to lodge under subsection (1B)
28 is taken to have been lodged with ASIC if:

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- 1 (a) the licensee is a body regulated by APRA; and
2 (b) the report is received by APRA in accordance with the terms
3 of an agreement between APRA and ASIC under which
4 APRA is to act as ASIC's agent in relation to such reports.
- 5 (1D) Subsection (1B) does not apply to a financial services licensee that
6 is a body regulated by APRA in relation to a breach if:
7 (a) the auditor or actuary of the licensee gives APRA a written
8 report about the breach; and
9 (b) the report is given within 10 business days after the licensee
10 becomes aware of the breach.

11 **32 Before subsection 1274(3)**

12 Insert:

- 13 (2D) For the purposes of subsections (2) and (5), each of the following
14 is taken to be a document lodged with ASIC if a copy has been
15 given to ASIC by APRA:
16 (a) benefit fund rules that have been approved by APRA under
17 section 16L of the *Life Insurance Act 1995*;
18 (b) an amendment of benefit fund rules that has been approved
19 by APRA under section 16Q of the *Life Insurance Act 1995*;
20 (c) consequential amendments of a company's constitution that
21 have been approved by APRA under section 16U or 16V of
22 the *Life Insurance Act 1995*.

23 **33 Schedule 3 (table item 264A)**

24 Omit "Subsection 912D(1)", substitute "Subsection 912D(1B)".

25 ***Income Tax Assessment Act 1997***

26 **34 Subsection 995-1(1) (definition of *current termination*** 27 ***value*)**

28 Omit "the *Solvency Standard", substitute "prudential standards made
29 under section 230A of the *Life Insurance Act 1995*".

30 **35 Subsection 995-1(1) (definition of *policy termination value*)**

31 Omit "the *Solvency Standard", substitute "prudential standards made
32 under section 230A of the *Life Insurance Act 1995*".

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1 **36 Subsection 995-1(1) (definition of *Solvency Standard*)**

2 Repeal the definition.

3 **37 Subsection 995-1(1) (definition of *Valuation Standard*)**

4 Omit “actuarial standard”, substitute “prudential standard made under
5 section 230A of the *Life Insurance Act 1995*”.

6 ***Insurance Act 1973***

7 **38 Subsection 3(1)**

8 Insert:

9 ***business day*** means a day that is not a Saturday, a Sunday or a
10 public holiday or bank holiday in the place concerned.

11 **39 Subsection 7(1)**

12 Repeal the subsection, substitute:

13 (1) APRA may, in writing, determine that any or all of the following
14 provisions of this Act do not apply to a person while the
15 determination is in force:

- 16 (a) a provision of Part III;
17 (b) section 35;
18 (c) section 39;
19 (d) section 41;
20 (e) a provision of Division 3 or 4 of Part IV;
21 (f) section 49Q;
22 (g) section 117;
23 (h) section 118;
24 (i) section 120;
25 (j) section 121.

26 **40 After subsection 7(2)**

27 Insert:

28 (2A) If APRA makes a determination that applies to a particular person,
29 APRA must also give the person written notice of the
30 determination.

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1 **41 Subsections 7(3) and (4)**

2 Repeal the subsections, substitute:

3 (3) APRA may, in writing, vary or revoke a determination under this
4 section.

5 (4) The following instruments made under this section are not
6 legislative instruments:

7 (a) a determination that applies to a particular person;

8 (b) an instrument varying or revoking a determination that
9 applies to a particular person.

10 (5) Otherwise, an instrument made under this section is a legislative
11 instrument.

12 **42 At the end of subsection 32(1)**

13 Add:

14 ; or (e) one or more specified general insurers, authorised NOHCs or
15 subsidiaries of general insurers or authorised NOHCs.

16 **43 Paragraph 32(3D)(b)**

17 Omit “NOHCs;”, substitute “NOHCs.”.

18 **44 Paragraph 32(3D)(c)**

19 Repeal the paragraph.

20 **45 Subsections 32(4), (4A) and (5)**

21 Repeal the subsections, substitute:

22 (4) APRA may, in writing, vary or revoke a standard. However, APRA
23 must not, under this subsection, vary or revoke a standard in a way
24 described in subsection (3A).

25 (4A) A standard referred to in paragraph (1)(e), or an instrument varying
26 or revoking such a standard, has effect:

27 (a) from the day on which the standard, variation or revocation is
28 made; or

29 (b) if the standard, variation or revocation specifies a later day—
30 from that later day.

31 (5) Part VI applies to the following decisions by APRA:

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- 1 (a) to make a standard referred to in paragraph (1)(e);
2 (b) to vary or revoke a standard referred to in paragraph (1)(e).

3 (5A) The following instruments made under this section are not
4 legislative instruments:

- 5 (a) a standard referred to in paragraph (1)(e);
6 (b) an instrument varying or revoking a standard referred to in
7 paragraph (1)(e);
8 (c) a modification of a standard under subsection (3A);
9 (d) an instrument varying or revoking a modification under
10 subsection (3A).

11 (5B) Otherwise, an instrument made under this section is a legislative
12 instrument.

13 **46 Subsection 32(6)**

14 Omit “section 49A”, substitute “section 14 of the *Legislative*
15 *Instruments Act 2003* and section 46AA”.

16 **47 Sections 33 and 35A**

17 Repeal the section.

18 **48 At the end of Division 3 of Part IIIA**

19 Add:

20 **38AA Requirement to notify APRA of certain matters**

21 (1) If:

- 22 (a) a general insurer has breached or will breach a provision of
23 this Act or the prudential standards; and
24 (b) the provision relates to the financial obligations of the
25 general insurer to its policy holders or to the general insurer’s
26 minimum capital requirements;
27 the general insurer must immediately notify APRA in writing of
28 the breach.

29 (2) Subsection (1) does not apply in relation to a breach if, before the
30 general insurer becomes aware of the breach, the auditor or actuary
31 of the insurer notifies APRA in writing of the breach.

32 Note: Auditors and actuaries must give APRA certain information under
33 section 49A and may give APRA information under section 49B.

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- 1 (3) If a body corporate that is a general insurer, an authorised NOHC
2 or a subsidiary of a general insurer or authorised NOHC becomes
3 aware:
- 4 (a) that the body corporate has materially breached or will
5 materially breach a provision of this Act or the prudential
6 standards (other than a provision to which subsection (1)
7 applies); or
- 8 (b) of a matter that materially affects the body corporate's
9 financial position;
- 10 the body corporate must give APRA a written report about the
11 breach or matter as soon as practicable, and in any case no later
12 than 10 business days, after becoming aware of the breach or
13 matter.
- 14 (4) For the purposes of paragraph (3)(a), a breach of a provision is
15 **material** if the breach is or will be significant having regard to one
16 or more of the following:
- 17 (a) the number or frequency of similar breaches;
- 18 (b) the impact the breach has or will have on the body
19 corporate's ability to conduct its business;
- 20 (c) the extent to which the breach indicates that the body
21 corporate's arrangements to ensure compliance with this Act
22 or with the prudential standards might be inadequate;
- 23 (d) the actual or potential financial loss arising or that will arise
24 from the breach:
- 25 (i) to policy holders of the body corporate; or
26 (ii) to the body corporate;
- 27 (e) any matters prescribed by the regulations for the purposes of
28 this paragraph.
- 29 (5) Subsection (3) does not apply in relation to a breach or matter if:
- 30 (a) the auditor or actuary of the body corporate gives APRA a
31 written report about the breach or matter; and
- 32 (b) the report is given within 10 business days after the body
33 corporate becomes aware of the breach or matter.
- 34 Note: Auditors and actuaries must give APRA certain information under
35 section 49A, and may give APRA information under section 49B.
- 36 (6) A body corporate commits an offence if:
- 37 (a) the body corporate is required to notify APRA of a breach or
38 matter under subsection (1) or (3); and
-

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1 (b) the body corporate fails to do so within the time required
2 under the subsection.

3 Penalty: 200 penalty units.

4 (7) If an individual:

5 (a) commits an offence under subsection (6) because of Part 2.4
6 of the *Criminal Code*; or

7 (b) commits an offence under Part 2.4 of the *Criminal Code* in
8 relation to an offence under subsection (6);

9 the individual is punishable on conviction by a fine not exceeding
10 40 penalty units.

11 (8) A notice or report given under subsection (1) or (3) must not
12 include information, books, accounts or documents with respect to
13 the affairs of an individual insured person, unless the information,
14 books, accounts or documents are in respect of prudential matters
15 relating to the body corporate.

16 **49 At the end of Part IIIA**

17 Add:

18 **Division 4—Protections in relation to information**

19 **Subdivision A—Protection for whistleblowers**

20 **38A Disclosures qualifying for whistleblower protection**

21 (1) This section applies to a disclosure of information made by a
22 person (the *discloser*) who is, in relation to a body corporate that is
23 a general insurer, an authorised NOHC or a subsidiary of a general
24 insurer or authorised NOHC, any of the following:

25 (a) an officer of the body corporate;

26 (b) an employee of the body corporate;

27 (c) a person who has a contract for the supply of services or
28 goods to the body corporate;

29 (d) an employee of a person who has a contract for the supply of
30 services or goods to the body corporate.

31 (2) The disclosure of information by the discloser qualifies for
32 protection under this Subdivision if:

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- 1 (a) the disclosure is made to any of the following:
2 (i) APRA;
3 (ii) the auditor, or a member of an audit team conducting an
4 audit, of the body corporate or a related body corporate;
5 (iii) the actuary of the body corporate or a related body
6 corporate;
7 (iv) a director or senior manager of the body corporate or a
8 related body corporate;
9 (v) a person authorised by the regulated body corporate to
10 receive disclosures of the kind made; and
11 (b) the discloser informs the person to whom the disclosure is
12 made of the discloser's name before making the disclosure;
13 and
14 (c) either or both of the following apply:
15 (i) the discloser considers that the information may assist a
16 person referred to in paragraph (a) to perform the
17 person's functions or duties in relation to the body
18 corporate or a related body corporate;
19 (ii) the discloser is required under this Act or the *Financial*
20 *Sector (Collection of Data) Act 2001* to make the
21 disclosure; and
22 (d) the discloser makes the disclosure in good faith.
- 23 (3) For the purposes of this section, a body corporate is a ***related body***
24 ***corporate*** of another body corporate if:
25 (a) in the case of a general insurer—the other body corporate is
26 the authorised NOHC of the general insurer or a subsidiary of
27 the general insurer or authorised NOHC of the general
28 insurer; or
29 (b) in the case of an authorised NOHC of a general insurer—the
30 other body corporate is the general insurer or a subsidiary of
31 the general insurer or authorised NOHC; or
32 (c) in the case of a subsidiary of a general insurer or authorised
33 NOHC—the other body corporate is the general insurer, the
34 authorised NOHC or another subsidiary of the general insurer
35 or authorised NOHC.
- 36 (4) For the purposes of this section, ***officer*** has the same meaning as it
37 has in the *Corporations Act 2001*.
-

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1 **38B Whistleblower protection for disclosures that qualify**

- 2 (1) If a person makes a disclosure that qualifies for protection under
3 this Subdivision:
4 (a) the person is not subject to any civil or criminal liability for
5 making the disclosure; and
6 (b) no contractual or other remedy may be enforced, and no
7 contractual or other right may be exercised, against the
8 person on the basis of the disclosure.
- 9 (2) Without limiting subsection (1):
10 (a) the person has qualified privilege in respect of the disclosure;
11 and
12 (b) a contract to which the person is a party must not be
13 terminated on the basis that the disclosure constitutes a
14 breach of the contract.
- 15 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied
16 that:
17 (a) a person (the *employee*) is employed in a particular position
18 under a contract of employment with another person (the
19 *employer*); and
20 (b) the employee makes a disclosure that qualifies for protection
21 under this Subdivision; and
22 (c) the employer purports to terminate the contract of
23 employment on the basis of the disclosure;
24 the court may order that the employee be reinstated in that position
25 or a position at a comparable level.

26 **38C Victimisation of whistleblowers prohibited**

27 *Actually causing detriment to another person*

- 28 (1) A person commits an offence if:
29 (a) the person engages in conduct; and
30 (b) the person's conduct causes any detriment to another person;
31 and
32 (c) the person intends that his or her conduct cause detriment to
33 the other person; and

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1 (d) the person engages in his or her conduct because the other
2 person made a disclosure that qualifies for protection under
3 this Subdivision.

4 Penalty: 25 penalty units or imprisonment for 6 months, or both.

5 *Threatening to cause detriment to another person*

6 (2) A person (the **first person**) commits an offence if:

7 (a) the first person makes a threat to another person (the **second**
8 **person**) to cause any detriment to the second person or to a
9 third person; and

10 (b) the first person:

11 (i) intends the second person to fear that the threat will be
12 carried out; or

13 (ii) is reckless as to causing the second person to fear that
14 the threat will be carried out; and

15 (c) the first person makes the threat because a person:

16 (i) made a disclosure that qualifies for protection under this
17 Subdivision; or

18 (ii) may make a disclosure that would qualify for protection
19 under this Subdivision.

