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| **EXPOSURE DRAFT** |

Inserts for

Financial Regulator Reform (No. 2) Bill 2019: Governance (FSRC Recommendations 6.9 and 6.11)

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Schedule 1 | The day this Act receives the Royal Assent. |  |
|  |  |  |

Schedule 1—Governance

Part 1—Cooperation obligation

Australian Prudential Regulation Authority Act 1998

1 After section 9

Insert:

9AA Co-operation with ASIC

(1) The object of this section is to require ASIC and APRA to support each other in performing and exercising their functions and powers effectively.

(2) In performing and exercising its functions and powers, APRA must, so far as is practicable, work in co-operation with ASIC.

(3) The performance or exercise of a function or power by APRA is not invalid merely because of a failure by APRA to comply with subsection (2).

(4) The performance or exercise of a function or power by APRA does not give rise to a private right of action merely because of a failure by APRA to comply with subsection (2).

(5) If a law (other than this section) requires APRA to cooperate with ASIC:

(a) this section does not affect the operation of that law; and

(b) that law does not affect the operation of this section.

Australian Securities and Investments Commission Act 2001

2 At the end of Division 1 of Part 2

Add:

12AA Co-operation with APRA

(1) The object of this section is to require ASIC and APRA to support each other in performing and exercising their functions and powers effectively.

(2) In performing and exercising its functions and powers, ASIC must, so far as is practicable, work in co-operation with APRA.

(3) The performance or exercise of a function or power by ASIC is not invalid merely because of a failure by ASIC to comply with subsection (2).

(4) The performance or exercise of a function or power by ASIC does not give rise to a private right of action merely because of a failure by ASIC to comply with subsection (2).

(5) If a law (other than this section) requires ASIC to cooperate with APRA:

(a) this section does not affect the operation of that law; and

(b) that law does not affect the operation of this section.

Part 2—Financial regulator information

Australian Prudential Regulation Authority Act 1998

3 After Part 5

Insert:

Part 5A—Giving information etc. to ASIC

55A ASIC may request information or documents

(1) ASIC may request APRA to give it any of the following:

(a) specified information or documents covered by section 55C;

(b) information or documents covered by section 55C of a specified kind.

(2) The request must be in writing.

(3) ASIC may, in writing, amend or withdraw the request.

55B APRA must comply with request

(1) If ASIC gives APRA a request under section 55A, APRA must comply with the request as soon as practicable.

(2) APRA need not notify any person (other than ASIC) that it plans to comply with subsection (1), or has complied with that subsection.

(3) Despite subsection (1), APRA need not comply with the request if:

(a) the Chair makes a determination under subsection (4); and

(b) the Chair gives a copy of the determination to ASIC.

(4) The Chair may determine, in writing, that APRA need not comply with the request if the Chair considers that complying with the request would compromise the proper functioning of APRA.

(5) The Chair’s power to make a determination under subsection (4) may only be exercised by the Chair personally.

(6) If the Chair makes a determination under subsection (4), the Chair give the following to the Financial Regulator Oversight Authority as soon as practicable:

(a) a copy of the determination; and

(b) a written statement of the reasons why the Chair made the determination.

55C Information and documents covered by request

(1) This section covers information or documents if:

(a) in the case of information—the information was given to APRA in writing by another person (including a person advising APRA); and

(b) in the case of documents—the documents were given to APRA by another person (including a person advising APRA); and

(c) ASIC considers the information or documents to be relevant to the exercise or performance of its functions or powers.

(2) Despite subsection (1), this section does not cover any of the following kinds of information or documents:

(a) information or documents concerning the internal administrative functioning of APRA;

(b) information or documents that discloses matter in respect of which APRA or any other person has claimed legal professional privilege;

(c) information or documents of a kind specified in the regulations.

(3) Without limiting the scope of subsection (1), and despite subsection (2), this section also covers information or documents of a kind specified in the regulations.

55D Notifying ASIC of reasonable belief of material breach of ASIC provisions

(1) Subsection (2) applies if APRA has a reasonable belief that a material breach of a legislative provision of which ASIC has the general administration may have occurred, or may be occurring.

(2) APRA must notify ASIC of that reasonable belief as soon as practicable.

4 Paragraph 56(2)(c)

After “(5A),”, insert “(5AB),”.

5 After subsection 56(5A)

Insert:

(5AB) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purpose of APRA complying with any of the following:

(a) section 55B (ASIC requests);

(b) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

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

(5AC) It is not an offence if:

(a) the disclosure of protected information or the production of a protected document is by ASIC, for the purposes of the performance of ASIC’s functions, or the exercise of ASIC’s powers; and

(b) the protected information was disclosed previously to ASIC, or the protected document was produced previously to ASIC, for the purpose of APRA complying with any of the following:

(i) section 55B (ASIC requests);

(ii) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

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

6 Subsection 56(12)

After “(5AA),”, insert “(5AB),”.

7 After section 56

Insert:

56A Application of secrecy provisions to information or documents given in accordance with section 122B of   
ASIC Act

(1) This section applies if ASIC gives APRA information or documents in order to comply with a request under section 122B of the *Australian Securities and Investments Commission Act 2001*.

