



Banking Act 1959

Act No. 6 of 1959 as amended

This compilation was prepared on 3 July 2003
taking into account amendments up to Act No. 42 of 2003

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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

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An Act to regulate Banking, to make provision for the Protection of the Currency and of the Public Credit of the Commonwealth, and for other purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Banking Act 1959*.

2 Commencement [see Note 1]

Except as otherwise provided by this Act, this Act shall come into operation on the day on which the *Reserve Bank Act 1959* comes into operation.

4 Repeal

The following Acts are repealed:

Banking Act 1945;

Banking Act 1953.

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

ADI is short for authorised deposit-taking institution.

ADI statutory manager has the meaning given by subsection 13A(2).

administrator of an ADI's business means an administrator appointed under subsection 13A(1) to take control of an ADI's business.

advance includes loan.

Section 5

APRA means the Australian Prudential Regulation Authority.

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

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

ASIC means the Australian Securities and Investments Commission.

Australia includes the Territories.

authorised deposit-taking institution means a body corporate in relation to which an authority under subsection 9(3) is in force.

authorised NOHC means a body corporate:

- (a) in relation to which an authority under subsection 11AA(2) is in force; and
- (b) that is a NOHC of an ADI or ADIs.

banking business means:

- (a) a business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution; or
- (b) a business that is carried on by a corporation to which paragraph 51(xx) of the Constitution applies and that consists, to any extent, of:
 - (i) both taking money on deposit (otherwise than as part-payment for identified goods or services) and making advances of money; or
 - (ii) other financial activities prescribed by the regulations for the purposes of this definition.

foreign ADI means a body corporate that:

- (a) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; and
- (b) is authorised to carry on banking business in a foreign country; and
- (c) has been granted an authority under section 9 to carry on banking business in Australia.

industry support contract means a contract under which emergency financial support is to be provided by parties to the contract to any ADI that is a party to the contract if a specified event occurs. The contract may also deal with matters associated with the provision of the financial support.

insolvent, in relation to a body corporate, means that the body corporate is not able to pay all its debts as and when they become due and payable.

NOHC is short for non-operating holding company.

NOHC authority means an authority under subsection 11AA(2).

non-operating holding company means, in relation to a body corporate, a body corporate:

- (a) of which the first body corporate is a subsidiary; and
- (b) that does not carry on a business (other than a business consisting of the ownership or control of other bodies corporate); and
- (c) that is incorporated in Australia.

prudential matters, in relation to a body corporate that is an ADI or a NOHC, means matters relating to the conduct by the body corporate of any of its affairs:

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

prudential regulation means a regulation under section 11A.

prudential standard means a standard under section 11AF.

section 9 authority means an authority under subsection 9(3).

subsidiary has the meaning given by subsection (2).

the Reserve Bank means the Reserve Bank of Australia.

ultimate termination of control has the meaning given by subsection 13C(1).

Section 6

- (2) For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

6 Application of Act

- (1) Nothing in Part II or V, or in sections 61 to 69 (inclusive), applies with respect to State banking.
- (2) Subject to section 6A, this Act extends to all the Territories.

6A Cessation of application of Act to Territory

- (1) The Treasurer may, by notice published in the *Gazette*, declare that, on a date specified in the notice, this Act shall cease to extend to an external Territory specified in the notice, and, on and after the date specified in such a notice, this Act, other than subsection (2), does not extend to the Territory so specified and a reference in this Act, other than this section, to a Territory does not include a reference to the Territory so specified.
- (2) Section 8 of the *Acts Interpretation Act 1901* applies in relation to a notice published under this section as if the notice were an Act repealing this Act to the extent that, immediately before the date specified in the notice, this Act extended to the Territory specified in the notice.

6B Application of *Criminal Code*

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

Part II—Provisions relating to the carrying on of banking business

Division 1—Authority to carry on banking business

7 Person other than a body corporate must not carry on banking business

- (1) A person is guilty of an offence if:
- (a) the person carries on any banking business in Australia; and
 - (b) the person is not a body corporate; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 200 penalty units.

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

- (2) An offence against subsection (1) is an indictable offence.
- (3) If a person carries on banking business in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

8 Only the Reserve Bank and bodies corporate that are ADIs may carry on banking business

- (1) A body corporate is guilty of an offence if:
- (a) the body corporate carries on any banking business in Australia; and
 - (b) the body corporate is not the Reserve Bank; and

Part II Provisions relating to the carrying on of banking business

Division 1 Authority to carry on banking business

Section 9

- (c) the body corporate is not an ADI; and
- (d) there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 200 penalty units.

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

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

- (2) An offence against subsection (1) is an indictable offence.
- (3) If a body corporate carries on banking business in circumstances that give rise to the body corporate committing an offence against subsection (1), the body corporate is guilty of an offence against that subsection in respect of:
 - (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

9 Authority to carry on banking business

- (2) A body corporate which desires authority to carry on banking business in Australia may apply in writing to APRA for authority accordingly.

Note: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975* and the *Financial Sector (Shareholdings) Act 1998*.

- (3) If an application has been made, APRA may grant the body corporate an authority to carry on banking business in Australia. The authority must be in writing, and APRA must give the body corporate written notice of the granting of the authority.

Note 1: The fact that a body corporate is granted an authority to carry on banking business in Australia does not mean it is entitled to call itself a bank. To do this, the body corporate will need to have a consent under section 66.

Note 2: For APRA's power to revoke an authority, see section 9A.

- (3A) Without limiting the circumstances in which APRA may refuse an application by a body corporate for authority to carry on banking business in Australia, APRA may refuse such an application if the body corporate is a subsidiary of a NOHC that does not hold a NOHC authority.
- (4) APRA may, at any time, by notice in writing served on the body corporate concerned:
- (a) impose conditions, or additional conditions, on an authority; or
 - (b) vary or revoke conditions imposed on an authority.
- The conditions must relate to prudential matters.
- (4A) Without limiting the conditions that APRA may impose under subsection (4) on an ADI's authority, APRA may make the authority conditional on a body corporate of which the ADI is a subsidiary being an authorised NOHC.
- (5) A condition may be expressed to have effect notwithstanding anything in the prudential standards or the regulations.
- (6) An ADI is guilty of an offence if:
- (a) it does, or fails to do, an act; and
 - (b) doing, or failing to do, the act results in a contravention of a condition of the ADI's authority; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

- (6A) An offence against subsection (6) is an indictable offence.
- (6B) If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (6), the ADI is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and

Part II Provisions relating to the carrying on of banking business

Division 1 Authority to carry on banking business

Section 9A

- (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (7) If APRA:
 - (a) grants an authority under subsection (3); or
 - (b) imposes, varies or revokes conditions under subsection (4);APRA must cause notice of that action to be published in the *Gazette*. APRA may also cause notice of that action to be published in any other way it considers appropriate.
- (8) A failure to comply with subsection (7) does not affect the validity of the action concerned.

9A Revocation of authority

- (1) APRA must revoke a body corporate's section 9 authority if:
 - (a) the body corporate, by notice in writing to APRA, requests the revocation of the authority; and
 - (b) APRA is satisfied that the revocation of the authority:
 - (i) would not be contrary to the national interest; and
 - (ii) would not be contrary to the interests of depositors of the body corporate.
- (2) APRA may revoke a body corporate's section 9 authority if APRA is satisfied that:
 - (a) the body corporate has failed to comply with:
 - (i) a requirement of this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
 - (ii) a direction under Division 1BA; or
 - (iii) a condition of its section 9 authority; or
 - (b) it would be contrary to the national interest for the authority to remain in force; or
 - (c) it would be contrary to the interests of depositors of the body corporate for the authority to remain in force; or
 - (d) the body corporate has failed to pay:

- (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
- (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
- (e) the body corporate is insolvent and is unlikely to return to solvency within a reasonable period of time; or
- (f) the body corporate has ceased to carry on banking business in Australia.

The procedures to be undergone before a revocation under this subsection are set out in subsection (3). Those procedures apply unless APRA determines under subsection (4) that they are not to apply.

- (3) Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's section 9 authority unless:
 - (a) APRA has given the body corporate a notice in writing advising the body corporate:
 - (i) that APRA is considering revoking the authority for the reasons specified in the notice; and
 - (ii) that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and
 - (iii) of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and
 - (b) APRA has considered any submissions that were made by the body corporate by the specified date.
- (4) APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:
 - (a) contrary to the national interest; or
 - (b) contrary to the interests of depositors with the body corporate.
- (5) A revocation of a body corporate's section 9 authority under subsection (1) or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.

Part II Provisions relating to the carrying on of banking business

Division 1 Authority to carry on banking business

Section 9B

- (6) If APRA revokes a body corporate's section 9 authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the *Gazette*. APRA may also cause notice of the revocation to be published in any other way it considers appropriate.
- (7) A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

9B Bodies that cease to exist or change their names

- (1) If APRA is satisfied that a body corporate that has been granted a section 9 authority:
 - (a) has ceased to exist; or
 - (b) has changed its name;APRA must cause notice of that fact to be published in the *Gazette*. APRA may also cause notice of that fact to be published in any other way it thinks appropriate.
- (2) If the body corporate has ceased to exist, its section 9 authority is taken to be revoked on publication of the notice in the *Gazette*.
- (3) If the body corporate has changed its name, its section 9 authority has effect after the publication of the notice in the *Gazette* as if it had been granted to the body under its changed name.

9C Publication of list of ADIs

APRA may, from time to time, publish a list of ADIs:

- (a) in the *Gazette*; or
- (b) in such other manner as APRA determines.

10 APRA to be supplied with certain documents

- (1) An application under this Part by a body corporate shall be accompanied by a copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document by which the body corporate is constituted.

- (2) Every copy of an Act, charter, deed of settlement, memorandum of association, articles of association or other document furnished to APRA under subsection (1) shall be verified by a statutory declaration made by a senior officer of the body corporate concerned.
- (3) An ADI is guilty of an offence if:
- (a) an alteration is made to the Act, charter, deed of settlement, memorandum of association, articles of association, constitution or other document by which the ADI was constituted as a body corporate; and
 - (b) the ADI does not, within 3 months of the making of the alteration, give to APRA a written statement:
 - (i) that sets out particulars of the alteration; and
 - (ii) that is verified by a statutory declaration made by a senior officer of the ADI; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

11 APRA may determine that provisions of this Act do not apply

- (1) APRA may, by order published in the *Gazette*, determine that all provisions (other than section 63) or specified provisions (other than section 63) of this Act do not apply to a person during the period while the order continues in force. The determination has effect accordingly.
- (2) An order under this section:
- (a) may be expressed to apply to a particular person or to the persons included in a class of persons;
 - (b) may specify the period during which the order shall remain in force; and
 - (c) may be made subject to such conditions as are specified in the order.

Part II Provisions relating to the carrying on of banking business

Division 1 Authority to carry on banking business

Section 11

- (3) A person is guilty of an offence if:
- (a) the person does, or fails to do, an act; and
 - (b) doing, or failing to do, the act results in a contravention of a condition to which an order under this section is subject (being an order that is in force and that applies to the person).

Maximum penalty: 200 penalty units.