20 Penalty: 25 penalty units or imprisonment for 6 months, or both.

21 *Officers and employees involved in offence*

22 (3) If a body corporate commits an offence under subsection (1) or (2),
23 any officer or employee of the body corporate who is involved in
24 the offence contravenes this subsection.

25 *Threats*

26 (4) For the purposes of subsection (2), a threat may be:

27 (a) express or implied; or

28 (b) conditional or unconditional.

29 (5) In a prosecution for an offence under subsection (2), it is not
30 necessary to prove that the person threatened actually feared that
31 the threat would be carried out.

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1 **38D Right to compensation**

2 If:

3 (a) a person:

4 (i) commits an offence under subsection 38C(1) or (2); or

5 (ii) contravenes subsection 38C(3); and

6 (b) another person suffers damage because of the conduct

7 constituting the offence or because of the contravention;

8 the person is liable to compensate the other person for the damage.

9 **38E Confidentiality requirement for company, company officers and** 10 **employees and auditors**

11 (1) A person (the *offender*) commits an offence under this subsection
12 if:

13 (a) a person (the *discloser*) makes a disclosure of information
14 that qualifies for protection under this Subdivision; and

15 (b) the disclosure relates to a contravention or possible
16 contravention of a provision of this Act or the *Financial*
17 *Sector (Collection of Data) Act 2001* by:

18 (i) a body that is a general insurer, an authorised NOHC or
19 a subsidiary of a general insurer or authorised NOHC;
20 or

21 (ii) an officer or employee of such a body corporate; and

22 (c) the disclosure is made to:

23 (i) the auditor, or a member of an audit team conducting an
24 audit, of the body corporate or a related body corporate
25 in within the meaning of subsection 38A(3); or

26 (ii) a director or senior manager of the body corporate or a
27 related body corporate; or

28 (iii) a person authorised by the body corporate to receive
29 disclosures of that kind; and

30 (d) the offender is:

31 (i) the auditor, or a member of an audit team conducting an
32 audit, of the body corporate or a related body corporate;
33 or

34 (ii) a director or senior manager of the body corporate or a
35 related body corporate; or

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- 1 (iii) a person authorised by the body corporate to receive
2 disclosures of that kind; or
3 (iv) the body corporate or a related body corporate; or
4 (v) an officer or employee of the body corporate or a related
5 body corporate; and
6 (e) the offender discloses any of the following information (the
7 **confidential information**):
8 (i) the information referred to in paragraph (a);
9 (ii) the identity of the discloser;
10 (iii) information that is likely to lead to the identification of
11 the discloser; and
12 (f) the confidential information is information that the offender
13 obtained directly or indirectly because of the disclosure
14 referred to in paragraph (a); and
15 (g) either:
16 (i) the offender is the person to whom the disclosure
17 referred to in paragraph (a) is made; or
18 (ii) the offender is a person to whom the confidential
19 information is disclosed in contravention of this section
20 and the offender knows that the disclosure of the
21 confidential information to the offender was unlawful or
22 made in breach of confidence; and
23 (h) the disclosure referred to in paragraph (e) is not authorised
24 under subsection (2).
- 25 Penalty: 25 penalty units.
- 26 (2) The disclosure referred to in paragraph (1)(e) is authorised under
27 this subsection if:
28 (a) it is made to APRA; or
29 (b) it is made to a member of the Australian Federal Police
30 (within the meaning of the *Australian Federal Police Act*
31 *1979*); or
32 (c) it is made to someone else with the consent of the discloser.

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1 **Subdivision B—Self-incrimination**

2 **38F Self-incrimination**

3 (1) An individual is not excused from complying with a requirement
4 under this Act, the prudential standards or the *Financial Sector*
5 *(Collection of Data) Act 2001* to give information on the ground
6 that doing so would tend to incriminate the individual or make the
7 individual liable to a penalty.

8 (2) Information given by the individual in compliance with a
9 requirement under this Act, the prudential standards or the
10 *Financial Sector (Collection of Data) Act 2001* is not admissible in
11 evidence against the individual in a criminal proceeding or a
12 proceeding for the imposition of a penalty, other than a proceeding
13 in respect of the falsity of the information, if:

14 (a) before giving the information, the individual claims that
15 giving the information might tend to incriminate the
16 individual or make the individual liable to a penalty; and

17 (b) giving the information might in fact tend to incriminate the
18 individual or make the individual liable to a penalty.

19 **50 Subsection 39(1) (note)**

20 Repeal the note.

21 **51 Subsection 39(3)**

22 Repeal the subsection, substitute:

23 (3) A general insurer must not appoint a person as the auditor or
24 actuary of the insurer unless:

25 (a) the insurer is satisfied that the person meets the eligibility
26 criteria for such an appointment set out in the prudential
27 standards; and

28 (b) there is no determination current under section 44
29 disqualifying the person from holding such an appointment.

30 **52 Sections 40 and 42**

31 Repeal the sections.

32 **53 Section 43**

33 Before “A person”, insert “(1)”.

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1 **54 Paragraph 43(b)**

2 Repeal the paragraph.

3 **55 At the end of section 43**

4 Add:

5 (2) A general insurer must end a person's appointment as auditor or
6 actuary of the general insurer if the general insurer is satisfied that
7 the person:

8 (a) has failed to perform adequately and properly the functions
9 and duties of such an appointment under this Act or the
10 prudential standards; or

11 (b) does not meet one or more of the criteria for fitness and
12 propriety set out in the prudential standards; or

13 (c) does not meet the eligibility criteria for such an appointment
14 set out in the prudential standards.

15 **56 Section 47**

16 Repeal the section.

17 **57 Section 48**

18 Repeal the section, substitute:

19 **48 Referring matters to professional associations for auditors and**
20 **actuaries**

21 (1) If APRA is of the opinion that an auditor of a general insurer:

22 (a) has failed, whether within or outside Australia, to carry out or
23 perform adequately and properly:

24 (i) the duties of an auditor under this Act or the prudential
25 standards; or

26 (ii) any duties required by a law of the Commonwealth, a
27 State or a Territory to be carried out or performed by an
28 auditor; or

29 (iii) any functions that an auditor is entitled to perform in
30 relation to this Act, the prudential standards or the
31 *Financial Sector (Collection of Data) Act 2001*; or

32 (b) is otherwise not a fit and proper person to be the auditor of a
33 general insurer;

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- 1 APRA may refer the details of the matter to either or both of the
2 following:
- 3 (c) the Companies Auditors and Liquidators Disciplinary Board
4 established by Division 1 of Part 11 of the *Australian*
5 *Securities and Investments Commission Act 2001*;
- 6 (d) those members of the professional association of the auditor
7 whom APRA believes will be involved in considering or
8 taking any disciplinary or other action concerning the matter
9 against the auditor.
- 10 (2) If APRA is of the opinion that an actuary of a general insurer:
- 11 (a) has failed, whether within or outside Australia, to carry out or
12 perform adequately and properly:
- 13 (i) the duties of an actuary under this Act or the prudential
14 standards; or
- 15 (ii) any duties required by a law of the Commonwealth, a
16 State or a Territory to be carried out or performed by an
17 actuary; or
- 18 (iii) any functions that an actuary is entitled to perform in
19 relation to this Act, the prudential standards or the
20 *Financial Sector (Collection of Data) Act 2001*; or
- 21 (b) is otherwise not a fit and proper person to be the actuary of a
22 life company;
- 23 APRA may refer the details of the matter to those members of the
24 professional association of the actuary whom APRA believes will
25 be involved in considering or taking any disciplinary or other
26 action concerning the matter against the actuary.
- 27 (3) If APRA refers details of a matter under this section, APRA must
28 also give written notice of the referral (including the nature of the
29 matter) to the auditor or actuary.
- 30 (4) APRA's powers under subsection (1) and (2) may be exercised
31 whether or not APRA has disqualified the person under section 44.

58 Paragraphs 49A(2)(b) and (c)

32 Repeal the paragraphs.

59 Subsection 49A(2)

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1 Omit “give APRA information (in writing) about the matter unless there
2 is a determination in force under subsection 7(1) that this subsection
3 does not apply to the person”, substitute “immediately notify APRA in
4 writing of the matter”.

5 **60 At the end of section 49A**

6 Add:

- 7 (5) If the person has reasonable grounds for believing that:
8 (a) the insurer, NOHC or subsidiary has materially failed to
9 comply with the prudential standards; or
10 (b) in the case of an insurer—the insurer has materially failed to
11 comply with a condition of its authorisation under section 12;
12 or
13 (c) in the case of an authorised NOHC—the NOHC has
14 materially failed to comply with a condition of its
15 authorisation under section 18; or
16 (d) the insurer, NOHC or subsidiary has materially failed to
17 comply with a requirement or direction under this Act or a
18 requirement under the *Financial Sector (Collection of Data)*
19 *Act 2001*;
20 the person must give APRA a written report about the failure as
21 soon as practicable, and in any case no later than 10 business days.
- 22 (6) For the purposes of subsection (5), a failure to comply is **material**
23 if the failure to comply is or will be significant having regard to
24 any one or more of the following:
25 (a) the number or frequency of similar failures;
26 (b) the impact the failure has or will have on the insurer’s,
27 NOHC’s or subsidiary’s ability to conduct its business;
28 (c) the extent to which the failure indicates that the insurer’s,
29 NOHC’s or subsidiary’s arrangements to ensure compliance
30 with this Act or with the prudential standards might be
31 inadequate;
32 (d) the actual or potential financial loss arising or that will arise
33 from the failure:
34 (i) in the case of an insurer—to the policy holders of the
35 insurer; or
36 (ii) to the insurer, NOHC or subsidiary;

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1 (e) any matters prescribed by the regulations for the purposes of
2 this paragraph.

3 (7) Subsections (2) and (5) do not apply to a person in relation to a
4 matter or a failure to comply if:

5 (a) a director or senior manager of the insurer, NOHC or
6 subsidiary informs the person that the insurer, NOHC or
7 subsidiary has informed APRA in writing of the matter or
8 failure; and

9 (b) the person has no reason to disbelieve the director or senior
10 manager.

11 (8) A person commits an offence if the person contravenes
12 subsection (5).

13 Penalty: Imprisonment for 6 months, or 100 penalty units, or both.

14 (9) A person commits an offence if the person contravenes
15 subsection (5). This is an offence of strict liability.

16 Penalty: 60 penalty units.

17 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

18 (10) A person commits an offence if:

19 (a) the person is a director or senior manager of a general
20 insurer, an authorised NOHC or a subsidiary of a general
21 insurer or authorised NOHC; and

22 (b) the person knows that there are reasonable grounds for
23 believing that a matter referred to in subsection (2) or a
24 failure referred to in subsection (5) may have occurred; and

25 (c) the person informs the auditor or actuary of the insurer,
26 NOHC or subsidiary that the insurer, NOHC or subsidiary
27 has informed APRA in writing of the matter or failure; and

28 (d) the insurer, NOHC or subsidiary has not done so.

29 Penalty: Imprisonment for 12 months.

30 **61 At the end of Part IV**

31 Add:

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1 **Division 6—Removal of auditors and actuaries**

2 **49R APRA may direct removal of auditor or actuary**

- 3 (1) APRA may, if satisfied there is a ground under subsection (3), give
4 a written direction to a body corporate that is a general insurer to
5 end the appointment of a person as:
6 (a) the auditor of the general insurer; or
7 (b) the actuary of the general insurer.
- 8 (2) APRA may, if satisfied there is a ground under subsection (3), give
9 a written direction to a body corporate that is an authorised NOHC
10 to end the appointment of a person as:
11 (a) the auditor of the authorised NOHC; or
12 (b) the actuary of the authorised NOHC.
- 13 (3) The grounds for giving a direction to end a person's appointment
14 are:
15 (a) if the person is the auditor or actuary of a general insurer—
16 the person is disqualified from holding such an appointment
17 under section 44; or
18 (b) the person does not meet one or more of the criteria for
19 fitness and propriety set out in the prudential standards.
- 20 (4) Before directing a body corporate to end a person's appointment,
21 APRA must:
22 (a) give written notice to:
23 (i) the body corporate; and
24 (ii) the person; and
25 (b) give the body corporate and the person a reasonable
26 opportunity to make submissions on the matter.
- 27 (5) The notice must include a statement that any submissions in
28 response to the notice may be discussed by APRA with other
29 persons as mentioned in paragraph (6)(b).
- 30 (6) If a submission is made in response to the notice, APRA:
31 (a) must have regard to the submission; and
32 (b) may discuss any matter contained in the submission with any
33 persons APRA considers appropriate for the purpose of
34 assessing the truth of the matter.
-

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- 1 (7) A direction to end a person's appointment takes effect on the day
2 specified in the direction, which must be at least 7 days after the
3 direction is made.
- 4 (8) If APRA directs a body corporate to end a person's appointment,
5 APRA must give the body corporate and the person a copy of the
6 direction.
- 7 (9) The power of a body corporate to comply with a direction to end a
8 person's appointment may be exercised on behalf of the body
9 corporate:
10 (a) by the Chair of the board of directors of the body corporate
11 signing a written notice; or
12 (b) by a majority of the directors of the body corporate
13 (excluding any director who is the subject of the direction)
14 jointly signing a written notice.
- 15 (10) Subsection (9) does not by implication limit any other powers of a
16 body corporate to end a person's appointment.
- 17 (11) Part VI applies to a decision by APRA to give a direction under
18 this section on the ground referred to in paragraph (3)(b).
- 19 (12) A direction to end a person's appointment is not a legislative
20 instrument.
- 21 (13) A body corporate commits an offence if:
22 (a) the body corporate does or fails to do an act; and
23 (b) by doing or failing to do the act, the body corporate fails to
24 comply with a direction under this section.
- 25 Penalty: 60 penalty units.
- 26 (14) Strict liability applies to subsection (13).
- 27 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

62 Subsection 70(5)

28 Repeal the subsection.

Life Insurance Act 1995

63 After section 7

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1 **7B Breach of condition of a determination under section 7A**

2 (1) A person commits an offence if:

3 (a) a determination under section 7A applies to a person; and

4 (b) the person does or fails to do an act; and

5 (c) doing or failing to do the act results in a breach of a condition
6 to which the determination is subject.