(2) The information is taken to be protected information, and the documents are taken to be protected documents, for the purposes of section 56.

Australian Securities and Investments Commission Act 2001

8 After Part 6

Insert:

Part 6A—Giving information etc. to APRA

122B APRA may request information or documents

(1) APRA may request ASIC to give it any of the following:

(a) specified information or documents covered by section 122D;

(b) information or documents covered by section 122D of a specified kind.

(2) The request must be in writing.

(3) APRA may, in writing, amend or withdraw the request.

122C ASIC must comply with request

(1) If APRA gives ASIC a request under section 122B, ASIC must comply with the request as soon as practicable.

(2) ASIC need not notify any person (other than APRA) that it plans to comply with subsection (1), or has complied with that subsection.

(3) Despite subsection (1), ASIC need not comply with the request if:

(a) the Chairperson makes a determination under subsection (4); and

(b) the Chairperson gives a copy of the determination to APRA.

(4) The Chairperson may determine, in writing, that ASIC need not comply with the request if the Chairperson considers that complying with the request would compromise the proper functioning of ASIC.

(5) The Chairperson’s power to make a determination under subsection (4) may only be exercised by the Chairperson personally.

(6) If the Chairperson makes a determination under subsection (4), the Chairperson give the following to the Financial Regulator Oversight Authority as soon as practicable:

(a) a copy of the determination; and

(b) a written statement of the reasons why the Chairperson made the determination.

122D Information and documents covered by request

(1) This section covers information or documents if:

(a) in the case of information—the information was given to ASIC in writing by another person (including a person advising ASIC); and

(b) in the case of documents—the documents were given to ASIC by another person (including a person advising ASIC); and

(c) APRA considers the information or documents to be relevant to the exercise or performance of its functions or powers.

(2) Despite subsection (1), this section does not cover any of the following kinds of information or documents:

(a) information or documents concerning the internal administrative functioning of ASIC;

(b) information or documents that discloses matter in respect of which ASIC or any other person has claimed legal professional privilege;

(c) information or documents of a kind specified in the regulations.

(3) Without limiting the scope of subsection (1), and despite subsection (2), this section also covers information or documents of a kind specified in the regulations.

122E Notifying APRA of reasonable belief of material breach of APRA provisions

(1) Subsection (2) applies if ASIC has a reasonable belief that a material breach of a legislative provision of which APRA has the general administration may have occurred, or may be occurring.

(2) ASIC must notify APRA of that reasonable belief as soon as practicable.

Insurance Act 1973

9 Paragraph 109E(1)(c)

After “(5A),”, insert “(5AB),”.

Life Insurance Act 1995

10 Paragraph 231E(1)(c)

After “(5A),”, insert “(5AB),”.

11 Application

(1) Subject to this item, the amendments made by this Part apply in relation to:

(a) requests made by ASIC under section 55A of the *Australian Prudential Regulation Authority Act 1998* on or after the commencement of this item, whether or not the information or documents requested were given to APRA before that commencement; and

(b) requests made by APRA under section 122B of the *Australian Securities and Investments Commission Act 2001* on or after the commencement of this item, whether or not the information or documents requested were given to ASIC before that commencement.

(2) The amendments made by this Part:

(a) inserting section 55D of the *Australian Prudential Regulation Authority Act 1998*; and

(a) inserting section 122E of the *Australian Securities and Investments Commission Act 2001*;

apply in relation to breaches of legislative provisions that may have occurred before, on or after the commencement of this item.

Part 3—ASIC meeting procedures

Australian Securities and Investments Commission Act 2001

12 Subsection 59(3)

Omit “(other than section 104)”.

13 Section 103

Repeal the section, substitute:

103 Times and places of meetings

(1) ASIC must hold the meetings that are necessary for the efficient performance and exercise of its functions and powers.

(2) Meetings are to be held at the times and places that the Chairperson determines.

(3) The Chairperson must convene a meeting if requested in writing by 2 or more members.

14 Section 104

Repeal the section.

15 Section 107

Repeal the section, substitute:

107 Voting at meetings

(1) A question arising at a meeting is to be determined by a majority of the votes of the members present and voting.

(2) The person presiding at a meeting has:

(a) a deliberative vote; and

(b) if necessary, also a casting vote.

107A Conduct of meetings

(1) ASIC may regulate proceedings at its meetings as it considers appropriate.

(2) However, proceedings at a meeting must not be inconsistent with this Division.

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

Note 2: Requirements relating to disclosure of interests are contained in Division 1 of Part 7 of this Act.

107B ASIC resolutions without meetings

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

(a) ASIC has determined:

(i) that resolutions may be passed in accordance with this section; and

(ii) the method of indicating agreement with a resolution passed in accordance with this section; and

(b) without meeting, a majority of the members indicate agreement with the resolution in accordance with the method determined by ASIC; and

(c) that majority would have constituted a quorum at a meeting; and

(d) all members were informed of the proposed resolution, or reasonable efforts were made to inform all members of the proposed resolution.