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

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

- (3A) An offence against subsection (3) is an indictable offence.
- (3B) If a person does or fails to do an act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (4) APRA may, by order published in the *Gazette*, vary or revoke an order under this section.

Division 1AA—Authority to be a NOHC of an ADI

11AA Authority to be a NOHC

- (1) A body corporate may apply in writing to APRA for an authority under this section. The authority operates as an authority in relation to the body corporate and any ADIs that are subsidiaries of the body corporate from time to time.

Note 1: The body corporate may want the authority:

- (a) because APRA refuses or may refuse to grant a subsidiary of the body corporate a section 9 authority unless the body corporate holds a NOHC authority (see subsection 9(3A)); or
- (b) for a purpose connected with the *Financial Sector (Shareholdings) Act 1998*.

Note 2: The body corporate may also need to consider the implications of the *Foreign Acquisitions and Takeovers Act 1975* and the *Financial Sector (Shareholdings) Act 1998*.

- (2) APRA may grant the authority if it considers it is appropriate to do so.

Note: For APRA's power to revoke the authority, see section 11AB.

- (3) APRA may, at any time, by notice in writing given to the body corporate:
- (a) impose conditions, or additional conditions, on the authority; and
 - (b) vary or revoke conditions imposed on the authority.

The conditions must relate to prudential matters.

- (4) A condition may be expressed to have effect despite anything in the prudential standards or the regulations.

- (5) The body corporate is guilty of an offence if:
- (a) it does, or fails to do, an act; and
 - (b) doing, or failing to do, the act results in a contravention of a condition of the authority; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 200 penalty units.

Part II Provisions relating to the carrying on of banking business

Division 1AA Authority to be a NOHC of an ADI

Section 11AB

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

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

(5A) An offence against subsection (5) is an indictable offence.

(5B) If the body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (5), the body corporate is guilty of an offence against that subsection in respect of:

- (a) the first day on which the offence is committed; and
- (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

(6) If APRA:

- (a) grants an authority under subsection (2); or
- (b) imposes, varies or revokes conditions under subsection (3);

APRA must cause notice of that action to be published in the *Gazette*. APRA may also cause notice of that action to be published in any other way that it considers appropriate.

(7) A failure to comply with subsection (6) does not affect the validity of the action concerned.

11AB Revocation of authority

(1) APRA must revoke a NOHC authority granted to a body corporate if:

- (a) the body corporate, by notice in writing to APRA, requests the revocation of the authority; and
- (b) APRA is satisfied that revocation of the authority:
 - (i) would not be contrary to the national interest; and
 - (ii) would not be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.

- (2) APRA may revoke a NOHC authority granted to a body corporate if APRA is satisfied that:
- (a) the body corporate has failed to comply with:
 - (i) a requirement of this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
 - (ii) a direction under Division 1BA; or
 - (iii) a condition of its NOHC authority; or
 - (b) the body corporate has ceased to be a NOHC of any ADI or ADIs; or
 - (c) it would be contrary to the national interest for the authority to remain in force; or
 - (d) it would be contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate for the authority to remain in force; or
 - (e) the body corporate has failed to pay:
 - (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
 - (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*.

The procedures to be undergone before a revocation under this subsection are set out in subsection (3). Those procedures apply unless APRA determines under subsection (4) that they are not to apply.

- (3) Subject to subsection (4), APRA must not, under subsection (2), revoke a body corporate's NOHC authority unless:
- (a) APRA has given the body corporate a notice in writing advising the body corporate:
 - (i) that APRA is considering revoking the authority for the reasons specified in the notice; and
 - (ii) that the body corporate may make submissions to APRA, in accordance with the notice, about the possible revocation; and
 - (iii) of the date by which any submissions must be made (being a date at least 90 days after the giving of the notice); and
 - (b) APRA has considered any submissions that were made by the body corporate by the specified date.

Section 11AC

- (4) APRA may determine that the procedures in subsection (3) do not apply if APRA is satisfied that following those procedures could result in a delay in revocation that would be:
 - (a) contrary to the national interest; or
 - (b) contrary to the interests of depositors of any ADI that is a subsidiary of the body corporate.
- (5) A revocation of a body corporate's NOHC authority under subsection (1) or (2) must be in writing, and APRA must give the body corporate written notice of the revocation of the authority.
- (6) If APRA revokes a body corporate's NOHC authority under subsection (1) or (2), APRA must cause notice of the revocation to be published in the *Gazette*. APRA may also cause notice of the revocation to be published in any other way it considers appropriate.
- (7) A failure to comply with subsection (5) (so far as it requires a body corporate to be given written notice of a revocation) or with subsection (6) does not affect the validity of a revocation.

11AC Bodies that cease to exist or change their names

- (1) If APRA is satisfied that a body corporate that has been granted a NOHC authority:
 - (a) has ceased to exist; or
 - (b) has changed its name;APRA must cause notice of that fact to be published in the *Gazette*. APRA may also cause notice of that fact to be published in any other way it thinks appropriate.
- (2) If the body corporate has ceased to exist, any NOHC authority granted to the body corporate that is still in force is taken to be revoked on publication of the notice in the *Gazette*.
- (3) If the body corporate has changed its name, any NOHC authority granted to the body corporate that is still in force has effect after the publication of the notice in the *Gazette* as if it had been granted to the body under its changed name.

11AD Publication of list of NOHCs

Section 11AD

APRA may, from time to time, publish a list of authorised NOHCs:

- (a) in the *Gazette*; or
- (b) in such other manner as APRA determines.

**Division 1A—Prudential supervision and monitoring of
ADIs and authorised NOHCs**

**11AF APRA may make prudential standards for ADIs and
authorised NOHCs**

- (1) APRA may, in writing, determine standards in relation to prudential matters to be complied with by:
 - (a) all ADIs; or
 - (b) all authorised NOHCs; or
 - (c) a specified class of ADIs or authorised NOHCs; or
 - (d) one or more specified ADIs or authorised NOHCs.
- (1A) A standard may impose different requirements to be complied with in different situations or in respect of different activities.
- (2) A standard:
 - (a) comes into force:
 - (i) unless subparagraph (ii) applies—on the day on which the determination of the standard is made; or
 - (ii) if that determination specifies a later day as the day on which the standard comes into force—on the day so specified; and
 - (b) continues in force until it is revoked.
- (3) APRA may, in writing, vary or revoke a standard.
- (4) Subject to subsection (6A), if APRA determines or varies a standard referred to in paragraph (1)(a), (b) or (c) it must, as soon as practicable, cause a notice advising of the determination of the standard, or of the variation of the standard, and summarising the purpose and effect of the standard or variation, to be published:
 - (a) in the *Gazette*; and
 - (b) in a daily newspaper or daily newspapers circulating generally in each State or Territory.
- (4A) If APRA determines or varies a standard referred to in paragraph (1)(d) it must, as soon as practicable, give a copy of the standard, or of the variation, to the ADI or authorised NOHC, or to each ADI

or authorised NOHC, to which the standard applies. Whenever APRA gives a copy of a standard, or of a variation, to an ADI or authorised NOHC, it must also provide a copy to the Treasurer.

- (5) If APRA revokes a standard referred to in paragraph (1)(a), (b) or (c) it must, as soon as practicable, cause a notice of the revocation to be published:
- (a) in the *Gazette*; and
 - (b) in a daily newspaper or daily newspapers circulating generally in each State or Territory.
- (5A) If APRA revokes a standard referred to in paragraph (1)(d) it must, as soon as practicable, give notice of the revocation to the ADI or authorised NOHC, or to each ADI or authorised NOHC, to which the standard applied. Whenever APRA gives a notice of revocation to an ADI or authorised NOHC, it must also provide a copy to the Treasurer.
- (6) Subject to subsection (6A), APRA must take reasonable steps to ensure that copies of the current text of the standards are available for inspection and purchase.
- (6A) If APRA considers that a standard, or a variation of a standard, contains commercially sensitive information:
- (a) APRA is not required to include that information in a notice published under subsection (4) or in the version of the standard that is available under subsection (6); but
 - (b) APRA may include some or all of that information in either or both of those things if APRA considers it appropriate to do so.
- (7) A failure to comply with subsection (4), (4A), (5), (5A) or (6) does not affect the validity of the action concerned.
- (8) In this section:

Territory means a territory to which this Act extends.

Section 11A

11A Prudential requirements may also be prescribed by the regulations

The regulations may make provision for and in relation to requiring ADIs and authorised NOHCs to observe such requirements in relation to prudential matters as are specified in, or ascertained in accordance with, the regulations.

11B APRA to monitor prudential matters

The functions of APRA include:

- (a) the collection and analysis of information in respect of prudential matters relating to ADIs and authorised NOHCs;
- (b) the encouragement and promotion of the carrying out by ADIs and authorised NOHCs of sound practices in relation to prudential matters; and
- (c) the evaluation of the effectiveness and carrying out of those practices.

11C Division not to limit operation of other provisions

Nothing in this Division is intended to limit the operation of any other provision of this Act or of the *Reserve Bank Act 1959*.

Division 1BA—APRA's power to issue directions

Subdivision A—Directions other than to enforce certified industry support contracts

11CA APRA may give directions in certain circumstances

- (1) APRA may give a body corporate that is an ADI or an authorised NOHC a direction of a kind specified in subsection (2) if APRA considers that:
 - (a) the body corporate has contravened a prudential regulation or a prudential standard; or
 - (aa) the body corporate is likely to contravene a prudential regulation or a prudential standard, and such a contravention is likely to give rise to a prudential risk; or
 - (b) if the body corporate is an ADI—the direction is necessary in the interests of depositors of the ADI; or
 - (c) if the body corporate is an authorised NOHC—the direction is necessary in the interests of depositors of any ADI that is a subsidiary of the body corporate; or
 - (d) the body corporate is conducting its affairs in an improper or in a financially unsound way; or
 - (e) the body corporate has contravened a requirement under the *Financial Sector (Collection of Data) Act 2001*.

The direction is to be by notice in writing given to the body corporate.

- (2) The kinds of direction the body corporate may be given are as follows:
 - (a) a direction to comply with the whole or a part of a prudential regulation or a prudential standard;
 - (b) a direction to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;
 - (c) a direction to do all or any of the following:
 - (i) remove a director, secretary, executive officer or employee of the body corporate from office;

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Division 1BA APRA's power to issue directions

Section 11CA

- (ii) ensure a director, secretary, executive officer or employee of the body corporate does not take part in the management or conduct of the business of the body corporate except as permitted by APRA;
- (iii) appoint a person or persons as a director, secretary, executive officer or employee of the body corporate for such term as APRA directs;
- (d) a direction to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;
- (e) a direction not to give any financial accommodation to any person;
- (f) a direction not to accept the deposit of any amount;
- (g) a direction not to borrow any amount;
- (h) a direction not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;
- (i) a direction not to repay any amount paid on shares;
- (j) a direction not to pay a dividend on any shares;
- (k) a direction not to repay any money on deposit or advance;
- (l) a direction not to pay or transfer any amount to any person, or create an obligation (contingent or otherwise) to do so;
- (m) a direction not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
- (n) any other direction as to the way in which the affairs of the body corporate are to be conducted or not conducted.