7 Penalty: 60 penalty units.

8 (2) Strict liability applies to subsection (1).

9 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

10 **64 At the end of subsection 12A(2)**

11 Add “or in the prudential standards”.

12 **65 At the end of subsection 12B(3)**

13 Add “or in the prudential standards”.

14 **66 Subsection 16A(5)**

15 Repeal the subsection, substitute:

16 (5) In addition to the modifications set out in this Part and in
17 regulations for the purposes of section 16ZC, this Act includes
18 some other special provisions in relation to friendly societies. See
19 in particular various provisions in Division 2 of Part 8 about
20 winding up of friendly societies.

21 **67 Subsection 16A(6) (note)**

22 Omit “to which section 125A or 125B applies has been modified, an
23 exemption order”, substitute “mentioned in subsection 7A(1) has been
24 modified, a determination”.

25 **68 Paragraph 16B(2)(a)**

26 After “Prudential Rules”, insert “or in the prudential standards”.

27 **69 At the end of subsection 16H(4)**

28 Add “or the prudential standards”.

29 **70 Paragraph 16H(4A)(b)**

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1 After “Prudential Rules”, insert “or the prudential standards”.

2 **71 Section 16J**

3 Omit “Rules”, substitute “Rules or the prudential standards”.

4 **72 At the end of subsection 16L(2)**

5 Add “or the prudential standards”.

6 **73 Paragraph 16L(4)(b)**

7 After “Prudential Rules”, insert “or the prudential standards”.

8 **74 Section 16M**

9 Repeal the section.

10 **75 Paragraph 16N(a)**

11 Omit “a copy of the rules is lodged with ASIC”, substitute “APRA
12 approved the rules”.

13 **76 At the end of subsection 16Q(2)**

14 Add “or the prudential standards”.

15 **77 Paragraph 16Q(4)(b)**

16 After “Prudential Rules”, insert “or the prudential standards”.

17 **78 Paragraph 16R(6)(b)**

18 After “Prudential Rules”, insert “or the prudential standards”.

19 **79 Section 16S**

20 Repeal the section.

21 **80 Paragraph 16T(c)**

22 Omit “a copy of the amendment is lodged with ASIC”, substitute
23 “APRA approved or determined the amendment”.

24 **81 At the end of subsection 16U(2)**

25 Add “or the prudential standards”.

26 **82 Paragraph 16U(4)(b)**

27 After “Prudential Rules”, insert “or the prudential standards”.

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1 **83 At the end of subsection 16V(3)**

2 Add “or the prudential standards”.

3 **84 Paragraph 16V(7)(b)**

4 After “Prudential Rules”, insert “or the prudential standards”.

5 **85 Section 16W**

6 Repeal the section.

7 **86 Paragraph 16X(c)**

8 Omit “a copy of the amendments is lodged with ASIC”, substitute
9 “APRA approved or determined the amendments”.

10 **87 Section 20**

11 Repeal the section, substitute:

12 **20 Application for registration**

13 (1) A company may apply in writing to APRA for registration under
14 this Act.

15 (2) The application must:

16 (a) be in the form (if any) approved by APRA; and

17 (b) be accompanied by any information requested by APRA; and

18 (c) nominate for the purposes of this Act:

19 (i) the person who is to be the principal executive officer of
20 the life company; and

21 (ii) the period that is to be the financial year of the life
22 company.

23 (3) For the purposes of determining an application, APRA may by
24 written notice require an applicant to provide the further
25 information specified in the notice, before the end of the period
26 specified in the notice.

27 (4) If the applicant does not provide the specified information before
28 the end of the specified period or any longer period agreed to in
29 writing by APRA, the application is taken to be withdrawn.

30 (5) A notice under subsection (3) must include a statement about the
31 effect of subsection (4).

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1 **88 Subsections 21(1) and (2)**

2 Repeal the subsections, substitute:

3 (1) APRA must, in writing, register a company that applies for
4 registration under section 20, unless:

5 (a) APRA is satisfied that a ground for refusal specified in
6 subsection (3) exists; and

7 (b) the Treasurer approves of the refusal.

8 **89 Subsections 21(5), (6) and (7)**

9 Repeal the subsections.

10 **90 Section 25**

11 Repeal the section.

12 **91 Section 28**

13 Repeal the section.

14 **92 At the end of subsection 34(4)**

15 Add “or the prudential standards”.

16 **93 Subsection 39(2)**

17 Omit “and section 259”.

18 **94 Subsection 40(3)**

19 Omit “The Commissioner”, substitute “APRA”.

20 **95 Paragraphs 42(4)(a) and (b)**

21 Omit “actuarial standards”, substitute “the prudential standards”.

22 **96 Subsection 44(6)**

23 After “Prudential Rules”, insert “or by reporting standards made under
24 the *Financial Sector (Collection of Data) Act 2001*”.

25 **97 Paragraphs 44(7)(a) and (b)**

26 After “Prudential Rules”, insert “or by reporting standards made under
27 the *Financial Sector (Collection of Data) Act 2001*”.

28 **98 Subsection 47(1)**

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1 Omit “The regulations may declare”, substitute “The prudential
2 standards may specify”.

3 **99 Subsection 47(2)**

4 Omit “If regulations are made under”, substitute “If prudential standards
5 are made for the purposes of”.

6 **100 Paragraphs 47(2)(a) and (b)**

7 Omit “regulations”, substitute “prudential standards”.

8 **101 Subsection 52(1)**

9 After “Prudential Rules”, insert “or the prudential standards”.

10 **102 Subsection 52(3)**

11 After “Prudential Rules”, insert “or the prudential standards”.

12 **103 Subparagraphs 52(4)(b)(i) and (ii)**

13 Omit “the solvency standard applicable to it”, substitute “the prudential
14 standards in relation to solvency”.

15 **104 Subsection 53(1)**

16 After “Prudential Rules”, insert “or the prudential standards”.

17 **105 Subsection 53(2)**

18 After “Prudential Rules”, insert “or the prudential standards”.

19 **106 At the end of subsection 55(2)**

20 Add “or the prudential standards”.

21 **107 At the end of subsection 55(3)**

22 Add “or the prudential standards”.

23 **108 Section 57**

24 After “If”, insert “annual”.

25 **109 Subsection 61(1) (definition of *starting amount*)**

26 After “Prudential Rules”, insert “or prudential standards”.

27 **110 Paragraph 62(3)(a)**

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1 Omit “solvency standard”, substitute “prudential standards in relation to
2 solvency”.

3 **111 Paragraph 62(3)(b)**

4 Omit “section 68”, substitute “section 230B in relation to solvency”.

5 **112 Paragraph 62(3)(c)**

6 After “Prudential Rules”, insert “or prudential standards”.

7 **113 Subsection 62(5)**

8 After “Prudential Rules”, insert “or the prudential standards”.

9 **114 Paragraph 62(4)(a)**

10 Omit “capital adequacy standard”, substitute “prudential standards in
11 relation to capital adequacy”.

12 **115 Paragraph 62(4)(b)**

13 Omit “section 73”, substitute “section 230B in relation to capital
14 adequacy”.

15 **116 Subparagraph 63(1)(b)(i)**

16 Omit “solvency standard”, substitute “prudential standards in relation to
17 solvency”.

18 **117 Subparagraph 63(1)(b)(ii)**

19 Omit “section 68”, substitute “section 230B in relation to solvency”.

20 **118 Paragraph 63(2)(a)**

21 Omit “capital adequacy standard”, substitute “prudential standards in
22 relation to capital adequacy”.

23 **119 Paragraph 63(2)(b)**

24 Omit “section 73”, substitute “section 230B in relation to capital
25 adequacy”.

26 **120 Part 5**

27 Repeal the Part.

28 **121 Subsection 77(2)**

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1 Omit “under subsection 20(4)”, substitute “for the purposes of
2 section 20”.

3 **122 Subsection 80(3)**

4 Omit “, for the purposes of subsection 83(3), by the approved auditor
5 for the company”, substitute “by the auditor of the life company for the
6 purposes of the *Financial Sector (Collection of Data) Act 2001*”.

7 **123 Section 83**

8 Repeal the section, substitute:

9 **83 Role of auditor**

10 (1) The auditor of a life company must perform for the life company
11 the functions of an auditor set out in the prudential standards and in
12 reporting standards made by APRA under the *Financial Sector*
13 *(Collection of Data) Act 2001*.

14 (2) The life company must make any arrangements necessary to enable
15 the auditor to perform those functions.

16 **124 Sections 84, 85 and 86**

17 Repeal the sections, substitute:

18 **84 Appointment of auditor**

19 A life company must not appoint a person as the auditor of the life
20 company unless:

- 21 (a) the person is a registered company auditor within the
22 meaning of the *Corporations Act 2001*; and
23 (b) the life company is satisfied that the person has the
24 experience to be suitable for appointment as the auditor of
25 the life company.

26 **85 Ending an appointment as auditor**

27 (1) A life company must end the appointment of a person as auditor of
28 the life company if:

- 29 (a) the person ceases to be a registered company auditor within
30 the meaning of the *Corporations Act 2001*; or

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1 (b) the life company is satisfied that the person has failed to
2 perform adequately and properly the functions and duties of
3 an auditor under this Act.

4 (2) If:

5 (a) a life company is required under subsection (1) to end the
6 appointment of a person as auditor of the company; and

7 (b) the power to appoint the auditor of the company is not vested
8 in the directors of the company or is not vested in the
9 directors of the company alone;

10 the directors may appoint a person who satisfies the requirements
11 in paragraphs 84(a) and (b) to be the auditor of the company until
12 an appointment is made in accordance with the constitution or
13 other rules of the life company.

14 **125 Subsection 88(2)**

15 After “the auditor must”, insert “immediately”.

16 **126 After subsection 88(2)**

17 Insert:

18 (2A) Subsection (2) does not apply to the auditor of a life company in
19 relation to a contravention if:

20 (a) a director or senior manager of the life company informs the
21 auditor that the life company has informed APRA in writing
22 of the contravention; and

23 (b) the auditor has no reason to disbelieve the director or senior
24 manager.

25 (2B) A person commits an offence if:

26 (a) the person is a director or senior manager of a life company;
27 and

28 (b) the person knows that:

29 (i) there are reasonable grounds for believing that the life
30 company or a director of the life company may have
31 contravened this Act or any other Act; and

32 (ii) the contravention is of such a nature that it may affect
33 significantly the interests of the owners of policies
34 issued by the company; and

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1 (c) the person informs the auditor of the life company that the
2 life company has informed APRA in writing of the
3 contravention; and

4 (d) the life company has not done so.

5 Penalty: Imprisonment for 12 months.

6 **127 Sections 90, 91 and 92**

7 Repeal the sections.

8 **128 Subsections 93(4), (5) and (6)**

9 Repeal the subsections, substitute:

10 (4) A person is eligible for appointment as a life company's actuary if
11 the person:

12 (a) is ordinarily resident in Australia; and

13 (b) is a Fellow of the Institute of Actuaries of Australia; and

14 (c) has been such a Fellow for at least 5 years.

15 **129 Subsections 94(2) to (5)**

16 Repeal the subsections, substitute:

17 (2) A life company must give a person notice under paragraph (1)(c) if
18 the life company is satisfied that the person has, in relation to the
19 company, failed to perform adequately and properly the duties and
20 functions of an appointed actuary under this Act.

21 **130 Section 96**

22 Omit "actuarial", substitute "prudential".

23 Note: The heading to section 96 is altered by omitting "**actuarial**" and substituting
24 "**prudential**".

25 **131 Section 97**

26 Repeal the section, substitute:

27 **97 Role of actuary**

28 (1) The appointed actuary of a life company must perform for the
29 company the functions of an actuary set out in the prudential
30 standards and in reporting standards made by APRA under the
31 *Financial Sector (Collection of Data) Act 2001*.

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1 (2) The life company must make any arrangements necessary to enable
2 the appointed actuary to perform those functions.

3 **132 Subsection 98(2)**

4 After “the appointed actuary must”, insert “immediately”.

5 **133 After subsection 98(2)**

6 Insert:

7 (2A) Subsection (2) does not apply to the appointed actuary of a life
8 company in relation to a contravention if:

- 9 (a) a director or senior manager of the life company informs the
10 actuary that the life company has informed APRA in writing
11 of the contravention; and
12 (b) the actuary has no reason to disbelieve the director or senior
13 manager.