A direction under paragraph (l) not to pay any amount does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

- (2A) Without limiting the generality of subsection (2), a direction referred to in a paragraph of that subsection may:
- (a) deal with some only of the matters referred to in that paragraph; or
 - (b) deal with a particular class or particular classes of those matters; or
 - (c) make different provision with respect to different matters or different classes of matters.

- (3) The direction may deal with the time by which, or period during which, it is to be complied with.
- (4) The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (5) The direction has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.
- (6) In this section, the expressions *director*, *secretary*, *executive officer* and *employee* have the same meanings as they have in the *Corporations Act 2001*, and the *affairs* of a body corporate include those set out in section 53 of that Law.

Note: For further information about directions, see Subdivision C.

Subdivision B—Directions to enforce certified industry support contracts

11CB APRA may certify an industry support contract

APRA may certify an industry support contract if all of the parties to the contract make a written request to APRA that the contract be certified and APRA considers it appropriate to certify the contract. The certification must be by notice in writing to the parties to the contract.

11CC APRA may direct parties to an industry support contract to comply with the contract

- (1) APRA may direct any ADI that is a party to an industry support contract that is certified under section 11CB to carry out, or cease to carry out, specified acts if APRA considers:
 - (a) that carrying out, or ceasing to carry out, those acts, is necessary in order for the terms of the contract to be fulfilled; and
 - (b) that the direction is in the interests of the depositors of one or more of the ADIs that are parties to the contract.

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The direction must be by notice in writing to the ADI.

- (2) The direction may deal with the time by which, or period during which, it is to be complied with.
- (3) The ADI has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.
- (4) The direction has effect until:
 - (a) APRA revokes the direction by notice in writing to the ADI (see subsection (5)); or
 - (b) APRA revokes the certification of the industry support contract by notice in writing to the ADIs that are parties to it (see subsection (6)).
- (5) APRA may revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.
- (6) APRA may revoke the certification of the industry support contract if it considers that it is appropriate to do so for any reason.

Subdivision C—General provisions relating to all directions

11CD Direction not grounds for denial of obligations

- (1) Subject to subsections (2) and (3), the fact that an ADI or an authorised NOHC is subject to a direction by APRA under Subdivision A or B is not a ground for any other party to a contract to which the ADI or NOHC is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.
- (2) If an ADI or an authorised NOHC is prevented from fulfilling its obligations under a contract because of a direction under Subdivision A, other than a direction under paragraph 11CA(2)(k), the other party or parties to the contract are, subject to any orders made under subsection (3), relieved from obligations owed to the ADI or authorised NOHC under the contract.
- (3) A party to a contract to which subsection (2) applies may apply to the Federal Court of Australia for an order relating to the effect on

the contract of a direction under Subdivision A. The order may deal with matters including (but not limited to):

- (a) requiring a party to the contract to fulfil an obligation under the contract despite subsection (2);
- (b) obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under Subdivision A.

11CE Supply of information about issue and revocation of directions

Power to publish notice of directions in Gazette

- (1) APRA may publish in the *Gazette* notice of any direction made under Subdivision A or B. The notice must include the name of the ADI or authorised NOHC given the direction and a summary of the direction.

Requirement to publish notice of revocation of certain directions in Gazette

- (2) If APRA publishes notice of a direction made under Subdivision A or B and then later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about direction to Treasurer and Reserve Bank

- (3) If the Treasurer or the Reserve Bank requests APRA to provide information about:
 - (a) any directions under Subdivision A or B in respect of a particular ADI or authorised NOHC; or
 - (b) any directions made during a specified period under Subdivision A or B in respect of any ADIs or authorised NOHCs;

APRA must comply with the request.

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Power to inform Treasurer and Reserve Bank of direction

- (4) APRA may provide any information that it considers appropriate to the Treasurer or the Reserve Bank about any directions, or revocations of directions, made under Subdivision A or B, in respect of any ADI or authorised NOHC, at any time.

Requirement to inform Treasurer and Reserve Bank of revocation of direction if informed of making of direction

- (5) If APRA provides the Treasurer or the Reserve Bank with information about a direction and then later revokes the direction, APRA must notify that person of the revocation of the direction as soon as practicable after the revocation. Failure to notify the person does not affect the validity of the revocation.

11CF Secrecy requirements

Information relating to directions and revocations of directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette* under section 11CE.

11CG Non-compliance with a direction

- (1) An ADI or an authorised NOHC is guilty of an offence if:
- (a) it does, or fails to do, an act; and
 - (b) doing, or failing to do, the act results in a contravention of a direction given to it under Subdivision A or Subdivision B; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI or authorised NOHC.

Maximum penalty: 50 penalty units.

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

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

- (1A) If an ADI or an authorised NOHC does or fails to do an act in circumstances that give rise to the ADI or NOHC committing an offence against subsection (1), the ADI or NOHC is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI or NOHC committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (2) An officer of an ADI or an authorised NOHC is guilty of an offence if:
- (a) the officer fails to take reasonable steps to ensure that the ADI or NOHC complies with a direction given to it under Subdivision A or Subdivision B; and
 - (b) the officer's duties include ensuring that the ADI or NOHC complies with the direction, or with a class of directions that includes the direction; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the officer.

Maximum penalty: 50 penalty units.

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

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

- (2A) If an officer of an ADI or an authorised NOHC fails to take reasonable steps to ensure that the ADI or NOHC complies with a direction given to it under Subdivision A or Subdivision B in circumstances that give rise to the officer committing an offence against subsection (2), the officer is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (3) In this section, ***officer*** has the meaning given by section 9 of the *Corporations Act 2001*.

Division 1B—Provisions relating to certain ADIs

11D Interpretation

In this Division:

foreign ADI does not include the Bank of China.

11E Division 2 not applicable to foreign ADIs

- (1) Division 2 does not apply to a foreign ADI.
- (2) A foreign ADI is guilty of an offence if:
 - (a) it accepts a deposit from a person in Australia; and
 - (b) before accepting the deposit, the foreign ADI did not inform the person, in a manner approved by APRA, of the requirements of this Act to which the foreign ADI is not subject because of subsection (1); and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the foreign ADI.

Maximum penalty: 50 penalty units.

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

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

11F Assets of foreign ADIs

If a foreign ADI (whether in or outside Australia) suspends payment or becomes unable to meet its obligations, the assets of the ADI in Australia are to be available to meet the ADI's liabilities in Australia in priority to all other liabilities of the ADI.

Division 2—Protection of depositors

Subdivision A—General provisions relating to depositor protection

12 APRA to protect depositors

It is the duty of APRA to exercise its powers and functions under this Division for the protection of the depositors of the several ADI's.

13 ADI to supply information to APRA

APRA's power to obtain information

- (1) APRA may, by notice in writing to an ADI, require the ADI to supply it, within the time specified in the notice, with such information relating to the ADI's financial stability as is specified in the notice.

The requirement to supply information may include a requirement to supply books, accounts or documents.

- (2) The information supplied in compliance with a requirement under subsection (1) must, if required by the notice, be verified by a statutory declaration made by an officer of the ADI concerned who is authorised by the ADI to make the declaration.

Information to be supplied if ADI unable, or likely to be unable, to meet obligations

- (3) An ADI is guilty of an offence if:
 - (a) the ADI considers that it is likely to become unable to meet its obligations, or that it is about to suspend payment; and
 - (b) the ADI does not immediately inform APRA of the situation; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

(3A) An offence against subsection (3) is an indictable offence.

APRA's power to investigate or appoint an investigator if information etc. not provided

(4) APRA may investigate the affairs of an ADI, or appoint a person to do so, if the ADI fails to comply with a requirement to provide information, books, accounts or documents under this section.

Interpretation

(5) In this section:

officer, in relation to an ADI, has the same meaning as in section 11CG.

13A Consequences of inability or failure of ADI to meet obligations

Appointment of investigator or administrator, or investigation or control by APRA

(1) APRA may investigate the affairs of an ADI, appoint a person to investigate the affairs of an ADI, take control of the ADI's business or appoint an administrator to take control of the ADI's business if:

- (a) the ADI informs APRA that the ADI considers that it is likely to become unable to meet its obligations or that it is about to suspend payment; or
- (b) APRA considers that the ADI is likely to become unable to meet its obligations or is about to suspend payment; or
- (c) the ADI becomes unable to meet its obligations or suspends payment.

Note: For information about another circumstance in which APRA may take control of the business of an ADI, see section 65.

(2) Throughout this Subdivision and Subdivision B, the term **ADI statutory manager** is used. It refers to the entity in control of an

Section 13B

ADI's business under this Subdivision. That entity will be either APRA or an administrator of an ADI's business appointed by APRA.

Australian assets of ADI to be available to meet deposit liabilities

- (3) If an ADI becomes unable to meet its obligations or suspends payment, the assets of the ADI in Australia are to be available to meet that ADI's deposit liabilities in Australia in priority to all other liabilities of the ADI.
- (4) An ADI is guilty of an offence if:
- (a) it does not hold assets (excluding goodwill) in Australia of a value that is equal to or greater than the total amount of its deposit liabilities in Australia; and
 - (b) APRA has not authorised the ADI to hold assets of a lesser value; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

- (5) An offence against subsection (4) is an indictable offence.
- (6) If the circumstances relating to the asset holdings of an ADI are such that give rise to the ADI committing an offence against subsection (4), the ADI is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

13B Investigators—ADI must provide information and facilities

(1) An investigator of the affairs of an ADI under section 13 or 13A is entitled to have access to the books, accounts and documents of the ADI, and to require the ADI to give the investigator information or facilities to conduct the investigation.

(1A) An ADI is guilty of an offence if:

(b) the ADI:

- (i) does not give the investigator access to its books, accounts and documents; or
- (ii) fails to comply with a requirement made under subsection (1) for the provision of information or facilities; and

(c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

(1B) If the ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (1A), the ADI is guilty of an offence against that subsection in respect of:

- (a) the first day on which the offence is committed; and
- (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

(2) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by investigators under this Act.

Section 13C

13C ADI statutory managers—termination of control

Conditions necessary for termination of control

- (1) If APRA assumes control of an ADI's business or appoints an administrator of an ADI's business, APRA must ensure that either it or an administrator of the ADI's business has control of the ADI's business until:
 - (a) the following conditions are satisfied:
 - (i) the ADI's deposit liabilities in Australia have been repaid or APRA is satisfied that suitable provision has been made for their repayment; and
 - (ii) APRA considers that it is no longer necessary for it or an administrator to remain in control of the ADI's business; or
 - (b) APRA considers that the ADI is insolvent and is unlikely to be returned to solvency within a reasonable time, and APRA has applied for the ADI to be wound up under the *Corporations Act 2001* (see section 14F).

A termination of control that is permitted under this section is called an ***ultimate termination of control***.

Note: This provision does not prevent a change, or changes, between control of an ADI's business by APRA and an administrator or between administrators.

Events to precede termination

- (2) Before making an ultimate termination of control by an ADI statutory manager of an ADI's business, APRA must:
 - (a) ensure that directors of the ADI have been appointed or elected under the ADI's constitution at a meeting called by the ADI statutory manager in accordance with the ADI's constitution; or
 - (b) appoint directors of the ADI by instrument in writing; or
 - (c) ensure that a liquidator for the ADI has been appointed.

Power to terminate control

- (3) If the requirements in subsections (1) and (2) are satisfied, APRA may by instrument in writing make an ultimate termination of control of an ADI's business by an ADI statutory manager.

- (4) If the ADI statutory manager at the time of the termination is an administrator, the instrument of termination also operates as a termination of the appointment of the administrator. A copy of the instrument must be given to the administrator. However, mere failure to give the copy to the administrator does not affect the termination of the appointment.

Period of director's appointment

- (5) If a director is elected or appointed under subsection (2), the director takes office on the termination of the ADI statutory manager's control of the ADI's business. If the director was appointed by APRA, the director holds office until the ADI's next annual general meeting, subject to any terms and conditions imposed by APRA on the director's appointment. If the director was appointed or elected under the ADI's constitution, the constitution governs the appointment.

Note: For further information about what happens when an ADI statutory manager is in control of an ADI's business, see Subdivision B.

Subdivision B—Provisions dealing with control of an ADI's business by an ADI statutory manager

14A ADI statutory manager's powers and functions

ADI statutory manager's powers and functions include powers and functions of board

- (1) An ADI statutory manager has the powers and functions of the members of the board of directors of the ADI (collectively and individually), including the board's powers of delegation.

Note: When an ADI statutory manager takes control of the business of an ADI, the directors of the ADI cease to hold office (see section 15).

ADI statutory manager's power to obtain information

- (2) An ADI statutory manager may, for the purposes of this Division, require a person who has, at any time, been an officer of the ADI to give the ADI statutory manager any information relating to the business of the ADI that the ADI statutory manager requires.

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- (2A) A person who is or has been an officer of an ADI is guilty of an offence if:
- (a) there is an ADI statutory manager in relation to the ADI; and
 - (b) under subsection (2), the ADI statutory manager requires the person to give the ADI statutory manager information; and
 - (c) the person fails to comply with the requirement; and
 - (d) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 12 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

- (3) An individual is not excused from complying with a requirement under subsection (2) to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.
- (4) If:
- (a) before giving information in compliance with a requirement under subsection (2), an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
 - (b) giving the information might in fact tend to incriminate the individual or make the individual so liable;
- the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.

ADI statutory manager's power to sell whole or part of ADI's business

- (5) An ADI statutory manager may sell or otherwise dispose of the whole or any part of the ADI's business. The sale or disposal may occur on any terms and conditions that the ADI statutory manager considers appropriate.

Interpretation

- (6) In this section:

officer, in relation to an ADI, has the same meaning as in section 11CG.

14B Administrator in control—additional powers to recommend action by APRA

Types of recommendation

- (1) An administrator of an ADI's business may make any of the following recommendations to APRA, by instrument in writing given to APRA:
- (a) that APRA make a particular direction under Division 1BA in respect of the ADI;
 - (b) if the administrator considers that the ADI is insolvent and could not be restored to solvency within a reasonable period:
 - (i) that APRA apply under section 14F to the Federal Court of Australia for an order that the ADI be wound up; or
 - (ii) that APRA revoke the ADI's section 9 authority.

Effect of recommendation

- (2) If an administrator of an ADI's business makes a recommendation under this section, APRA must consider the recommendation but is not required to act on it.

Section 14C

14C ADI statutory manager's liabilities and duties

Liability for loss due to fraud etc.

- (1) If an ADI incurs any loss because of any fraud, dishonesty, negligence or wilful failure to comply with this Act by the ADI statutory manager, the ADI statutory manager is liable for the loss.

Other losses

- (2) An ADI statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, negligence or wilful failure to comply with this Act. If the ADI statutory manager is an administrator of the ADI's business, the administrator must provide details of the loss in a written report to APRA. However, failure to do so does not make the administrator liable for the loss.

Subsections (1) and (2) apply instead of general indemnity provisions

- (3) The question whether an ADI statutory manager is liable for a loss is to be determined in accordance with subsections (1) and (2), rather than in accordance with section 70A of this Act or section 58 of the *Australian Prudential Regulation Authority Act 1998*.

ADI statutory manager not liable under section 588G of the Corporations Act 2001

- (4) An ADI statutory manager is not to be taken to be a director for the purposes of section 588G of the *Corporations Act 2001*.

Signpost to secrecy obligations

- (5) Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received by ADI statutory managers under this Act.

14D Administrator in control—additional duties

Duty to report to APRA on request

- (1) A person who is an administrator of an ADI's business must give to APRA a written report showing how the control of the ADI's business is being carried out if APRA requests that such a report be provided to it. The report must be given to APRA within a reasonable time after the request.

Duty to report to APRA on termination of appointment

- (2) A person who was an administrator of an ADI's business must give to APRA a written report showing how the control of the ADI's business was carried out over the period of the administrator's appointment if the administrator's appointment has been terminated. The report must be given to APRA within a reasonable time of the termination.

Duty to follow directions by APRA

- (3) APRA may give an administrator of an ADI's business a direction relating to the control of the ADI's business, and may alter such a direction. If a direction (including an altered direction) is given to an administrator by APRA, the administrator must:
 - (a) act in accordance with the direction; or
 - (b) immediately provide to APRA information relating to the control of the ADI's business and request APRA to alter the direction.
- (4) If an administrator of an ADI's business requests APRA to alter a direction and APRA considers the request then confirms the direction, the administrator must act in accordance with the direction.

14E Termination of administrator's appointment

- (1) If an administrator of an ADI's business contravenes a requirement of this Division, APRA may terminate the administrator's appointment.

Section 14F

- (2) The terms and conditions of the administrator's appointment may provide for termination in circumstances in addition to those mentioned in subsection (1).
- (3) This section has effect subject to section 13C.

14F APRA's powers to apply for ADI to be wound up

Power to apply for ADI to be wound up

- (1) APRA may apply to the Federal Court of Australia for an order that an ADI be wound up if:
 - (a) an ADI statutory manager is in control of the ADI's business; and
 - (b) APRA considers that the ADI is insolvent and could not be restored to solvency within a reasonable period.
- (2) The winding up of the ADI is to be conducted in accordance with the *Corporations Act 2001* under which the ADI is incorporated or is taken to be incorporated.

15 Effect on directors of ADI statutory manager taking control of an ADI's business

- (1) The directors of an ADI cease to hold office when an ADI statutory manager takes control of the ADI's business.

Note: For the definition of *director*, see subsection (4).
- (2) A director of an ADI must not be appointed or elected while an ADI statutory manager is in control of the ADI's business unless the appointment is made under subsection 13C(2).
- (3) If a person who ceased to hold office under subsection (1), or a purported director of the ADI appointed or elected in contravention of subsection (2), purports to act in relation to the ADI's business while an ADI statutory manager has control of the ADI's business, those acts are invalid and of no effect.
- (4) For the purposes of this section, *director* has the same meaning as it has in the *Corporations Act 2001*.

15A Effect on external administrator of ADI statutory manager taking control of an ADI's business

- (1) The appointment of an external administrator of an ADI is terminated when an ADI statutory manager takes control of the ADI's business.

Note: For the definition of *external administrator*, see subsection (5).

- (2) An external administrator of an ADI must not be appointed while an ADI statutory manager is in control of the ADI's business unless APRA approves the appointment.
- (3) If a person who ceased to be the external administrator of an ADI under subsection (1), or a purported external administrator of the ADI appointed in contravention of subsection (2), purports to act in relation to the ADI's business while an ADI statutory manager has control of the ADI's business, those acts are invalid and of no effect.
- (4) APRA must inform the external administrator of an ADI that an ADI statutory manager will take control of the ADI's business as soon as possible after the decision that an ADI statutory manager will take control of the ADI's business is made. However, failure to inform the external administrator does not affect the operation of this section.
- (5) For the purposes of this section, *external administrator* means any of the following:
- (a) a liquidator or provisional liquidator;
 - (b) a receiver, manager, managing controller, receiver and manager or other controller (other than an ADI statutory manager);
 - (c) a voluntary administrator or administrator of a deed of a company arrangement or a scheme manager.

Expressions used in this subsection have the same meanings as they have in the *Corporations Act 2001*.

Section 15B

15B Effect on legal proceedings of ADI statutory manager taking control of an ADI's business

- (1) A person cannot begin or continue a proceeding in a court against an ADI while an ADI statutory manager is in control of the ADI's business unless:
 - (a) the court grants leave on the ground that the person would be caused hardship if leave were not granted; or
 - (b) APRA consents to the proceedings beginning or continuing.
- (2) A person intending to apply for leave of the court under paragraph (1)(a) must give APRA at least 10 days notice of the intention to apply. APRA may apply to the court to be joined as a party to the proceedings for leave.
- (3) In this section, a reference to a proceeding against an ADI includes a reference to a cross-claim or third party claim against an ADI.

15C ADI statutory manager being in control not grounds for denial of obligations

The fact that an ADI statutory manager is in control of an ADI's business is not a ground for any other party to a contract to which the ADI is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

16 Costs of statutory management

- (1) APRA's costs (including costs in the nature of remuneration and expenses) of being in control of an ADI's business, or of having an administrator in control of an ADI's business, are payable from the ADI's funds and are a debt due to APRA.
- (2) Despite anything contained in any law relating to the winding-up of companies, but subject to subsection 13A(3), debts due to APRA by an ADI under subsection (1) have priority in a winding-up of the ADI over all other unsecured debts.

16A APRA must report to Treasurer and publish information about statutory management

Reports to the Treasurer

- (1) If the Treasurer requests APRA to give him or her a written report concerning the activities of ADI statutory managers in respect of specified ADIs or in respect of a specified period, APRA must give the Treasurer such a written report within a reasonable time after the Treasurer requests it.
- (2) If an ADI statutory manager takes control of an ADI's business during a financial year, or if there is an ultimate termination of control during a financial year, APRA must give the Treasurer a written report within a reasonable time after the end of the financial year concerning activities of all ADI statutory managers and each ultimate termination of control that occurred during that financial year.

Requirement to publish notices in Gazette

- (3) If APRA:
 - (a) takes control of an ADI's business; or
 - (b) appoints an administrator of an ADI's business; or
 - (c) makes an ultimate termination of control in respect of an ADI's business;

APRA must publish notice of that fact in the *Gazette*. However, mere failure to publish such a notice does not affect the validity of the act.

**Division 2A—Auditors of ADIs and authorised NOHCs
and their subsidiaries**

**16B Requirements for auditors and people who have been auditors
to give information to APRA**

Duty to give information when required

- (1) APRA may, by notice in writing, require a person who is, or who has been, an auditor of:
- (a) an ADI; or
 - (b) an authorised NOHC; or
 - (c) a subsidiary of an ADI or authorised NOHC;

to provide information about the ADI, authorised NOHC or subsidiary to APRA if APRA considers that the provision of the information will assist APRA in performing its functions under this Act.