14 (2B) A person commits an offence if:

- 15 (a) the person is a director or senior manager of a life company;
16 and
17 (b) the person knows that:
18 (i) there are reasonable grounds for believing that the life
19 company or a director of the life company may have
20 contravened this Act or any other Act; and
21 (ii) the contravention is of such a nature that it may affect
22 significantly the interests of the owners of policies
23 issued by the company; and
24 (c) the person informs the appointed actuary of the life company
25 that the life company has informed APRA in writing of the
26 contravention; and
27 (d) the life company has not done so.

28 Penalty: Imprisonment for 12 months.

29 **134 Subsection 98(4)**

30 Repeal the subsection.

31 **135 Divisions 5, 6, 7 and 8 of Part 6**

32 Repeal the Divisions, substitute:

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1 **Division 5—Miscellaneous**

2 **114 Method of valuing policy liabilities**

3 (1) This section applies to a valuation of policy liabilities made for the
4 purposes of any provision of this Act, other than a provision of
5 Division 2 of Part 8.

6 (2) A valuation of the policy liabilities referable to a statutory fund
7 must be made in accordance with the prudential standards.

8 **124 Policy owner's right to copy of annual financial statements and**
9 **annual return**

10 (1) The owner of a policy issued by a life company is entitled, on his
11 or her request, to be provided by the company with one copy of the
12 latest annual financial statements and annual return given by the
13 company to APRA under the *Financial Sector (Collection of Data)*
14 *Act 2001*.

15 (2) Copies provided under subsection (1) are to be provided free of
16 charge.

17 **125 Referring matters to professional associations for auditors and**
18 **actuaries**

19 (1) If APRA is of the opinion that an auditor of a life company:

20 (a) has failed, whether within or outside Australia, to carry out or
21 perform adequately and properly:

22 (i) the duties of an auditor under this Act; or

23 (ii) any duties required by a law of the Commonwealth, a
24 State or a Territory to be carried out or performed by an
25 auditor; or

26 (iii) any functions that an auditor is entitled to perform in
27 relation to this Act or the *Financial Sector (Collection*
28 *of Data) Act 2001*; or

29 (b) is otherwise not a fit and proper person to be the auditor of a
30 life company;

31 APRA may refer the details of the matter to either or both of the
32 following:

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- 1 (c) the Companies Auditors and Liquidators Disciplinary Board
2 established by Division 1 of Part 11 of the *Australian*
3 *Securities and Investments Commission Act 2001*;
- 4 (d) those members of the professional association of the auditor
5 whom APRA believes will be involved in considering or
6 taking any disciplinary or other action concerning the matter
7 against the auditor.
- 8 (2) If APRA is of the opinion that an appointed actuary of a life
9 company:
- 10 (a) has failed, whether within or outside Australia, to carry out or
11 perform adequately and properly:
- 12 (i) the duties of an actuary under this Act; or
13 (ii) any duties required by a law of the Commonwealth, a
14 State or a Territory to be carried out or performed by an
15 actuary; or
16 (iii) any functions that an actuary is entitled to perform in
17 relation to this Act or the *Financial Sector (Collection*
18 *of Data) Act 2001*; or
- 19 (b) is otherwise not a fit and proper person to be the actuary of a
20 life company;
- 21 APRA may refer the details of the matter to those members of the
22 professional association of the actuary whom APRA believes will
23 be involved in considering or taking any disciplinary or other
24 action concerning the matter against the actuary.
- 25 (3) If APRA refers details of a matter under this section, APRA must
26 also give written notice of the referral (including the nature of the
27 matter) to the auditor or actuary.

28 **136 After section 132**

29 Insert:

30 **132A Requirement to notify APRA of certain matters**

- 31 (1) If:
- 32 (a) a life company becomes aware that the life company has
33 breached or will breach a provision of this Act; and
34 (b) the provision relates to the financial obligations of the life
35 company to the owners of policies issued by it or to the life
36 company's minimum capital requirements;
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1 the life company must immediately notify APRA in writing of the
2 breach.

3 (2) Subsection (1) does not apply in relation to a breach if, before the
4 life company becomes aware of the breach, the auditor or
5 appointed actuary of the life company notifies APRA in writing of
6 the breach.

7 Note: Auditors and appointed actuaries must give APRA certain information
8 under sections 88 and 98, and may give APRA information under
9 sections 88A and 98A.

10 (3) If a life company becomes aware:

11 (a) that the life company has materially breached or will
12 materially breach a provision of this Act (other than a
13 provision to which subsection (1) applies); or

14 (b) of a matter that materially affects the life company's financial
15 position;

16 the life company must give APRA a written report about the
17 breach or matter as soon as practicable, and in any case no later
18 than 10 business days, after becoming aware of the breach or
19 matter.

20 (4) For the purposes of paragraph (3)(a), a breach of a provision is
21 **material** if the breach is or will be significant having regard to any
22 one or more of the following:

23 (a) the number or frequency of similar breaches;

24 (b) the impact the breach has or will have on the life company's
25 ability to conduct its life insurance business;

26 (c) the extent to which the breach indicates that the life
27 company's arrangements to ensure compliance with this Act
28 or with the prudential standards might be inadequate;

29 (d) the actual or potential financial loss arising or that will arise
30 from the breach:

31 (i) to the owners of policies issued by the life company; or

32 (ii) to the life company;

33 (e) any matters prescribed by the regulations for the purposes of
34 this paragraph.

35 (5) Subsection (3) does not apply in relation to a breach or matter if:

36 (a) the auditor or appointed actuary of the life company gives
37 APRA a written report about the breach or matter; and

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- 1 (b) the report is given within 10 business days after the life
2 company becomes aware of the breach or matter.
- 3 Note: Auditors and appointed actuaries must give APRA certain information
4 under sections 88 and 98, and may give APRA information under
5 sections 88A and 98A.
- 6 (6) A life company commits an offence if:
7 (a) the life company is required to notify APRA of a breach or
8 matter under subsection (1) or (3); and
9 (b) the life company fails to do so within the time required under
10 the subsection.
- 11 Penalty: 200 penalty units.
- 12 (7) If an individual:
13 (a) commits an offence under subsection (6) because of Part 2.4
14 of the *Criminal Code*; or
15 (b) commits an offence under Part 2.4 of the *Criminal Code* in
16 relation to an offence under subsection (6);
17 the individual is punishable on conviction by a fine not exceeding
18 40 penalty units.
- 19 (8) A notice or report given under subsection (1) or (3) must not
20 include information, books, accounts or documents with respect to
21 the affairs of an individual insured person, unless the information,
22 books, accounts or documents are in respect of prudential matters
23 relating to the life company.

24 **137 At the end of Division 2 of Part 7**

25 Add:

26 **133A Enforceable undertakings**

- 27 (1) APRA may accept a written undertaking given by a person in
28 connection with a matter in relation to which APRA has a power or
29 function under this Act.
- 30 (2) The person may, with APRA's consent, vary or withdraw the
31 undertaking.
- 32 (3) If APRA considers that a person who has given an undertaking has
33 breached any of the terms of the undertaking, APRA may apply to
34 the Court for an order under subsection (4).
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- 1 (4) If the Court is satisfied that a person who has given an undertaking
2 has breached any of the terms of the undertaking, the Court may
3 make any or all of the following orders:
4 (a) an order directing the person to comply with the undertaking;
5 (b) an order directing the person to pay to the Commonwealth an
6 amount up to the amount of any financial benefit that the
7 person obtained (whether directly or indirectly) and that is
8 reasonably attributable to the breach;
9 (c) any order that the Court considers appropriate directing the
10 person to compensate any other person who has suffered loss
11 or damage as a result of the breach;
12 (d) any other order that the Court considers appropriate.

13 **138 Division 3 of Part 7 (heading)**

14 Repeal the heading, substitute:

15 **Division 3—Investigation by APRA**

16 **139 After paragraph 136(c)**

17 Insert:

- 18 (ca) that a term of an undertaking referred to in section 133A that
19 relates to the life company has been breached by a person
20 who is subject to the undertaking;

21 **140 Section 148**

22 Repeal the section.

23 **141 At the end of Part 7**

24 Add:

25 **Division 5—Protections in relation to information**

26 **Subdivision A—Protection for whistleblowers**

27 **156A Disclosures qualifying for whistleblower protection**

- 28 (1) This section applies to a disclosure of information by a person (the
29 *discloser*) who is, in relation to a life company, any of the
30 following:

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- 1 (a) an officer of the life company;
2 (b) an employee of the life company;
3 (c) a person who has a contract for the supply of services or
4 goods to the life company;
5 (d) an employee of a person who has a contract for the supply of
6 services or goods to the life company.
- 7 (2) The disclosure of information by the discloser qualifies for
8 protection under this Subdivision if:
9 (a) the disclosure is made to any of the following:
10 (i) APRA;
11 (ii) the life company's auditor or a member of an audit team
12 conducting an audit of the life company;
13 (iii) the appointed actuary of the life company;
14 (iv) a director or senior manager of the life company;
15 (v) a person authorised by the life company to receive
16 disclosures of the kind made; and
17 (b) the discloser informs the person to whom the disclosure is
18 made of the discloser's name before making the disclosure;
19 and
20 (c) either or both of the following apply:
21 (i) the discloser considers that the information may assist a
22 person referred to in paragraph (a) to perform the
23 person's functions or duties in relation to the life
24 company;
25 (ii) the discloser is required under this Act or the *Financial*
26 *Sector (Collection of Data) Act 2001* to make the
27 disclosure; and
28 (d) the discloser makes the disclosure in good faith.
- 29 (3) For the purposes of this section, *officer* has the same meaning as it
30 has in the *Corporations Act 2001*.

31 **156B Whistleblower protection for disclosures that qualify**

- 32 (1) If a person makes a disclosure that qualifies for protection under
33 this Subdivision:
34 (a) the person is not subject to any civil or criminal liability for
35 making the disclosure; and
-

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- 1 (b) no contractual or other remedy may be enforced, and no
2 contractual or other right may be exercised, against the
3 person on the basis of the disclosure.
- 4 (2) Without limiting subsection (1):
- 5 (a) the person has qualified privilege in respect of the disclosure;
6 and
- 7 (b) a contract to which the person is a party must not be
8 terminated on the basis that the disclosure constitutes a
9 breach of the contract.
- 10 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied
11 that:
- 12 (a) a person (the *employee*) is employed in a particular position
13 under a contract of employment with another person (the
14 *employer*); and
- 15 (b) the employee makes a disclosure that qualifies for protection
16 under this Subdivision; and
- 17 (c) the employer purports to terminate the contract of
18 employment on the basis of the disclosure;
- 19 the court may order that the employee be reinstated in that position
20 or a position at a comparable level.

21 **156C Victimization of whistleblowers prohibited**

22 *Actually causing detriment to another person*

- 23 (1) A person commits an offence if:
- 24 (a) the person engages in conduct; and
- 25 (b) the person's conduct causes any detriment to another person;
26 and
- 27 (c) the person intends that his or her conduct cause detriment to
28 the other person; and
- 29 (d) the person engages in his or her conduct because the other
30 person made a disclosure that qualifies for protection under
31 this Subdivision.

32 Penalty: 25 penalty units or imprisonment for 6 months, or both.

33 *Threatening to cause detriment to another person*

- 34 (2) A person (the *first person*) commits an offence if:
-

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- 1 (a) the first person makes a threat to another person (the *second*
2 *person*) to cause any detriment to the second person or to a
3 third person; and
4 (b) the first person:
5 (i) intends the second person to fear that the threat will be
6 carried out; or
7 (ii) is reckless as to causing the second person to fear that
8 the threat will be carried out; and
9 (c) the first person makes the threat because a person:
10 (i) made a disclosure that qualifies for protection under this
11 Subdivision; or
12 (ii) may make a disclosure that would qualify for protection
13 under this Subdivision.

14 Penalty: 25 penalty units or imprisonment for 6 months, or both.

15 *Officers and employees involved in offence*

- 16 (3) If a body corporate commits an offence under subsection (1) or (2),
17 any officer or employee of the body corporate who is involved in
18 the offence contravenes this subsection.

19 *Threats*

- 20 (4) For the purposes of subsection (2), a threat may be:
21 (a) express or implied; or
22 (b) conditional or unconditional.
23 (5) In a prosecution for an offence under subsection (2), it is not
24 necessary to prove that the person threatened actually feared that
25 the threat would be carried out.