- (1A) A person who is or has been an auditor of an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, is guilty of an offence if:
- (a) under subsection (1), APRA requires the person to provide information; and
 - (b) the person fails to comply with the requirement; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

Additional duty to give information about ADIs

- (2) A person who is or has been an auditor of an ADI is guilty of an offence if:
- (a) the person has reasonable grounds for believing that:
 - (i) the ADI is insolvent, or there is a significant risk that the ADI will become insolvent; or
 - (ii) the ADI has failed to comply with a prudential standard, a requirement under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*, a direction under Division 1BA of Part II or a condition of its section 9 authority; or
 - (iii) an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI; and
 - (b) the person does not inform APRA of the matter; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

Additional duty to give information about authorised NOHCs

- (3) A person who is or has been an auditor of an authorised NOHC is guilty of an offence if:
- (a) the person has reasonable grounds for believing that:
 - (i) the NOHC is insolvent, or there is a significant risk that the NOHC will become insolvent; or
 - (ii) the NOHC has failed to comply with a prudential standard, a requirement under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*, a

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direction under Division 1BA of Part II or a condition of its NOHC authority; or

- (iii) an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC; and
- (b) the person does not inform APRA of the matter; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

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

Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.

Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

Additional duty to give information about subsidiaries of ADIs or authorised NOHCs

- (4) A person who is or has been an auditor of a subsidiary of an ADI or an authorised NOHC (other than a subsidiary that itself is an ADI or an authorised NOHC) is guilty of an offence if:
 - (a) the person has reasonable grounds for believing that:
 - (i) the subsidiary is insolvent, or there is a significant risk that the subsidiary will become insolvent; or
 - (ii) the subsidiary has failed to comply with a requirement under this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
 - (iii) if the subsidiary is a subsidiary of an ADI—an existing or proposed state of affairs may materially prejudice the interests of depositors of the ADI; or
 - (iv) if the subsidiary is a subsidiary of an authorised NOHC—an existing or proposed state of affairs may materially prejudice the interests of depositors of any ADI that is a subsidiary of the NOHC; and
 - (b) the person does not inform APRA of the matter; and

- (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: Imprisonment for 6 months.

- Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine a court may impose is worked out as provided in that subsection.
- Note 3: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the maximum fine worked out as mentioned in Note 2.

Self-incrimination

- (5) An individual is not excused from complying with a requirement under this section to give information on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.
- (6) If:
- (a) before giving information in compliance with a requirement under this section, an individual claims that giving the information might tend to incriminate the individual or make the individual liable to a penalty; and
 - (b) giving the information might in fact tend to incriminate the individual or make the individual so liable;
- the information given in compliance with the requirement is not admissible in evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information.

16C Auditor may provide information to APRA

A person who is, or who has been, an auditor of:

- (a) an ADI; or
- (b) an authorised NOHC; or
- (c) a subsidiary of an ADI or authorised NOHC;

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may provide information about the ADI, authorised NOHC or subsidiary to APRA if the person considers that the provision of that information to APRA will assist APRA in performing its functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.

Division 4—Mobilization of foreign currency

32 Interpretation

In this Division:

excess receipts of foreign currency, in relation to an ADI as at a date, means the amount by which the amount of that ADI's surplus foreign currency as at that date exceeds the amount (if any) of its surplus foreign currency as at the commencement of this Part.

sterling means currency that is legal tender in the United Kingdom.

surplus foreign currency, in relation to an ADI, means the amount by which the amount of that ADI's assets outside Australia attributable to, or acquired by virtue of, its Australian business exceeds the amount of its liabilities outside Australia attributable to, or incurred by virtue of, its Australian business.

33 Transfer of foreign currency to Reserve Bank [see Note 3]

- (1) The Reserve Bank may, from time to time, by notice in writing, require each ADI to transfer to the Reserve Bank an amount of sterling equivalent to such proportion as is specified in the notice of that ADI's excess receipts of foreign currency as at the close of business on a date specified in the notice, not being more than 21 days before the date on which the notice is given.
- (2) The proportion specified in a notice under subsection (1) shall be the same in respect of each ADI.
- (3) Where, as at the close of business on a date specified in a notice under subsection (1), an ADI has not transferred an amount of sterling that it has been required to transfer in pursuance of any previous notice under that subsection, the excess receipts of foreign currency to which that amount of sterling is equivalent shall not, for the purpose of calculating the amount of sterling required to be transferred in pursuance of the first-mentioned notice, be taken into account as part of the excess receipts of foreign currency of that ADI.

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- (4) An ADI is guilty of an offence if:
- (a) the ADI receives a notice under subsection (1); and
 - (b) the ADI does not comply with the notice within:
 - (i) 7 days after receiving the notice; or
 - (ii) if a longer period for compliance is specified by the Reserve Bank—the period so specified; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

- (4A) An offence against subsection (4) is an indictable offence.
- (4B) If an ADI does or fails to do an act in circumstances that give rise to the ADI committing an offence against subsection (4), the ADI is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the ADI committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (5) An ADI shall be deemed to have complied with the requirements of a notice under subsection (1) if it transfers to the Reserve Bank an amount of sterling equivalent to the specified proportion of that ADI's excess receipts of foreign currency, as shown in that ADI's books of account, as at the close of business on the date in question.
- (6) Where a ADI's assets outside Australia attributable to, or acquired by virtue of, its Australian business include foreign currency that is not freely convertible into sterling, the Reserve Bank shall make such adjustment in the amount of sterling required to be transferred by that bank to the Reserve Bank under this section as appears to the Reserve Bank to be necessary in the circumstances.

34 Payment for transferred foreign currency

The Reserve Bank shall pay to an ADI transferring sterling in compliance with a notice under section 33 such amount in Australian currency as is agreed upon between the Reserve Bank and the ADI transferring the sterling or, in default of agreement, as is determined in an action for compensation by the ADI against the Reserve Bank.

35 Sale of foreign currency by Reserve Bank

The Reserve Bank may sell foreign currency to an ADI:

- (a) where the Reserve Bank is satisfied that the ADI has complied with the provisions of this Division and is likely to suffer a shortage of foreign currency; or
- (b) if the Reserve Bank considers that, for any other reason, it is desirable to do so.

Division 5—Advances

36 Advance policy

(1) Where the Reserve Bank is satisfied that it is necessary or expedient to do so in the public interest, the Reserve Bank may determine the policy in relation to advances to be followed by ADIs.

(1A) An ADI is guilty of an offence if:

- (a) the Reserve Bank has made a determination under subsection (1) of a policy that applies to the ADI; and
- (b) the ADI fails to follow the policy; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

(2) Without limiting the generality of subsection (1), the Reserve Bank may give directions as to the classes of purposes for which advances may or may not be made by ADIs.

(2A) An ADI is guilty of an offence if:

- (a) the Reserve Bank has given a direction under subsection (2) that applies to the ADI; and
- (b) the ADI fails to comply with the directions; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 200 penalty units.

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

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

(2B) An offence against subsection (2A) is an indictable offence.

(3) Nothing in this section:

- (a) authorizes the Reserve Bank to make a determination or give a direction with respect to an advance made, or proposed to be made, to a particular person; or
- (b) affects the validity of a transaction entered into in relation to an advance or affects the right of an ADI to recover an advance or enforce the security given in respect of an advance.

Part IIA—ADI mergers (operation of State and Territory laws)

38A Operation of certain State and Territory laws relating to ADI mergers

- (1) Any law of the Commonwealth with which a provision of a law of a State or Territory referred to in Schedule 1 would, but for this subsection, be inconsistent has effect subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision.
- (2) Without prejudice to its effect apart from this subsection, each provision of a law of a State or Territory referred to in Schedule 1 has or shall be deemed to have had, as the case may be, by force of this subsection, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (3) If, at any time after the commencement of this Part, a law of a State or Territory is passed or made for the purpose of, or for the purpose of making provision consequent upon or in relation to, the merger of 2 or more ADIs, the Treasurer may, in his or her discretion, by signed writing published in the *Gazette*, declare that law to be a law to which this subsection applies.
- (4) Where a declaration is made under subsection (3) in relation to a law of a State or Territory:
 - (a) any law of the Commonwealth with which a provision of that law of a State or Territory would, but for this paragraph, be inconsistent has effect, subject to that provision, or shall be deemed to have had effect subject to that provision, as the case may be, on and from the day that is the prescribed day in relation to that provision; and

- (b) without prejudice to its effect apart from this paragraph, each provision of that law of a State or Territory has, or shall be deemed to have had, as the case may be, by force of this paragraph, on and from the day that is the prescribed day in relation to that provision, the effect that it would have, or would have had, if that law bound the Crown in right of the Commonwealth, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (5) A reference in this section to the prescribed day in relation to a provision of a law of a State or Territory is a reference to the day on which that provision comes or came into operation.

Part III—Foreign exchange, foreign investment etc.

39 Power to make regulations

- (1) Where the Governor-General considers it expedient to do so for purposes related to:
 - (a) foreign exchange or the foreign exchange resources of Australia;
 - (b) the protection of the currency or the protection of the public credit or revenue of Australia; or
 - (c) foreign investment in Australia, Australian investment outside Australia, foreign ownership or control of property in Australia or of Australian property outside Australia or Australian ownership or control of property outside Australia or of foreign property in Australia;the Governor-General may make regulations, not inconsistent with this Act, in accordance with this section.
- (2) The regulations authorized to be made by this section are regulations (being regulations with respect to matters with respect to which the Parliament has power to make laws) making provision for or in relation to:
 - (a) rates of exchange;
 - (b) the control or prohibition of the buying, borrowing, selling, lending or exchanging in Australia of, or other dealing in Australia with, foreign currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, foreign currency by or on behalf of a person who is a resident;
 - (c) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, foreign currency, being a transaction that takes place in whole or in part in Australia or to which a person who is a resident is a party;

- (d) the control or prohibition of the buying, borrowing, selling, lending or exchanging outside Australia of, or other dealing outside Australia with, Australian currency by or on behalf of any person, and of the buying, borrowing, selling, lending or exchanging in Australia, or other dealing in Australia with, Australian currency by or on behalf of a person who is not a resident;
- (e) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, Australian currency, being a transaction that takes place in whole or in part outside Australia or to which a person who is not a resident is a party;
- (f) the control or prohibition of the taking or sending out of Australia, and of the bringing or sending into Australia, of Australian currency or foreign currency;
- (g) requiring any person who is a resident and who has power to sell, or to procure the sale of, any foreign currency, or any person (whether a resident or not) who has power to sell in Australia, or to procure the sale in Australia of, any foreign currency, to sell, or to procure the sale of, that currency as prescribed;
- (h) requiring any person who is not a resident and who has power to sell, or to procure the sale of, any Australian currency, or any person (whether a resident or not) who has power to sell outside Australia, or to procure the sale outside Australia of, any Australian currency, to sell, or to procure the sale of, that currency as prescribed;
- (i) the control or prohibition of the taking, sending or transfer of any securities to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia), and of the bringing, sending or transfer of any securities to Australia from a place outside Australia (including the transfer of securities from a register outside Australia to a register in Australia);
- (j) the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is in Australia, or of Australian securities that are outside Australia, by or on behalf of a person who is not a resident;

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- (k) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is in Australia, or of Australian securities that are outside Australia, being a transaction to which a person who is not a resident is a party;
- (l) the control or prohibition of the buying, borrowing, selling, lending or exchanging of, or other dealing with, property that is outside Australia, or of foreign securities that are in Australia, by or on behalf of a person who is a resident;
- (m) the control or prohibition of any transaction that has the effect of or involves a purchase, borrowing, sale, loan or exchange of, or that otherwise relates to, property that is outside Australia, or of foreign securities that are in Australia, being a transaction to which a person who is a resident is a party;
- (n) requiring any person who is a resident and by whom moneys are payable to a person who is not a resident to pay those moneys within such time as is fixed by or under the regulations;
- (o) the control or prohibition of the importation or exportation of goods;
- (p) the obtaining by the Reserve Bank (or by a person authorized by the Bank for the purpose) of information, and the examination by the Bank (or by a person authorized by the Bank for the purpose) of accounts, books, documents or other papers, for purposes related to the exercise of the Bank's powers or the performance of the Bank's functions under the regulations;
- (q) prescribing penalties not exceeding a fine of 1,000 penalty units, or imprisonment for a period not exceeding 5 years, for offences against the regulations made under this section; and
- (r) empowering a court to order the forfeiture, or the disposal in accordance with the directions of the Reserve Bank, of Australian currency, foreign currency, goods or other property in respect of which an offence against the regulations made under this section has been committed.