26 **156D Right to compensation**

- 27 If:
28 (a) a person:
29 (i) commits an offence under subsection 156C(1) or (2); or
30 (ii) contravenes subsection 156C(3); and
31 (b) another person suffers damage because of the conduct
32 constituting the offence or because of the contravention;
33 the person is liable to compensate the other person for the damage.
-

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1 **156E Confidentiality requirement for company, company officers**
2 **and employees and auditors**

3 (1) A person (the *offender*) commits an offence under this subsection
4 if:

5 (a) a person (the *discloser*) makes a disclosure of information
6 that qualifies for protection under this Subdivision; and

7 (b) the disclosure relates to a contravention or possible
8 contravention of a provision of this Act or the *Financial*
9 *Sector (Collection of Data) Act 2001* by:

10 (i) a life company; or

11 (ii) an officer or employee of a life company; and

12 (c) the disclosure is made to:

13 (i) the life company's auditor or a member of an audit team
14 conducting an audit of the life company; or

15 (ii) a director or senior manager of the life company; or

16 (iii) a person authorised by the life company to receive
17 disclosures of that kind; and

18 (d) the offender is:

19 (i) the life company's auditor or a member of an audit team
20 conducting an audit of the life company; or

21 (ii) a director or senior manager of the life company; or

22 (iii) a person authorised by the life company to receive
23 disclosures of that kind; or

24 (iv) the life company; or

25 (v) an officer or employee of the life company; and

26 (e) the offender discloses any of the following information (the
27 *confidential information*):

28 (i) the information referred to in paragraph (a);

29 (ii) the identity of the discloser;

30 (iii) information that is likely to lead to the identification of
31 the discloser; and

32 (f) the confidential information is information that the offender
33 obtained directly or indirectly because of the disclosure
34 referred to in paragraph (a); and

35 (g) either:

36 (i) the offender is the person to whom the disclosure
37 referred to in paragraph (a) is made; or

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- 1 (ii) the offender is a person to whom the confidential
2 information is disclosed in contravention of this section
3 and the offender knows that the disclosure of the
4 confidential information to the offender was unlawful or
5 made in breach of confidence; and
6 (h) the disclosure referred to in paragraph (e) is not authorised
7 under subsection (2).

8 Penalty: 25 penalty units.

- 9 (2) The disclosure referred to in paragraph (1)(e) is authorised under
10 this subsection if:
11 (a) it is made to APRA; or
12 (b) it is made to a member of the Australian Federal Police
13 (within the meaning of the *Australian Federal Police Act*
14 *1979*); or
15 (c) it is made to someone else with the consent of the discloser.

16 **Subdivision B—Self-incrimination**

17 **156F Self-incrimination**

- 18 (1) An individual is not excused from complying with a requirement
19 under this Act or under the *Financial Sector (Collection of Data)*
20 *Act 2001* to give information on the ground that doing so would
21 tend to incriminate the individual or make the individual liable to a
22 penalty.
- 23 (2) Information given by the individual in compliance with a
24 requirement under this Act or under the *Financial Sector*
25 *(Collection of Data) Act 2001* is not admissible in evidence against
26 the individual in a criminal proceeding or a proceeding for the
27 imposition of a penalty, other than a proceeding in respect of the
28 falsity of the information, if:
29 (a) before giving the information, the individual claims that
30 giving the information might tend to incriminate the
31 individual or make the individual liable to a penalty; and
32 (b) giving the information might in fact tend to incriminate the
33 individual or make the individual liable to a penalty.

34 **142 Subparagraph 159(1)(a)(ii)**

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1 Omit “solvency standard”, substitute “prudential standards in relation to
2 solvency”.

3 **143 Subparagraph 159(a)(iii)**

4 Omit “section 68”, substitute “section 230B in relation to solvency”.

5 **144 Subsection 207(4)**

6 Omit “actuarial standards”, substitute “the prudential standards”.

7 **145 Subsection 209(3)**

8 Omit “actuarial standards”, substitute “the prudential standards”.

9 **146 Paragraph 209(5)(d)**

10 Omit “actuarial standards”, substitute “the prudential standards”.

11 **147 After subsection 230A(3)**

12 Insert:

13 (3A) A standard may provide for APRA to exercise powers and
14 discretions under the standard, including (but not limited to)
15 discretions to approve, impose, adjust or exclude specific
16 prudential requirements in relation to one or more specified life
17 companies.

18 **148 Subsection 230A(4)**

19 Repeal the subsection.

20 **149 After subsection 230A(5)**

21 Insert:

22 (5A) A standard referred to in paragraph (1)(c), or an instrument varying
23 or revoking such a standard, has effect:

24 (a) from the day on which the standard, variation or revocation is
25 made; or

26 (b) if the standard, variation or revocation specifies a later day—
27 from that later day.

28 **150 Subsections 230A(6), (8) (10) and (11)**

29 Repeal the subsections.

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1 **151 Subsection 230A(12)**

2 Omit “(6), (7), (8), (9) or (10)”, substitute “(7) or (9)”.

3 **152 After subsection 230A(12)**

4 Insert:

5 (12A) The following instruments made under this section are not
6 legislative instruments:

- 7 (a) a standard referred to in paragraph (1)(c);
8 (b) an instrument varying or revoking a standard referred to in
9 paragraph (1)(c).

10 (12B) Otherwise, an instrument made under this section is a legislative
11 instrument.

12 **153 Paragraph 230B(1)(a)**

13 Omit “paragraph 125A(4)(a) or 125B(4)(a)”, substitute “paragraph
14 7A(2)(c)”.

15 **154 At the end of Part 10A**

16 Add:

17 **Division 3—Directions in relation to office holders**

18 **230G APRA may direct removal of certain office holders**

19 (1) APRA may, if satisfied there is a ground under subsection (2), give
20 a life company a written direction to remove any of the following
21 persons from the life company:

- 22 (a) a director;
23 (b) a senior manager;
24 (c) the auditor;
25 (d) the appointed actuary;

26 (2) The grounds for giving a direction to remove a person are:

- 27 (a) the person is a disqualified person within the meaning of
28 section 245; or
29 (b) if the person is the auditor—the person has failed to perform
30 adequately and properly the duties and functions of an
31 auditor under this Act; or

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- 1 (c) if the person is the appointed actuary—the person has failed
2 to perform adequately and properly the duties and functions
3 of an appointed actuary under this Act; or
4 (d) APRA is satisfied that the person does not meet one or more
5 of the criteria for fitness and propriety set out for that kind of
6 person in the prudential standards.
- 7 (3) Before directing a life company to remove a person, APRA must:
8 (a) give written notice to:
9 (i) the life company; and
10 (ii) the person; and
11 (b) give the life company and the person a reasonable
12 opportunity to make submissions on the matter.
- 13 (4) The notice must include a statement that any submissions in
14 response to the notice may be discussed by APRA with other
15 persons as mentioned in paragraph (5)(b).
- 16 (5) If a submission is made in response to the notice, APRA:
17 (a) must have regard to the submission; and
18 (b) may discuss any matter contained in the submission with any
19 persons APRA considers appropriate for the purpose of
20 assessing the truth of the matter.
- 21 (6) A direction to remove a person takes effect on the day specified in
22 the direction, which must be at least 7 days after the direction is
23 made.
- 24 (7) If APRA directs a life company to remove a person, APRA must
25 give the life company and the person a copy of the direction.
- 26 (8) The power of a life company to comply with a direction to remove
27 a person may be exercised on behalf of the life company:
28 (a) by the Chair of the board of directors of the life company
29 signing a written notice; or
30 (b) by a majority of the directors of the life company (excluding
31 any director who is the subject of the direction) jointly
32 signing a written notice.
- 33 (9) Subsection (8) does not by implication limit any other powers of a
34 life company to remove a person.
- 35 (10) A direction to remove a person is not a legislative instrument.
-

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- 1 (11) A life company commits an offence if:
2 (a) the life company does or fails to do an act; and
3 (b) by doing or failing to do the act, the life company fails to
4 comply with a direction under this section.

5 Penalty: 60 penalty units.

- 6 (12) Strict liability applies to subsection (11).

7 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

8 **155 Subsection 236(1) (definition of *person affected by a***
9 ***reviewable decision*)**

10 Repeal the definition.

11 **156 Subsection 236(1) (before paragraph (a) of the definition**
12 ***of reviewable decision*)**

13 Insert:

14 (aaa) a decision under section 7A;

15 **157 Subsection 236(1) (paragraphs (e) and (f) of the definition**
16 ***of reviewable decision*)**

17 Omit “direction”, substitute “condition”.

18 **158 Subsection 236(1) (paragraphs (k) and (l) of the definition**
19 ***of reviewable decision*)**

20 After “Prudential Rules”, insert “or prudential standards”.

21 **159 Subsection 236(1) (paragraphs (o), (p), (q), (r), (s), (sa),**
22 **(sb), (sc), (t), (v), (w), (x), (y), (z), (za), (zc), (zg) and (zga)**
23 ***of the definition of reviewable decision*)**

24 Repeal the paragraphs.

25 **160 Subsection 236(1) (at the end of the definition of**
26 ***reviewable decision*)**

27 Add:

28 (zp) a decision under subsection 230A(1) to make, vary or revoke
29 a standard referred to in paragraph 230A(1)(c);

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1 (zq) a decision to give a life company a direction under
2 section 230G, other than a direction on the ground referred to
3 in paragraph 230G(2)(a).

4 **161 Paragraphs 236(1A)(e), (f), (g), (h), (i), (j), (ja), (jb) and (jc)**

5 Repeal the paragraphs.

6 **162 Sections 238 and 239**

7 Repeal the sections.

8 **163 Subsection 246(1)**

9 Omit “under subsection 20(4)”, substitute “for the purposes of
10 section 20”.

11 **164 Subsection 252(1)**

12 Omit “in writing”, substitute “by legislative instrument”.

13 **165 Subsection 252(2)**

14 Repeal the subsection, substitute:

15 (2) APRA must not make rules under this section on or after the day
16 on which Part 1 of Schedule 1 to the *Financial Sector Legislation*
17 *Amendment (Simplifying Regulation and Review) Act 2007*
18 commences (the *cut-off day*).

19 (3) A rule made under this section that is in force immediately before
20 the cut-off day continues in force until revoked by APRA.

21 (4) APRA may, on or after the cut-off day, vary or revoke a rule
22 continued in force under subsection (3).

23 **166 Paragraph 253(1)(a)**

24 Omit “, other than matters required or permitted to be prescribed by
25 Prudential Rules or actuarial standards”.

26 **167 Subsections 254(4) and (6)**

27 Repeal the subsection.

28 **168 Sections 256 to 263**

29 Repeal the sections.

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1 **169 Schedule (definition of *actuarial standards*)**

2 Repeal the definition.

3 **170 Schedule (definition of *annual actuarial investigation*)**

4 Repeal the definition.

5 **171 Schedule (definition of *approved auditor*)**

6 Repeal the definition.

7 **172 Schedule (definition of *Board*)**

8 Repeal the definition.

9 **173 Schedule**

10 Insert:

11 *business day* means a day that is not a Saturday, a Sunday or a
12 public holiday or bank holiday in the place concerned.

13 **174 Schedule (definition of *Commissioner*)**

14 Repeal the definition.

15 **175 Schedule (definition of *financial condition report*)**

16 Repeal the definition.

17 **176 Schedule**

18 Insert:

19 *senior manager*, of a life company, means a person who has or
20 exercises any of the senior management responsibilities (within the
21 meaning of the prudential standards) for the life company.

22 **177 Schedule (paragraph (a) of the definition of *this Act*)**

23 Omit “actuarial standards,”.

24 **178 Schedule (paragraph (b) of the definition of *this Act*)**

25 Omit “the instruments made under that Act referred to in
26 paragraph (a)”, substitute “prudential standards made under that Act”.

27 ***Superannuation Industry (Supervision) Act 1993***

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1 **179 Subsection 10(1)**

2 Insert:

3 *ABN* has the meaning given by section 41 of the *A New Tax*
4 *System (Australian Business Number) Act 1999*.

5 **180 Subsection 10(1) (after paragraph (rb) of the definition of**
6 ***reviewable decision*)**

7 Insert:

8 (rc) a decision of the Regulator to give a direction under
9 section 126G, other than a direction on the ground referred to
10 in paragraph 126G(2)(a); or

11 **181 Subsection 10(1) (after paragraph (t) of the definition of**
12 ***reviewable decision*)**

13 Insert:

14 (ta) a decision of the Regulator to give a direction under
15 section 131AA, other than a direction on the ground
16 mentioned in paragraph 133AA(2)(a); or

17 **182 Subsection 10(1) (at the end of paragraph (z) of the**
18 **definition of *reviewable decision*)**

19 Add “that applies to a particular person or a particular group of
20 individual trustees”.

21 **183 Subsection 10(1) (paragraph (za) of the definition of**
22 ***reviewable decision*)**

23 Repeal the paragraph.

24 **184 Subsection 10(1) (at the end of paragraph (zb) of the**
25 **definition of *reviewable decision*)**

26 Add “that applies to a particular person or a particular group of
27 individual trustees”.

28 **185 Subsection 10(1) (paragraph (zc) of the definition of**
29 ***reviewable decision*)**

30 Repeal the paragraph.

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1 **186 Subsection 10(1) (paragraph (zd) of the definition of**
2 **reviewable decision)**

3 Omit “to revoke an exemption or declaration”, insert “to vary or revoke
4 an exemption or declaration that applies to a particular person or a
5 particular group of individual trustees”.

6 **187 Section 29DB**

7 Repeal the section, substitute:

8 **29DB Notice of class of licence**

9 If APRA decides to grant an RSE licence to a body corporate or
10 group of individual trustees, APRA must give the body corporate
11 or group an RSE licence that specifies the class of licence granted.