- (3) Without limiting the generality of the power of the Governor-General to make regulations under this section, the regulations may:
- (a) for any purpose of the regulations, prohibit the doing of any act or thing (including the importation or exportation of goods) specified in the regulations either absolutely or subject to conditions, being conditions which may prohibit the doing of the act or thing without the authority of the Reserve Bank or except in pursuance of a licence granted under the regulations;
 - (b) make provision for or in relation to terms and conditions subject to which such authorities or licences shall or may be granted, being terms and conditions which may require the deposit of money with the Reserve Bank; and
 - (c) make provision for or in relation to the granting of exemptions, either unconditionally or subject to conditions determined by the Reserve Bank, from the application of any provision of the regulations.
- (4) Regulations under this section may provide:
- (a) that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a resident included in a prescribed class of persons as if the person were not a resident; and
 - (b) that the regulations, or a particular provision of the regulations specified in the regulations, shall apply, without modification or with such modifications as are prescribed, to and in relation to a person who is not a resident but is included in a prescribed class of persons, as if the person were a resident.
- (5) Regulations under this section may provide:
- (a) that, where a body corporate that is not a resident has a place of business in Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts

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and things done by the body corporate at or through that place of business; and

- (b) that, where a body corporate that is a resident has a place of business outside Australia, the body corporate shall be deemed, for the purposes of the regulations or a particular provision of the regulations specified in the regulations, not to be a resident in relation to the affairs of the body corporate conducted by the body corporate at or through that place of business, including any business carried on, transactions entered into and acts and things done by the body corporate at or through that place of business.
- (6) Regulations under this section may provide that no act or thing done, or contract or other transaction entered into, is invalid or unenforceable by reason only that the provisions of the regulations have not, or a particular provision of the regulations specified in the regulations has not, been complied with, but regulations so made shall not be construed as having the effect of preventing a person from being convicted of an offence against the regulations by reason of having failed to comply with a provision of the regulations.
- (7) Regulations under this section may provide that, in the exercise of its powers or the performance of its functions under the regulations, or under a particular provision of the regulations specified in the regulations, the Reserve Bank is subject to the directions of the Treasurer.
- (8) In this section:
- Australian currency* includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed in Australian money, and also includes rights, and instruments of title, to Australian money.
- Australian securities* means securities or other property included in a class of securities or property specified in the regulations as Australian securities.
- foreign currency* includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques payable or expressed otherwise than in

Australian money, and also includes rights and instruments of title, to money other than Australian money.

foreign securities means securities or other property included in a class of securities or property specified in the regulations as foreign securities.

property includes securities and rights under securities.

resident means:

- (a) a person, not being a body corporate, who is ordinarily resident in Australia; and
- (b) a body corporate which is incorporated in Australia.

securities includes shares, stock, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities.

- (9) Nothing in Part IV shall be taken as limiting the power of the Governor-General to make regulations under this section for or in relation to the control or prohibition of the importation or exportation of gold, or otherwise with respect to gold.
- (10) A reference in this section to property that is in Australia shall be read as including a reference to a right, not being property, that is exercisable in Australia, and a reference in this section to property that is outside Australia shall be read as including a reference to a right, not being property, that is not exercisable in Australia.
- (11) Nothing in subsection (1) shall be taken to affect, by implication or otherwise, the interpretation or operation of regulations made under this section.

39A Extra-territorial application of regulations

- (1) Regulations made under section 39 shall, except where the contrary intention appears, apply both within and without Australia.
- (2) A provision of the *Judiciary Act 1903* by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against the regulations made under section 39 of this Act not committed within

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any State, as if that jurisdiction were so invested without limitation as to locality.

- (3) Subject to the Constitution, jurisdiction is conferred on the several courts of a Territory, within the limits of their several jurisdictions other than limits as to locality, with respect to offences against the regulations made under section 39 not committed within a State or within another Territory.
- (4) The trial on indictment of an offence against the regulations made under section 39 not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

39B Granting of authorities by Reserve Bank subject to taxation clearance

- (1) Where regulations made under section 39 contain a provision prohibiting the doing of an act or thing without the authority of the Reserve Bank and an application is made to the Bank for the authority of the Bank to do that act or thing, then:
 - (a) if the act or thing is of a kind specified in a notice in force under subsection (2) of this section—the Bank shall not grant that authority unless there is produced to the Bank, in respect of that act or thing, a tax clearance certificate issued under section 14C of the *Taxation Administration Act 1953* in respect of that act or thing; or
 - (b) in any other case—the Bank may refuse to grant that authority unless there is produced to the Bank such a certificate;but the foregoing shall not be taken as limiting the discretion of the Bank to refuse to grant any such authority on any other ground.
- (2) The Treasurer may, by notice in writing published in the *Gazette*, direct that acts or things of a kind specified in the notice are, on and after the date of publication of the notice or such later date as is specified in the notice, acts or things of a kind to which this section applies.

Part IV—Gold

40 Operation of Part [see Note 2]

- (1) This Part shall not be in operation except as provided by this section.
- (2) Where the Governor-General is satisfied that it is expedient so to do, for the protection of the currency or of the public credit of the Commonwealth, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall come into operation, and this Part, or the provisions so specified, shall thereupon come into operation.
- (3) Where the Governor-General is satisfied that it is no longer expedient, for the protection of the currency or of the public credit of the Commonwealth, that this Part, or any of the provisions of this Part, should remain in operation, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall cease to be in operation, and thereupon this Part, or the provisions so specified, shall cease to be in operation.

41 Transfer of gold out of Australia

- (1) A person shall not, except with the consent in writing of the Reserve Bank, take or send any gold out of Australia.
- (2) A person is guilty of an offence if:
 - (a) the person contravenes subsection (1); and
 - (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
 - (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

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

- (3) An offence against subsection (2) is an indictable offence.

42 Delivery of gold

- (1) Subject to this Part, a person who has any gold in the person's possession or under the person's control, not being:
- (a) gold coins the total value of the gold content of which does not exceed the prescribed amount; or
 - (b) gold lawfully in the possession of that person for the purpose of being worked or used by that person in connexion with the person's profession or trade;

shall deliver the gold to the Reserve Bank, or as prescribed, within one month after the gold comes into the person's possession or under the person's control or, if the gold is in the person's possession or under the person's control on any date on which this Part comes into operation, within one month after that date.

- (1A) A person is guilty of an offence if:
- (a) the person fails to comply with subsection (1); and
 - (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
 - (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 50 penalty units.

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

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

- (2) Where a person who has gold lawfully in the person's possession for the purpose of being worked or used by the person in connexion with the person's profession or trade ceases to have that purpose in respect of that gold, the person shall deliver the gold to the Reserve Bank, or as prescribed, within one month after the person has ceased to have that purpose in respect of that gold.

- (3) A person is guilty of an offence if:
- (a) the person fails to comply with subsection (2); and
 - (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
 - (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 50 penalty units.

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

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

43 Vesting of gold delivered

All gold delivered in pursuance of section 42 shall thereupon vest in the Reserve Bank absolutely, free from any mortgage, charge, lien, trust or other interest in or affecting the gold, and the Reserve Bank shall pay for the gold, to the person delivering the gold, on behalf of all persons having any interest in the gold, an amount determined in accordance with section 44 and the Reserve Bank shall not be under any liability to any other person claiming any interest in the gold.

44 Payment for gold

The amount to be paid for any gold delivered in pursuance of section 42 shall be an amount determined in accordance with such price as is fixed and published by the Reserve Bank or, at the option of the person delivering the gold, such amount as is determined in an action for compensation against the Reserve Bank.

45 Limitation of sale and purchase of gold

- (1) Subject to this Part:
- (a) a person shall not sell or otherwise dispose of gold to a person other than the Reserve Bank or a person authorized in writing by the Reserve Bank to purchase gold; and

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- (b) a person, other than the Reserve Bank or a person so authorized, shall not buy or otherwise obtain gold from any person.

(1A) A person is guilty of an offence if:

- (a) the person fails to comply with subsection (1); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
- (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

- (2) A person may buy gold from the Reserve Bank or from a person authorized in writing by the Reserve Bank to sell gold, and the Reserve Bank or a person so authorized may sell gold to a person, for the purpose of its being worked or used by the purchaser in connexion with the person's profession or trade.
- (3) A person authorized by the Reserve Bank under this section shall comply with such directions relating to gold as are given to the person by the Reserve Bank.
- (4) A person is guilty of an offence if:
 - (a) the person fails to comply with subsection (3); and
 - (b) there is no order in force under section 11 determining that this subsection does not apply to the person; and
 - (c) there is no instrument in force under section 48 exempting the person from the application of this subsection.

Maximum penalty: 200 penalty units.

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

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

- (5) An offence against subsection (4) is an indictable offence.

46 Limitation on working of gold

- (1) A person shall not work or use in manufacture any gold, not being gold lawfully in the person's possession for the purpose of being worked or used by the person in connexion with the person's profession or trade.
- (2) A person is guilty of an offence if:
- (a) the person fails to comply with subsection (1); and
 - (b) there is no order in force under section 11 determining that subsection (1) does not apply to the person; and
 - (c) there is no instrument in force under section 48 exempting the person from the application of subsection (1).

Maximum penalty: 200 penalty units.

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

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

- (3) An offence against subsection (2) is an indictable offence.

47 Application of Part

- (1) This Part does not apply to wrought gold, not being wrought gold worked or manufactured in contravention of this Part.
- (2) In this section, **wrought gold** means gold and gold alloys which on view have apparently been worked or manufactured for professional or trade purposes and includes the waste products arising from the working or manufacturing of gold and gold alloys for professional or trade purposes.

48 Exemptions

The Reserve Bank may, by instrument in writing, and either wholly or to the extent specified in the instrument, exempt a person from the application of the whole or any of the provisions of this Part

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and, so long as the exemption continues, that person is exempt accordingly.