12 **188 Subsection 29DC(1)**

13 Omit “the number of its RSE licence”, substitute “its ABN”.

14 Note: The heading to section 29DC is altered by omitting “**licence numbers**” and substituting
15 “**ABNs**”.

16 **189 Subsection 29DC(2)**

17 Omit “the number”, substitute “its ABN”.

18 **190 After paragraph 29E(1)(b)**

19 Insert:

20 (ba) the RSE licensee must have an ABN;

21 **191 Subsection 29JA(1)**

22 After “particulars of a”, insert “material”.

23 **192 Subsection 29JA(1)**

24 Omit “14 days”, substitute “10 business days”.

25 **193 After subsection 29JA(1)**

26 Insert:

27 (1A) For the purposes of subsection (1), a breach is *material* if the
28 breach is or will be significant having regard to any one or more of
29 the following factors:

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- 1 (a) the number or frequency of similar previous breaches;
2 (b) the impact the breach has or will have on the RSE licensee's
3 ability to fulfil its obligations as trustee of the superannuation
4 entity;
5 (c) the extent to which the breach indicates that the RSE
6 licensee's arrangements to ensure compliance with the Act,
7 the regulations or the *Financial Sector (Collection of Data)*
8 *Act 2001* might be inadequate;
9 (d) the actual or potential financial loss arising or that will arise
10 from the breach to the beneficiaries or the entity or to the
11 RSE licensee;
12 (e) any other matters prescribed by regulations made for the
13 purposes of this paragraph.

14 **194 After section 29JC**

15 Insert:

16 **29JCA False representation about status as RSE licensee**

17 A person commits an offence if:

- 18 (a) the person makes a representation; and
19 (b) the representation is that the person is, or is a member of a
20 group that is, an RSE licensee; and
21 (c) the representation is false.

22 Penalty: 60 penalty units.

23 **195 Section 29JE**

24 Repeal the section.

25 **196 Section 29MA**

26 Repeal the section, substitute:

27 **29MA Notice of registration**

28 If APRA registers a registrable superannuation entity, APRA must
29 notify the RSE licensee of the entity in writing of the registration.

30 **197 Subsection 29MB(1)**

31 Omit "registration number", substitute "ABN".

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1 **198 Subsection 29MB(2)**

2 Omit “number”, substitute “ABN”.

3 **199 Section 29QB**

4 Repeal the section.

5 **200 Subsection 71(2B)**

6 Omit “(ba),”.

7 **201 Subsection 106(1)**

8 Omit “gives written notice to the Regulator setting out particulars of the
9 event, no later than the third business day after the first-mentioned
10 trustee becomes aware of the event”, substitute “immediately notifies
11 the Regulator in writing of the event”.

12 **202 After section 121**

13 Insert:

14 **121A Trustees’ obligations in relation to appointment of custodians**
15 **and investment managers**

16 (1) The trustee or trustees of a superannuation entity must not appoint
17 a body corporate as custodian or investment manager of the
18 superannuation entity unless the trustee is or the trustees are
19 satisfied that:

20 (a) the body corporate is a fit and proper person to hold the
21 appointment; and

22 (b) the body corporate is not a disqualified person for the
23 purposes of this Part (see section 120).

24 (2) The trustee or trustees of a superannuation entity must end the
25 appointment of a body corporate as the custodian or investment
26 manager of the superannuation entity if the trustee is or the trustees
27 are satisfied that the body corporate:

28 (a) is not a fit and proper person to hold the appointment; or

29 (b) is a disqualified person for the purposes of this Part (see
30 section 120); or

31 (c) has failed to perform adequately and properly the functions
32 and duties of such an appointment under this Act, the

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1 regulations or the *Financial Sector (Collection of Data) Act*
2 *2001*.

3 **203 After section 126F**

4 Insert:

5 **126G Regulator may direct removal of custodians and investment** 6 **managers**

- 7 (1) The Regulator may, if satisfied there is a ground under
8 subsection (2), give a written direction to the trustee or trustees of a
9 superannuation entity to remove a body corporate from the position
10 of:
- 11 (a) custodian of the superannuation entity; or
 - 12 (b) investment manager of the superannuation entity.
- 13 (2) The grounds for giving a direction to remove a body corporate
14 from a position are that:
- 15 (a) the Regulator is satisfied that the body corporate is a
16 disqualified person for the purposes of this Part (see
17 section 120); or
 - 18 (b) the body corporate has failed to perform adequately and
19 properly the functions and duties of the position under this
20 Act, the regulations or the *Financial Sector (Collection of*
21 *Data) Act 2001*; or
 - 22 (c) the body corporate is not a fit and proper person to occupy
23 the position.
- 24 (3) Before directing a trustee or trustees to remove a body corporate
25 from a position with a superannuation entity, the Regulator must:
- 26 (a) give written notice to:
 - 27 (i) the trustee or trustees; and
 - 28 (ii) the body corporate; and
 - 29 (b) give the trustee or trustees and the body corporate a
30 reasonable opportunity to make submissions on the matter.
- 31 (4) The notice must include a statement that any submissions in
32 response to the notice may be discussed by the Regulator with
33 other persons as mentioned in paragraph (5)(b).
- 34 (5) If a submission is made in response to the notice, the Regulator:
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- 1 (a) must have regard to the submission; and
2 (b) may discuss any matter contained in the submission with any
3 persons the Regulator considers appropriate for the purpose
4 of assessing the truth of the matter.
- 5 (6) A direction to remove a body corporate from a position takes effect
6 on the day specified in the direction, which must be at least 7 days
7 after the direction is made.
- 8 (7) If the Regulator directs a trustee or trustees to remove a body
9 corporate from a position, the Regulator must give the trustee or
10 trustees and the body corporate a copy of the direction.
- 11 (8) A direction to remove a body corporate from a position is not a
12 legislative instrument.
- 13 (9) A trustee of a superannuation entity commits an offence if:
14 (a) the trustee does or fails to do an act; and
15 (b) by doing or failing to do the act, the trustee fails to comply
16 with a direction under this section.
- 17 Penalty: 60 penalty units.
- 18 (10) Strict liability applies to subsection (9).
19 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

20 **204 Subsection 130(2)**

21 Omit “, as soon as practicable after forming the opinion mentioned in
22 paragraph (1)(a),”, substitute “immediately”.

23 **205 Subsection 130A(1)**

24 Omit “(1)”.

25 **206 Subsection 130A(2)**

26 Repeal the subsection.

27 **207 Section 130B**

28 Repeal the section.

29 **208 After section 131**

30 Insert:

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131AA Regulator may direct removal of auditor or actuary

- 1
- 2 (1) The Regulator may, if satisfied there is a ground under
3 subsection (2), give a written direction to the trustee or trustees to
4 end the appointment of a person as:
5 (a) the approved auditor of the superannuation entity; or
6 (b) the actuary of the superannuation entity.
- 7 (2) The grounds for giving a direction to end a person's appointment
8 are:
9 (a) if the person holds an appointment as the approved auditor of
10 the superannuation entity—the person is disqualified under
11 section 131; or
12 (b) the person is not a fit and proper person to hold such an
13 appointment; or
14 (c) the person has failed to perform adequately and properly the
15 duties or functions of such an appointment under this Act, the
16 regulations or the *Financial Sector (Collection of Data) Act*
17 *2001*.
- 18 (3) Before directing a trustee or trustees to end a person's
19 appointment, the Regulator must:
20 (a) give written notice to:
21 (i) the trustee or trustees; and
22 (ii) the person; and
23 (b) give the trustee or trustees and the person a reasonable
24 opportunity to make submissions on the matter.
- 25 (4) The notice must include a statement that any submissions in
26 response to the notice may be discussed by the Regulator with
27 other persons as mentioned in paragraph (5)(b).
- 28 (5) If a submission is made in response to the notice, the Regulator:
29 (a) must have regard to the submission; and
30 (b) may discuss any matter contained in the submission with any
31 persons the Regulator considers appropriate for the purpose
32 of assessing the truth of the matter.
- 33 (6) A direction to end a person's appointment takes effect on the day
34 specified in the direction, which must be at least 7 days after the
35 direction is made.
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1 (7) If the Regulator directs a trustee or trustees to end a person's
2 appointment, the Regulator must give the trustee or trustees and the
3 person a copy of the direction.

4 (8) A direction to end a person's appointment is not a legislative
5 instrument.

6 (9) A trustee commits an offence if:
7 (a) the trustee does or fails to do an act; and
8 (b) by doing or failing to do the act, the trustee fails to comply
9 with a direction under this section.

10 Penalty: 60 penalty units.

11 (10) Strict liability applies to subsection (9).

12 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

13 **209 Section 327 (definition of *modifiable provision*)**

14 Repeal the definition, substitute:

15 *modifiable provision* means any of the following:

- 16 (a) a provision of Part 2A, 2B or 3;
17 (b) section 36;
18 (c) section 54;
19 (d) subsection 63(7B), (7C) or (7D);
20 (e) a provision of Part 9;
21 (f) section 113 (except so far as it applies in relation to
22 self-managed superannuation funds);
23 (g) a provision of Part 19 or 20;
24 (h) a provision of any regulations made for the purposes of a
25 provision referred to in paragraphs (a) to (g).

26 **210 Section 328**

27 Repeal the section, substitute:

28 **328 Regulator's powers of exemption—modifiable provisions**

- 29 (1) The Regulator may, in writing, exempt from compliance with any
30 or all of the modifiable provisions:
31 (a) a particular person or a class of persons; or

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1 (b) a particular group of individual trustees or a class of groups
2 of individual trustees.

3 (2) An exemption that applies to a particular person or group is not a
4 legislative instrument.

5 (3) Otherwise, an exemption is a legislative instrument.

6 **211 Section 332**

7 Repeal the section, substitute:

8 **332 Regulator's powers of modification—modifiable provisions**

9 (1) The Regulator may, in writing, declare that a modifiable provision
10 is to have effect, as if it were modified as specified in the
11 declaration, in relation to:

12 (a) a particular person or class of persons; or

13 (b) a particular group of individual trustees or a class of groups
14 of individual trustees.

15 (2) A declaration that applies to a particular person or group is not a
16 legislative instrument.

17 (3) Otherwise, a declaration is a legislative instrument.

18 **212 Sections 335 and 336**

19 Repeal the sections, substitute:

20 **335 Variation and revocation of exemptions and modifications**

21 The Regulator may, in writing, vary or revoke an exemption or
22 declaration under this Part.

23 **336 Notice of exemptions and modifications**

24 If the Regulator:

25 (a) makes an exemption or modification under this Part that
26 applies to a particular person or a particular group of
27 individual trustees; or

28 (b) varies or revokes such an exemption or modification;

29 the Regulator must also notify the person or group in writing of the
30 making, variation or revocation.

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Amendments commencing on Royal Assent **Part 1**

1 **213 After Part 29**

2 Insert:

3 **Part 29A—Protections in relation to information**

4 **Division 1—Protection for whistleblowers**

5 **336A Disclosures qualifying for whistleblower protection**

6 (1) This section applies to a disclosure of information by a person (the
7 **discloser**) who is, in relation to a superannuation entity, any of the
8 following:

- 9 (a) a trustee of the superannuation entity;
10 (b) an officer of a body corporate that is a trustee, custodian or
11 investment manager of the superannuation entity;
12 (c) an employee of an individual referred to in paragraph (a) or a
13 body corporate referred to in paragraph (b);
14 (d) a person who has a contract for the supply of services or
15 goods to an individual referred to in paragraph (a) or a body
16 corporate referred to in paragraph (b);
17 (e) an employee of a person referred to in paragraph (d).

18 (2) The disclosure of the information by the discloser qualifies for
19 protection under this Division if:

- 20 (a) the disclosure is made to any of the following:
21 (i) the Regulator;
22 (ii) the actuary or auditor of the superannuation entity;
23 (iii) an individual who is a trustee of the superannuation
24 entity;
25 (iv) a director of a body corporate that is the trustee of the
26 superannuation entity;
27 (v) a person authorised by the trustee or trustees of the
28 superannuation entity to receive disclosures of that kind;
29 and
30 (b) the discloser informs the person to whom the disclosure is
31 made of the discloser's name before making the disclosure;
32 and
33 (c) either of the following apply:
-

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- 1 (i) the discloser considers that the information may assist a
2 person referred to in paragraph (a) to perform the
3 person's functions in relation to the superannuation
4 entity;
- 5 (ii) the discloser is required under this Act, the regulations
6 or the *Financial Sector (Collection of Data) Act 2001* to
7 make the disclosure; and
- 8 (d) the discloser makes the disclosure in good faith.

9 **336B Whistleblower protection for disclosures that qualify**

- 10 (1) If a person makes a disclosure that qualifies for protection under
11 this Division:
- 12 (a) the person is not subject to any civil or criminal liability for
13 making the disclosure; and
- 14 (b) no contractual or other remedy may be enforced, and no
15 contractual or other right may be exercised, against the
16 person on the basis of the disclosure.
- 17 (2) Without limiting subsection (1):
- 18 (a) the person has qualified privilege in respect of the disclosure;
19 and
- 20 (b) a contract to which the person is a party must not be
21 terminated on the basis that the disclosure constitutes a
22 breach of the contract.
- 23 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied
24 that:
- 25 (a) a person (the *employee*) is employed in a particular position
26 under a contract of employment with another person (the
27 *employer*); and
- 28 (b) the employee makes a disclosure that qualifies for protection
29 under this Division; and
- 30 (c) the employer purports to terminate the contract of
31 employment on the basis of the disclosure;
- 32 the court may order that the employee be reinstated in that position
33 or a position at a comparable level.

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Amendments commencing on Royal Assent **Part 1**

336C Victimization of whistleblowers prohibited

Actually causing detriment to another person

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct causes any detriment to another person; and
 - (c) the person intends that his or her conduct cause detriment to the other person; and
 - (d) the person engages in his or her conduct because the other person made a disclosure that qualifies for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Threatening to cause detriment to another person

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
 - (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the first person makes the threat because a person:
 - (i) made a disclosure that qualifies for protection under this Division; or
 - (ii) may make a disclosure that would qualify for protection under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Officers and employees involved in offence

- (3) If a body corporate commits an offence under subsection (1) or (2), any officer or employee of the body corporate who is involved in the offence contravenes this subsection.

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Schedule 1 Streamlining prudential regulation

Part 1 Amendments commencing on Royal Assent

1

Threats

2

(4) For the purposes of subsection (2), a threat may be:

3

(a) express or implied; or

4

(b) conditional or unconditional.

5

(5) In a prosecution for an offence under subsection (2), it is not

6

necessary to prove that the person threatened actually feared that

7

the threat would be carried out.

8

336D Right to compensation

9

If:

10

(a) a person:

11

(i) commits an offence under subsection 336C(1) or (2); or

12

(ii) contravenes subsection 336C(3); and

13

(b) another person suffers damage because of the conduct

14

constituting the offence or because of the contravention;

15

the person is liable to compensate the other person for the damage.

16

336E Confidentiality requirement for company, company officers and employees and auditors

17

18

(1) A person (the *offender*) commits an offence under this subsection

19

if:

20

(a) a person (the *discloser*) makes a disclosure of information that qualifies for protection under this Division; and

21

22

(b) the disclosure relates to a contravention or possible contravention of a provision of this Act or the *Financial Sector (Collection of Data) Act 2001* by:

23

24

25

(i) a superannuation entity; or

26

(ii) an individual who is a trustee of the superannuation entity; or

27

28

(iii) an officer or employee of a body corporate that is the trustee, custodian or investment manager of the superannuation entity; and

29

30

(c) the disclosure is made to:

31

32

(i) the auditor of, or a member of an audit team conducting an audit of, the superannuation entity; or

33

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Streamlining prudential regulation **Schedule 1**
Amendments commencing on Royal Assent **Part 1**

- 1 (ii) an individual who is a trustee of the superannuation
2 entity; or
3 (iii) a director of a body corporate that is the trustee,
4 custodian or investment manager of the superannuation
5 entity; or
6 (iv) a person authorised by the trustee or trustees of the
7 superannuation entity to receive disclosures of that kind;
8 and
9 (d) the offender is:
10 (i) the auditor of, or a member of an audit team conducting
11 an audit of, the superannuation entity; or
12 (ii) an individual who is the trustee of the superannuation
13 entity; or
14 (iii) a director of a body corporate that is the trustee,
15 custodian or investment manager of the superannuation
16 entity; or
17 (iv) a person authorised by the trustee or trustees of the
18 superannuation entity to receive disclosures of that kind;
19 or
20 (v) an officer or employee of a body corporate that is the
21 trustee, custodian or investment manager of the
22 superannuation entity; and
23 (e) the offender discloses any of the following information (the
24 **confidential information**):
25 (i) the information referred to in paragraph (a);
26 (ii) the identity of the discloser;
27 (iii) information that is likely to lead to the identification of
28 the discloser; and
29 (f) the confidential information is information that the offender
30 obtained directly or indirectly because of the disclosure
31 referred to in paragraph (a); and
32 (g) either:
33 (i) the offender is the person to whom the disclosure
34 referred to in paragraph (a) is made; or
35 (ii) the offender is a person to whom the confidential
36 information is disclosed in contravention of this section
37 and the offender knows that the disclosure of the
38 confidential information to the offender was unlawful or
39 made in breach of confidence; and
-

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Schedule 1 Streamlining prudential regulation

Part 1 Amendments commencing on Royal Assent

1 (h) the disclosure referred to in paragraph (e) is not authorised
2 under subsection (2).

3 Penalty: 25 penalty units.

4 (2) The disclosure referred to in paragraph (1)(e) is authorised under
5 this subsection if:

6 (a) it is made to APRA; or

7 (b) it is made to a member of the Australian Federal Police
8 (within the meaning of the *Australian Federal Police Act*
9 *1979*); or

10 (c) it is made to someone else with the consent of the discloser.

11 **Division 2—Self-incrimination**

12 **336F Self-incrimination**

13 (1) An individual is not excused from complying with a requirement
14 under this Act, the regulations or the *Financial Sector (Collection*
15 *of Data) Act 2001* to give information on the ground that doing so
16 would tend to incriminate the individual or make the individual
17 liable to a penalty.

18 (2) Information given by the individual in compliance with a
19 requirement under this Act, the regulations or the *Financial Sector*
20 *(Collection of Data) Act 2001* is not admissible in evidence against
21 the individual in a criminal proceeding or a proceeding for the
22 imposition of a penalty, other than a proceeding in respect of the
23 falsity of the information, if:

24 (a) before giving the information, the individual claims that
25 giving the information might tend to incriminate the
26 individual or make the individual liable to a penalty; and

27 (b) giving the information might in fact tend to incriminate the
28 individual or make the individual liable to a penalty.

29 **214 Part 31**

30 Repeal the Part.

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Streamlining prudential regulation **Schedule 1**
Amendments commencing 1 July 2011 **Part 2**

1

2 **Part 2—Amendments commencing 1 July 2011**

3 *Life Insurance Act 1995*

4 **215 Subsection 12A(2)**

5 Omit “in Prudential Rules or”.

6 **216 Subsection 12B(3)**

7 Omit “in Prudential Rules or”.

8 **217 Subsection 15(3)**

9 Repeal the subsection.

10 **218 Paragraph 16B(2)(a)**

11 Omit “Prudential Rules or in”.

12 **219 Subsection 16C(4)**

13 Repeal the subsection.

14 **220 Subsection 16H(4)**

15 Omit “Prudential Rules or”.

16 **221 Paragraph 16H(4A)(b)**

17 Omit “Prudential Rules or”.

18 **222 Section 16J**

19 Omit “Prudential Rules or”.

20 **223 Subsection 16L(2)**

21 Omit “Prudential Rules or”.

22 **224 Paragraph 16L(4)(b)**

23 Omit “Prudential Rules or”.

24 **225 Subsection 16Q(2)**

25 Omit “Prudential Rules or”.

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Schedule 1 Streamlining prudential regulation
Part 2 Amendments commencing 1 July 2011

1 **226 Paragraph 16Q(4)(b)**

2 Omit “Prudential Rules or”.

3 **227 Paragraph 16R(6)(b)**

4 Omit “Prudential Rules or”.

5 **228 Subsection 16U(2)**

6 Omit “Prudential Rules or”.

7 **229 Paragraph 16U(4)(b)**

8 Omit “Prudential Rules or”.

9 **230 Subsection 16V(3)**

10 Omit “Prudential Rules or”.

11 **231 Paragraph 16V(7)(b)**

12 Omit “Prudential Rules or”.

13 **232 Subsection 34(4)**

14 Omit “Prudential Rules or”.

15 **233 Subsection 44(6)**

16 Omit “by Prudential Rules or”.

17 **234 Paragraphs 44(7)(a) and (b)**

18 Omit “by Prudential Rules or”.

19 **235 Subsection 52(1)**

20 Omit “Prudential Rules or the”, substitute “The”.

21 **236 Subsection 52(3)**

22 Omit “Prudential Rules or”.

23 **237 Subsection 53(1)**

24 Omit “Prudential Rules or the”, substitute “The”.

25 **238 Subsection 53(2)**

26 Omit “Prudential Rules or”.

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Streamlining prudential regulation **Schedule 1**
Amendments commencing 1 July 2011 **Part 2**

1 **239 Section 54**

2 Repeal the section.

3 **240 Subsection 55(2)**

4 Omit “Prudential Rules or”.

5 **241 Subsection 55(3)**

6 Omit “Prudential Rules or”.

7 **242 Subsection 62(5)**

8 Omit “Prudential Rules or the”, substitute “The”.

9 **243 Division 4 of Part 6**

10 Repeal the Division.

11 **244 Subsection 236(1) (paragraphs (k) and (l) of the definition**
12 **of *reviewable decision*)**

13 Omit “Prudential Rules or”.

14 **245 Section 252**

15 Repeal the section.

16 **246 Schedule (definition of *Prudential Rules*)**

17 Repeal the definition.

18 **247 Schedule (paragraph (a) of the definition of *this Act*)**

19 Omit “, prudential standards and Prudential Rules”, substitute “and
20 prudential standards”.

EXPOSURE DRAFT

Schedule 2 Financial assistance

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Schedule 2—Financial assistance

Financial Institutions Supervisory Levies Collection Act 1998

1 Section 16 (definition of *Account*)

7 Repeal the definition.

2 Section 24

9 Repeal the section, substitute:

24 Application of levy, late payment penalty and repayments of financial assistance

12 If levy is imposed as a result of a determination by the Minister to
13 make a grant of financial assistance, the following amounts must
14 be paid to the Commonwealth:

- 15 (a) amounts of the levy, and late payment penalty in respect of
16 the levy, received by the Minister;
17 (b) repayments of the financial assistance.

Superannuation Industry (Supervision) Act 1993

3 Section 228 (definition of *defined benefit fund*)

20 Repeal the definition.

4 Section 228 (definition of *defined benefit member*)

22 Repeal the definition.

5 Section 228 (definition of *defined benefit pension*)

24 Repeal the definition.

6 Section 228 (definition of *eligible loss*)

26 Repeal the definition, substitute:

27 *eligible loss* means a loss suffered by a fund as a result of
28 fraudulent conduct, or theft, but does not include an amount that

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Financial assistance **Schedule 2**

1 the fund did not receive because of the failure of a person to pay
2 contributions to the fund.

3 **7 Section 228 (definition of *fund*)**

4 Repeal the definition.

5 **8 After paragraph 229(1)(a)**

6 Insert:

7 (aa) at the time it suffers the loss, the fund is:

8 (i) a regulated superannuation fund (other than a
9 self-managed superannuation fund); or

10 (ii) an approved deposit fund; and

11 **9 At the end of section 229**

12 Add:

13 (3) To avoid doubt, an application may be made under this section by
14 a trustee of a self-managed superannuation fund as long as the fund
15 met the requirements in subsection (1) at the time the fund suffered
16 the loss to which the application relates.

17 **10 Section 230**

18 Before “The”, insert “(1)”.

19 **11 At the end of section 230**

20 Add:

21 (2) The Minister may, by signed instrument, delegate the Minister’s
22 power under subsection (1) to an SES employee, or acting SES
23 employee, in the Department.

24 (3) In exercising a power delegated under subsection (2), a delegate
25 must comply with any directions of the Minister.

26 **12 At the end of section 230A**

27 Add:

28 (4) The Minister may, by signed instrument, delegate the Minister’s
29 function under subsection (1) to an SES employee, or acting SES
30 employee, in the Department.

EXPOSURE DRAFT

Schedule 2 Financial assistance

- 1 (5) In exercising a function delegated under subsection (4), a delegate
2 must comply with any directions of the Minister.

3 **13 Paragraph 231(1)(a)**

- 4 Omit “for the purposes of the fund”, substitute “for the purposes of
5 restoring the loss”.

6 **14 At the end of section 231**

7 Add:

- 8 (3) To avoid doubt, the Minister may grant financial assistance to a
9 self-managed superannuation fund under this section as long as the
10 fund met the requirements in subsection 229(1) at the time the fund
11 suffered the loss to which the assistance relates.

- 12 (4) The Consolidated Revenue Fund is appropriated for the purposes
13 of making payments of financial assistance granted under this
14 section.

15 **15 Section 233**

16 Before “The”, insert “(1)”.

17 **16 Subparagraph 233(b)(i)**

- 18 Omit “beneficiaries in the fund”, substitute “persons who were
19 beneficiaries in the fund at the time the fund suffered the eligible loss”.

20 **17 Subparagraph 233(b)(ii)**

21 Omit “the beneficiaries”, substitute “those persons”.

22 **18 At the end of section 233**

23 Add:

- 24 (2) Despite any law of the Commonwealth, a State or a Territory,
25 whether written or unwritten, or any provision of a trust deed or
26 other rules according to which a fund is administered:
27 (a) a trustee of a fund is obliged to comply with a condition
28 mentioned in paragraph (1)(b); and
29 (b) the trustee does not contravene the law, trust deed or rules by
30 complying with such a condition.