Part V—Interest rates

50 Control of interest rates

- (1) The Reserve Bank may, with the approval of the Treasurer, make regulations:
 - (a) making provision for or in relation to the control of rates of interest payable to or by ADIs, or to or by other persons in the course of any banking business carried on by them;
 - (b) making provision for or in relation to the control of rates of discount chargeable by ADIs, or by other persons in the course of any banking business carried on by them;
 - (c) providing that interest shall not be payable in respect of an amount deposited with an ADI, or with another person in the course of banking business carried on by the person, and repayable on demand or after the end of a period specified in the regulations; and
 - (d) prescribing penalties, for offences against the regulations, not exceeding:
 - (i) if the offender is a natural person—a fine of \$5,000; or
 - (ii) if the offender is a body corporate—a fine of \$25,000.

Part VII—Miscellaneous

61 APRA may conduct investigations

- (1) APRA may appoint a person to investigate and report on prudential matters in relation to a body corporate that is an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC, if it is satisfied that such a report is necessary. The appointment must be in writing and must specify the prudential matters that are to be the subject of the investigation and report.
- (2) If APRA has appointed a person under this section to investigate and report on prudential matters in relation to a body corporate, the body corporate must give the person access to its books, accounts and documents and must give the person such information and facilities as the person requires to conduct the investigation and produce the report.
- (2A) A body corporate is guilty of an offence if:
 - (a) under subsection (1), APRA has appointed a person to investigate and report on prudential matters in relation to the body corporate; and
 - (b) the body corporate:
 - (i) does not give the person access to its books, accounts and documents; or
 - (ii) fails to comply with a requirement made under subsection (2) for the provision of information or facilities; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the body corporate.

Maximum penalty: 50 penalty units.

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

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

- (2B) If a body corporate does or fails to do an act in circumstances that give rise to the body corporate committing an offence against subsection (2A), the body corporate is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the body corporate committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (3) Nothing in this section is intended to limit the operation of any other provision of this Act.

62 Supply of information

- (1) APRA may require persons to provide information as follows:
- (a) an ADI may be required to give APRA information in respect of the ADI;
 - (b) an authorised NOHC may be required to give APRA information in respect of the NOHC;
 - (c) a subsidiary of an ADI or an authorised NOHC may be required to give APRA information in respect of the subsidiary;
 - (d) any other person who carries on any banking business in Australia may be required to give APRA information in connection with the person's banking business.

The requirement to supply information may include a requirement to supply books, accounts or documents.

- (1A) A person is guilty of an offence if:
- (a) under subsection (1), APRA requires the person to provide information, books, accounts or documents; and
 - (b) the person fails to comply with the requirement; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 200 penalty units.

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

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

(1B) An offence against subsection (1A) is an indictable offence.

(1C) If a person fails to comply with a requirement under subsection (1) in circumstances that give rise to the person committing an offence against subsection (1A), the person is guilty of an offence against subsection (1A) in respect of:

- (a) the first day on which the offence is committed; and
- (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

(2) A requirement under subsection (1) must not require information, books, accounts or documents to be given with respect to the affairs of an individual customer of an ADI unless the information, books, accounts or documents are in respect of prudential matters relating to the ADI.

(3) An individual is not excused from complying with a requirement under subsection (1) to give information, books, accounts or documents on the ground that doing so would tend to incriminate the individual or make the individual liable to a penalty.

(4) If:

- (a) before giving information, books, accounts or documents in compliance with a requirement under subsection (1), an individual claims that giving the information, books, accounts or documents might tend to incriminate the individual or make the individual liable to a penalty; and
- (b) giving the information, books, accounts or documents might in fact tend to incriminate the individual or make the individual so liable;

the information, books, accounts or documents given in compliance with the requirement is not, or are not, admissible in

evidence against the individual in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding in respect of the falsity of the information, books, accounts or documents.

63 Restructuring of ADIs

(1AA) If consent has been given under this section to an arrangement, agreement or reconstruction, the Treasurer must arrange for notice of the consent to be published in the *Gazette* as soon as practicable.

- (1) An ADI, other than a foreign ADI, is guilty of an offence if:
- (a) the ADI:
 - (i) enters into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or
 - (ii) effects a reconstruction of the ADI; and
 - (b) the Treasurer did not give prior consent in writing to the ADI entering into the arrangement or agreement or effecting the reconstruction.

Maximum penalty: 200 penalty units.

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

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

- (1A) An offence against subsection (1) is an indictable offence.
- (2) Any such arrangement, agreement or reconstruction, and any such sale or disposal in pursuance of any such arrangement or agreement, entered into without the prior consent of the Treasurer is void and of no effect.
- (3) The consent of the Treasurer under subsection (1) shall not be unreasonably withheld.
- (3A) In making a decision whether to consent to an arrangement, agreement or reconstruction, the Treasurer must take the national interest into account.

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- (4) A foreign ADI is guilty of an offence if:
- (a) there is a proposal that involves the ADI:
 - (i) entering into an arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with another ADI; or
 - (ii) effecting a reconstruction of the ADI; and
 - (b) the ADI does not give the Treasurer reasonable notice, in writing, of the proposal.

Maximum penalty: 200 penalty units.

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

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

- (4A) An offence against subsection (4) is an indictable offence.
- (5) The Treasurer may, in writing, delegate all or any of his powers under this section and section 64 to:
- (a) APRA, an APRA member or an APRA staff member; or
 - (aa) ASIC, a member of ASIC or a staff member (as defined in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*) only in the case of a demutualisation of an ADI; or
 - (b) an officer of the Department.
- (6) A reference in this section to a reconstruction of an ADI includes a reference to a demutualisation of an ADI.
- (7) The regulations may define the meaning of **demutualisation** for the purposes of this section. If the regulations do so, **demutualisation** has, in this section, the meaning given by the regulations.
- (8) The Treasurer may, in writing, determine guidelines as to acceptable standards of disclosure of information by an ADI (other than a foreign ADI) to its members in respect of a proposed demutualisation of the ADI.
- (9) The Treasurer must consider whether an ADI has complied with the guidelines (if any) in deciding whether to give a consent, for

the purposes of paragraph (1)(b), to the ADI effecting a demutualisation.

- (10) In making a determination under subsection (8), the Treasurer must consult with APRA and ASIC.
- (11) A determination under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (12) Subsections (6) to (11) do not limit the generality of the rest of this section. In particular, those subsections do not limit the matters that the Treasurer may take into account in deciding whether to give a consent, for the purposes of paragraph (1)(b), to an ADI effecting a demutualisation.

64 Conditions on consent to restructure an ADI

- (1) The Treasurer's consent under subsection 63(1) is subject to the conditions (if any) imposed by the Treasurer on the consent.
- (2) The Treasurer may, by written notice given to the person who has been given the consent:
 - (a) impose conditions, or further conditions, on the consent; or
 - (b) revoke or vary any condition imposed on the consent; or
 - (c) revoke the consent if the Treasurer is satisfied that there has been a contravention of a condition to which the consent is subject.
- (2A) The Treasurer must arrange for a copy of a notice that has been given under subsection (2) to be published in the *Gazette* as soon as practicable.
- (3) The Treasurer's powers under subsection (2) may be exercised on the Treasurer's own initiative. The Treasurer's powers under paragraph (2)(a) or (b) may be exercised on application made to the Treasurer by the person who has been given the consent.

65 ADIs and authorised NOHCs may be directed to comply with Act

- (1) Where an ADI or an authorised NOHC is convicted of an offence against this Act or the regulations, a Full Court of the Federal Court of Australia may, upon the application of the Attorney-

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General by motion, direct compliance by the ADI or NOHC, within a period specified by the Court, with the provisions of this Act or the regulations with which the ADI or NOHC has failed to comply.

- (2) In default of compliance by the ADI or NOHC within the specified period with a direction given in pursuance of subsection (1), the Federal Court of Australia may authorize APRA to assume control of, and to carry on, the business of the ADI or NOHC.
- (3) The provisions of Subdivision B of Division 2 of Part II have effect, so far as they are applicable, as if they also extended to APRA being in control of the business of the ADI or NOHC under subsection (2) of this section, and as if they covered authorised NOHCs in the same way as they cover ADIs.
- (4) Where APRA has assumed control of the business of the ADI or NOHC under subsection (2), APRA shall remain in control of, and shall continue to carry on, the business of the ADI or NOHC until such time as the Federal Court of Australia is satisfied that it is no longer necessary for APRA to remain in control of the business of the ADI or NOHC and authorizes APRA to cease to control the business of the ADI or NOHC.

65A Injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
 - (a) a contravention of a provision of section 7, 8, 66, 66A or 67, or a condition imposed under section 64; or
 - (b) attempting to contravene the provision or condition; or
 - (c) aiding, abetting, counselling or procuring a person to contravene the provision or condition; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the provision or condition; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the provision or condition; or

- (f) conspiring with others to contravene the provision or condition;

the Federal Court of Australia may grant an injunction in accordance with subsection (2).

- (2) The injunction:
 - (a) may restrain the person from engaging in the conduct; and
 - (b) may also require that person to do a particular act or thing, if the Court thinks it desirable to do so.The Court may grant the injunction on such terms as it thinks appropriate.
- (3) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Performance injunctions

- (4) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required:
 - (a) by a provision of section 7, 8, 66, 66A or 67 to do; or
 - (b) by a condition on a consent given under subsection 63(1);the Court may grant an injunction requiring the person to do that act or thing. It may grant the injunction on such terms as the Court thinks appropriate.
- (5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

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- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

Who may apply for an injunction

- (6) The Court may only grant an injunction on the application of:
 - (a) APRA—in all cases; or
 - (b) the Treasurer—in the case of a contravention of a condition imposed under section 64; or
 - (c) ASIC or a member of the ADI—in the case of a contravention of a condition imposed under section 64 that has been imposed in relation to a demutualisation of an ADI.

In this subsection, *demutualisation* has the same meaning as in section 63.

Consent injunctions

- (7) If an application for an injunction under subsection (1) or (4) has been made, the Court may, if the Court thinks it appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that the subsection applies.

Interim injunctions

- (8) The Court may grant an interim injunction pending determination of an application under subsection (1).

Variation or discharge of injunctions

- (9) The Court may discharge or vary an injunction granted under subsection (1), (4) or (7).

Damages undertakings

- (10) APRA, ASIC and the Treasurer cannot be required, as a condition of granting an interim injunction, to give an undertaking as to damages.

Damages orders

- (11) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.
- (12) The powers conferred on the Court by this section are in addition to any other of its powers, and do not derogate from its other powers.

66 Restriction on use of certain words and expressions

- (1) A person is guilty of an offence if:
 - (a) the person carries on a financial business, whether or not in Australia; and
 - (b) the person assumes or uses, in Australia, a restricted word or expression in relation to that financial business; and
 - (c) neither subsection (1AB) nor subsection (1AC) allows that assumption or use of that word or expression; and
 - (d) APRA did not consent to that assumption or use of that word or expression; and
 - (e) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

Note 1: For the meanings of *restricted word or expression*, *assume or use* and *financial business*, see subsection (4).