31 **19 Division 3 of Part 23 (heading)**

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Financial assistance **Schedule 2**

1 Repeal the heading, substitute:

2 **Division 3—Repayment of financial assistance**

3 **20 Sections 234, 235, 236 and 237**

4 Repeal the sections.

5 **21 Application of amendments made by this Schedule**

- 6 (1) The amendments made by this Schedule apply in relation to
7 applications for financial assistance made on or after the
8 commencement of this Schedule (whether or not the eligible loss to
9 which the application relates is suffered before or after the
10 commencement of this Schedule).
- 11 (2) However, if an application for financial assistance in relation to an
12 eligible loss was made before the commencement of this Schedule, the
13 amendments made by this Schedule do not apply in relation to any
14 further application in respect of that loss.

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Schedule 3 Accounts, reporting etc. obligations

1
2
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4

Schedule 3—Accounts, reporting etc. obligations

Income Tax Assessment Act 1936

1 Subsection 161(3) (including the note)

7 Omit “36A” (wherever occurring), substitute “35D”.

Superannuation Industry (Supervision) Act 1993

2 Section 4 (table item for Part 4)

10 Repeal the item, substitute:

4 accounts, audit and reporting obligations for
superannuation entities

3 Section 4 (table item for Part 13)

12 Repeal the item.

4 Subparagraph 6(1)(a)(vii)

14 Omit “Parts 13”, substitute “Part 14”.

5 Subsection 6(2)

16 Omit “, 30 and 31”, substitute “30”.

6 Subsection 10(1) (paragraph (b) of the definition of *approved deposit fund*)

19 Omit “an RSE licensee that is”.

7 Part 4

21 Repeal the Part, substitute:

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Accounts, reporting etc. obligations **Schedule 3**

1 **Part 4—Accounts, audit and reporting obligations**
2 **for superannuation entities**
3

4 **35 Objects of Part**

5 The objects of this Part are:

- 6 (a) to set out rules about the accounts, statements and audits of
7 superannuation entities; and
8 (b) to require certain reports and returns relating to
9 superannuation entities to be given to the Regulator.

10 **35A Accounting records (all superannuation entities)**

11 (1) Each trustee of a superannuation entity must ensure that:

- 12 (a) accounting records that correctly record and explain the
13 transactions and financial position of the entity are kept; and
14 (b) if the entity is a registrable superannuation entity—the
15 accounts of the entity are kept in a way that enables the
16 preparation of reporting documents referred to in section 13
17 of the *Financial Sector (Collection of Data) Act 2001*; and
18 (c) if the entity is a self managed superannuation fund—the
19 accounting records of the entity are kept in a way that enables
20 the following to be prepared:
21 (i) the accounts and statements of the entity referred to in
22 section 35B;
23 (ii) the returns of the entity referred to in section 35D; and
24 (d) the accounting records of the entity are kept in a way that
25 enables those accounts, statements and returns to be
26 conveniently and properly audited in accordance with this
27 Act.

28 (2) If accounting records of a superannuation entity are kept in
29 accordance with subsection (1), each trustee of the superannuation
30 entity must ensure that:

- 31 (a) the records are retained for at least 5 years after the end of the
32 year of income to which the transactions relate; and
33 (b) the records are kept in Australia; and
34 (c) the records are kept:
35 (i) in writing in the English language; or
-

EXPOSURE DRAFT

Schedule 3 Accounts, reporting etc. obligations

1 (ii) in a form in which they are readily accessible and
2 readily convertible into writing in the English language.

3 (3) A trustee commits an offence if the trustee contravenes
4 subsection (1) or (2).

5 Penalty: 100 penalty units.

6 (4) A trustee commits an offence if the trustee contravenes
7 subsection (1) or (2). This is an offence of strict liability.

8 Penalty: 50 penalty units.

9 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

10 **35B Accounts and statements (self-managed superannuation funds** 11 **only)**

12 (1) Each trustee of a superannuation entity that is a self managed
13 superannuation fund must, in respect of each year of income of the
14 fund, ensure that the following accounts and statements are
15 prepared in respect of the entity:

16 (a) except where the regulations provide that this paragraph does
17 not apply—a statement of financial position;

18 (b) except where the regulations provide that this paragraph does
19 not apply—an operating statement;

20 (c) except where the regulations provide that this paragraph does
21 not apply—a statement of cash flows;

22 (d) the accounts and statements specified in the regulations.

23 (2) The regulations may provide for or in relation to the preparation of
24 accounts and statements covered by subsection (1). If the
25 regulations do so, the accounts and statements covered by
26 subsection (1) must be prepared in accordance with the regulations.

27 (3) The accounts and statements prepared in accordance with
28 subsection (1) must be signed as follows:

29 (a) if there is a single corporate trustee—by at least 2 directors of
30 the corporate trustee;

31 (b) if there is a group of individual trustees—by at least 2 of
32 those trustees.

EXPOSURE DRAFT

Accounts, reporting etc. obligations **Schedule 3**

1 (4) Each trustee must ensure that the accounts and statements prepared
2 in accordance with subsection (1) are retained for a period of 5
3 years after the end of the year of income to which they relate.

4 (5) A person commits an offence if the person contravenes this
5 section.

6 Penalty: 100 penalty units.

7 (6) A person commits an offence if the person contravenes this
8 section. This is an offence of strict liability.

9 Penalty: 50 penalty units.

10 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

11 **35C Audit of accounts and statements (all superannuation entities)**

12 (1) For each year of income, each trustee of a superannuation entity
13 must ensure that an approved auditor is appointed to give the
14 trustee or trustees a report, in the approved form, of the operations
15 of the entity, and the RSE licensee (if any) of the entity, for that
16 year. The appointment must be made within whichever of the
17 periods set out in the regulations applies to the entity.

18 (2) If an auditor requests, in writing, a trustee of a superannuation
19 entity to give the auditor a document, each trustee of the entity
20 must ensure that the document is given to the auditor within 14
21 days of the request being made. Only documents that are relevant
22 to the preparation of the report may be requested.

23 (3) A trustee commits an offence if the trustee contravenes
24 subsection (1) or (2).

25 Penalty: Imprisonment for 2 years.

26 (4) A trustee commits an offence if the trustee contravenes
27 subsection (1) or (2). This is an offence of strict liability.

28 Penalty: 50 penalty units.

29 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

30 (5) Without limiting subsection (1), an approved form:
31 (a) must, if it is approved for a registrable superannuation entity,
32 either:

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Schedule 3 Accounts, reporting etc. obligations

- 1 (i) relate solely to the audit of financial statements given to
2 APRA under the *Financial Sector (Collection of Data)*
3 *Act 2001* and prepared in respect of a year of income; or
4 (ii) relate only to the audit of those statements and of any
5 other accounts and statements, prepared in respect of a
6 year of income, that are identified in the form; and
7 (b) must, if it is approved for a superannuation entity that is a
8 self managed superannuation fund—either:
9 (i) relate solely to the audit of the accounts and statements
10 referred to in subsection 35B(1) and prepared in respect
11 of a year of income; or
12 (ii) relate only to the audit of those accounts and statements
13 and of any other accounts and statements, prepared in
14 respect of a year of income, that are identified in the
15 form; and
16 (c) must include a statement by the auditor as to whether, in the
17 auditor’s opinion, each trustee of the entity and the RSE
18 licensee (if any) of the entity has, during the year of income,
19 complied with the provisions of:
20 (i) this Act and the regulations; and
21 (ii) if the entity is a registrable superannuation entity—the
22 *Financial Sector (Collection of Data) Act 2001* and the
23 *Corporations Act 2001*;
24 that are identified in the form; and
25 (d) must, if it is approved for a registrable superannuation entity
26 that is registered under Part 2B, include a statement by the
27 auditor as to whether, in the opinion of the auditor, the RSE
28 licensee of the entity:
29 (i) has complied with each risk management plan for the
30 entity that applied during that year; and
31 (ii) has adequate systems to ensure future compliance with
32 any risk management plan for the entity; and
33 (iii) has complied with each risk management strategy that
34 applied to the RSE licensee during that year in relation
35 to risks arising from any activities, and proposed
36 activities, as RSE licensee of the entity, and all other
37 activities, or proposed activities, relevant to those
38 activities; and
39 (iv) has adequate systems to ensure future compliance with
40 the risk management strategy for the RSE licensee in
-

EXPOSURE DRAFT

Accounts, reporting etc. obligations **Schedule 3**

1 relation to future risks arising from any proposed future
2 activities as RSE licensee of the entity, and all other
3 proposed future activities relevant to those activities.

4 (6) The auditor must give the report to each trustee of the entity within
5 the prescribed period after the end of the year of income.

6 (7) The auditor commits an offence if the auditor contravenes
7 subsection (6).

8 Penalty: Imprisonment for 6 months.

9 (8) The auditor commits an offence if the auditor contravenes
10 subsection (6). This is an offence of strict liability.

11 Penalty: 50 penalty units.

12 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

13 **35D Trustee to lodge annual returns (self-managed superannuation** 14 **funds only)**

15 *Lodgment*

16 (1) Each trustee of a superannuation entity that was a self managed
17 superannuation fund at any time during a year of income must,
18 within the reporting period, or within such longer period as the
19 Commissioner of Taxation allows, ensure that the Commissioner
20 of Taxation is given a return under this section.

21 *Period for lodgment*

22 (2) The **reporting period** is the period that begins at the end of the year
23 of income and whose length is:

24 (a) prescribed by the regulations for the purposes of this
25 paragraph; or

26 (b) if the length of the period is not prescribed—specified, by
27 legislative instrument, by the Commissioner of Taxation.

28 *Form of return*

29 (3) The return must:

30 (a) be in the approved form; and

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1 (b) contain the information required by the form in relation to the
2 fund in respect of that year of income or in relation to another
3 year of income, or both.

4 Note: The approved form of return may require a trustee to set out the tax
5 file number of the entity. See subsection 299U(2).

6 (4) A person commits an offence if the person contravenes this
7 section.

8 Penalty: 50 penalty units.

9 (5) A person commits an offence if the person contravenes this
10 section. This is an offence of strict liability.

11 Penalty: 25 penalty units.

12 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

13 **36 Trustee to give copy of audit report to APRA (registrable** 14 **superannuation entities only)**

15 *Lodgment*

16 (1) Each trustee of a registrable superannuation entity must, within the
17 prescribed period after the year of income, ensure that APRA is
18 given a copy of the report given to a trustee of the entity by an
19 approved auditor under section 35C in relation to the entity, and
20 any RSE licensee of the entity, in respect of that year of income,
21 certified to be a true copy of the report by:

22 (a) if the trustee is a body corporate—a responsible officer of the
23 body corporate; or

24 (b) if the trustee is a member of a group of individual trustees—
25 at least one of those trustees; or

26 (c) in any other case—the trustee.

27 Note: The *Financial Sector (Collection of Data) Act 2001* makes provision
28 for annual returns and other reporting documents to be given by
29 trustees to APRA.

30 (2) A trustee commits an offence if the trustee contravenes
31 subsection (1).

32 Penalty: 50 penalty units.

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1 (3) A trustee commits an offence if the trustee contravenes
2 subsection (1). This is an offence of strict liability.

3 Penalty: 25 penalty units.

4 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

5 **8 Part 13**

6 Repeal the Part.

7 **9 Paragraph 129(1)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) the person forms the opinion that it is likely that a
10 contravention of any of the following may have occurred,
11 may be occurring, or may occur, in relation to the entity:
- 12 (i) this Act or the regulations;
 - 13 (ii) if the entity is a registrable superannuation entity—the
14 *Financial Sector (Collection of Data) Act 2001*;
 - 15 (iii) if the entity is a registrable superannuation entity—a
16 provision of the *Corporations Act 2001* listed in a
17 subparagraph of paragraph (b) of the definition of
18 *regulatory provision* in section 38A of this Act or
19 specified in regulations made for the purposes of
20 subparagraph (b)(xvi) of that definition, as it applies in
21 relation to superannuation interests; and

22 **10 At the end of paragraph 130A(1)(c)**

23 Add “or”.

24 **11 After paragraph 130A(1)(c)**

25 Add:

- 26 (d) the *Corporations Act 2001*;

27 ***Superannuation (Self Managed Superannuation Funds)*** 28 ***Taxation Act 1987***

29 **12 Section 15DA**

30 Omit “36A”, substitute “35D”.

31 **13 Savings and application provisions**

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- 1 (1) If, immediately before the commencement of this Schedule:
2 (a) subsection 111(2); or
3 (b) subsection 112(4);
4 of the *Superannuation Industry (Supervision) Act 1993* applied to the
5 trustee of a superannuation entity in relation to the accounting records
6 of the entity, that subsection continues to apply to the trustee in relation
7 to the records despite the repeal of the subsection by this Schedule.
- 8 (2) If, before the commencement of this Schedule, an auditor had requested
9 a trustee of a superannuation entity to give the auditor a document under
10 subsection 113(1A) of the *Superannuation Industry (Supervision) Act*
11 *1993* and the request had not been complied with, the trustee's
12 obligation under subsection 113(1A) to ensure that the document is
13 given to the auditor continues to apply despite the repeal of the
14 subsection by this Schedule.
- 15 (3) Sections 35B, 35C and 35D of the *Superannuation Industry*
16 *(Supervision) Act 1993* apply in relation to a superannuation entity in
17 respect of the year of income in which those sections commence and
18 each later year of income.