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

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

- (1AA) If a person assumes or uses a word or expression in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:
 - (a) the first day on which the offence is committed; and

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- (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (1AB) It is not an offence against subsection (1) for the Reserve Bank to assume or use the words **bank**, **banker** or **banking** in relation to its financial business.

- (1AC) It is not an offence against subsection (1) for an ADI to assume or use the word **banking** in referring to the fact that it has been granted an authority under this Act.

Note: For example, an ADI may, in its letterhead, refer to itself as being authorised under the *Banking Act 1959* to carry on banking business.

- (1B) A consent may be expressed to apply to a particular person or to persons included in a class of persons.

- (2) APRA may, at any time:

- (a) impose conditions, or additional conditions, on a consent; or
- (b) vary or revoke conditions imposed on a consent; or
- (c) revoke a consent.

- (2A) The form of the granting of a consent, or the taking of action under subsection (2) in relation to a consent, is to be as follows:

- (a) if the consent applies to a particular person—notice in writing served on the person;
- (b) if the consent applies to a class of persons—notice in writing published in the *Gazette*.

- (2B) If APRA:

- (a) grants a consent; or
- (b) takes action under subsection (2) in relation to a consent;

APRA must give ASIC notice of the granting of the consent or the taking of the action.

- (3) A person is guilty of an offence if:

- (a) the person has been given a consent under this section; and

- (b) the person contravenes a condition to which the consent is subject; and
- (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

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

- (3A) If a person does or fails to do an act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (4) In this section:
- (a) a reference to a restricted word or expression is a reference to:
 - (i) the word ***bank, banker or banking***; or
 - (ii) the expression ***building society, credit union or credit society***; or
 - (iii) any other word or expression specified in a determination in force under subsection (5); or
 - (iv) any other word or expression (whether or not in English) that is of like import to a word or expression covered by any of the previous subparagraphs; and
 - (b) a reference to a word or expression being assumed or used includes a reference to the word or expression being assumed or used:
 - (i) as part of another word or expression; or
 - (ii) in combination with other words, letters or other symbols; and

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- (c) a reference to a financial business is a reference to a business that:
 - (i) consists of, or includes, the provision of financial services; or
 - (ii) relates, in whole or in part, to the provision of financial services.
- (5) APRA may, in writing, determine that a specified word or expression is to be a restricted word or expression for the purposes of this section. A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

66A Restriction on use of expressions *authorised deposit-taking institution* and *ADI*

- (1) A person, other than an ADI, is guilty of an offence if:
 - (a) the person carries on a financial business, whether or not in Australia; and
 - (b) the person assumes or uses, in Australia, the expression ***authorised deposit-taking institution***, or ***ADI***, in relation to that financial business; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

Note 1: For the meanings of *assume or use* and *financial business*, see subsection (2).

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

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

- (1A) If a person assumes or uses an expression in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:
 - (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue

(including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

(2) In this section:

- (a) a reference to an expression being assumed or used includes a reference to the expression being assumed or used:
 - (i) as part of another expression; or
 - (ii) in combination with other words, letters or other symbols; and
- (b) a reference to a financial business is a reference to a business that:
 - (i) consists of, or includes, the provision of financial services; or
 - (ii) relates, in whole or in part, to the provision of financial services.

(3) However, this section does not prohibit the use of the letters ADI as part of another word.

Note: For example, the letters *adi* appear in the word *traditional*. Use of the word *traditional* is not prohibited by this section.

67 Restriction on establishment or maintenance of representative offices of overseas banks

- (1) A person, other than an ADI, is guilty of an offence if:
 - (a) the person carries on banking business in a foreign country but does not carry on banking business in Australia; and
 - (b) the person establishes or maintains an office in Australia wholly or partly in connection with the carrying on of that banking business in that foreign country; and
 - (c) APRA did not consent, in writing, to the establishment or maintenance of that office; and
 - (d) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

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

- (1A) If a person establishes or maintains an office in circumstances that give rise to the person committing an offence against subsection (1), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (2) APRA may, at any time, by notice in writing served on the person concerned:
- (a) impose conditions, or additional conditions, on a consent;
 - (b) vary or revoke conditions imposed on a consent; or
 - (c) revoke a consent.
- (3) A person is guilty of an offence if:
- (a) the person has been given a consent under this section; and
 - (b) the person contravenes a condition to which the consent is subject; and
 - (c) there is no order in force under section 11 determining that this subsection does not apply to the person.

Maximum penalty: 50 penalty units.

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

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

- (4) If a person does or fails to do an Act in circumstances that give rise to the person committing an offence against subsection (3), the person is guilty of an offence against that subsection in respect of:
- (a) the first day on which the offence is committed; and
 - (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue

(including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

68 Bank holidays

- (1) The Treasurer may, by notice published in the *Gazette*, declare a day specified in the notice to be a bank holiday.
- (2) An ADI is not, on a day so declared to be a bank holiday, compellable to make a payment or to do any other act that the ADI would not be compellable to make or do on a Sunday and the obligation to make the payment or to do the act shall be deemed to be an obligation to make the payment or to do the act on the next day which is not a Sunday, a bank holiday or a public holiday.
- (3) This section does not affect the operation of any law of a State or Territory relating to bank holidays or public holidays.
- (4) In this section:
ADI includes the Reserve Bank.

69 Unclaimed moneys

- (1) For the purposes of this section, *unclaimed moneys* means all principal, interest, dividends, bonuses, profits and sums of money legally payable by an ADI but in respect of which the time within which proceedings may be taken for the recovery thereof has expired, and includes moneys to the credit of an account that has not been operated on either by deposit or withdrawal for a period of not less than 7 years.
- (2) For the purposes of subsection (1), the debiting of a fee to an account shall be deemed not to be a withdrawal and the crediting to an account of interest payable by an ADI on that account shall be deemed not to be a deposit.
- (3) An ADI shall, within 3 months after the 31 December in each year, deliver to the Treasurer a statement, complying with subsection (4) and any regulations under subsection (3), of all sums of unclaimed moneys, other than unclaimed moneys held in RSAs (within the

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meaning of the *Retirement Savings Accounts Act 1997*), of not less than \$100 or such higher amount as is prescribed.

(3AA) The ADI is guilty of an offence if:

- (a) it does not give the Treasurer a statement as required by subsection (3); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

(3A) The regulations may require the statement to be delivered in a specified form in a specified kind of disk, tape, film or other medium.

(4) The statement shall set out:

- (a) the name, and the last-known address, of each shareholder, depositor or creditor; and
- (b) the amount due; and
- (c) in the case of moneys to the credit of an account—the office or branch of the ADI at which the account was kept.

(5) The total amount shown in the statement shall be paid by the ADI to the Commonwealth at the time of the delivery of the statement.

(5A) The ADI is guilty of an offence if:

- (a) it does not pay, at the time of the delivery of the statement, the amount specified in the statement, as required by subsection (5); and
- (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

- (6) Subject to subsection (7), an ADI is, upon payment to the Commonwealth of an amount as required by this section, discharged from further liability in respect of that amount.
- (7) Where unclaimed moneys have been paid to the Commonwealth under this section and the Treasurer or an authorized officer is satisfied that, but for subsection (6), a person would be paid those unclaimed moneys by the ADI by which they were paid to the Commonwealth (or, if that ADI is no longer carrying on banking business, by an ADI to which the business of the first-mentioned ADI has been sold or disposed of), those unclaimed moneys shall be paid to that ADI and the ADI shall thereupon pay those moneys to that person.
- (7A) The ADI is guilty of an offence if:
 - (a) it does not pay moneys to a person as required by subsection (7); and
 - (b) there is no order in force under section 11 determining that this subsection does not apply to the ADI.

Maximum penalty: 50 penalty units.

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

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

- (8) The Consolidated Revenue Fund is appropriated for the purposes of, and to the extent necessary to give effect to, subsection (7).
- (9) The Treasurer shall cause particulars of every sum shown in a statement delivered under this section to be:
 - (a) published in the *Gazette*; or
 - (b) made available to the public (whether or not on the payment of a fee) in such other manner as the Treasurer determines.
- (11) The Treasurer or an ADI may apply to the Federal Court of Australia for a declaration whether any moneys are or are not

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unclaimed moneys within the meaning of this section and the Federal Court of Australia may make a declaration accordingly.

- (11A) It is the intention of the Parliament that a law of a State or Territory has no effect insofar as it requires an ADI to:
- (a) pay unclaimed moneys to, or to an authority of, a State or Territory; or
 - (b) lodge a return relating to unclaimed moneys with, or with an authority of, a State or Territory.

- (11B) The Treasurer may, by instrument in writing, delegate any of his or her functions or powers under this section to:
- (a) a Commonwealth authority for which the Treasurer is the responsible Minister; or
 - (b) a member, or staff member, of such an authority.

In this section, *Commonwealth authority* and *responsible Minister* have the respective meanings given by the *Commonwealth Authorities and Companies Act 1997*.

- (11C) The reference to the Treasurer in paragraph (3AA)(a) is to be read as including a reference to the authority or person to whom the Treasurer has delegated his or her function under subsection (3).

- (12) In this section:

authorized officer, means the Secretary to the Department of the Treasury or an officer of that Department authorized by the Secretary to act under this section.

69AA Powers about money of depositors who have died

- (1) If a depositor of an ADI dies, the ADI may apply an amount not exceeding \$15,000 held by the ADI that was deposited or paid up on a withdrawable share by the deceased person:
- (a) in payment of the deceased person's funeral expenses or debts; or
 - (b) in payment to the executor of the deceased person's will; or
 - (c) in payment to anyone else who is, in the ADI's opinion, entitled to the amount, having regard to the laws of probate and accepted practice for the administration of deceased estates.

The amount may be applied without production of probate, of the will or letters of administration of the estate.

- (2) No action lies against an ADI for acting, or failing to act, under subsection (1).

69C Conduct of directors, servants and agents

- (3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

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Note: For provisions relating to proof of offences by bodies corporate, see Part 2.5 of the *Criminal Code*.

69D Disclosure of information received under Act prohibited in certain circumstances

Part 6 of the *Australian Prudential Regulation Authority Act 1998* prohibits certain disclosures of information received under this Act.

69E Compensation for acquisition of property

(1) If:

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

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

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

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

69F Severability

Act also has effect as provided in this section

- (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

References to a NOHC of an ADI

- (2) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:
 - (a) the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;
 - (b) the Act has effect as if a reference to a NOHC of an ADI were expressly limited to a reference to a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

References to a subsidiary of an ADI

- (3) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:
 - (a) the Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;
 - (b) this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (a) of the ***banking business definition***;
 - (c) this Act has effect as if a reference to a subsidiary of an ADI were expressly limited to a reference to a subsidiary of an ADI, being an ADI that carries on banking business as mentioned in paragraph (b) of the ***banking business definition***.

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References to a subsidiary of an authorised NOHC

- (4) This Act has, by force of this subsection, the effect it would have if the Act separately provided as mentioned in the following paragraphs:
- (a) the Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;
 - (b) this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (a) of the *banking business definition*;
 - (c) this Act has effect as if a reference to a subsidiary of an authorised NOHC were expressly limited to a reference to a subsidiary of an authorised NOHC, being a NOHC of an ADI that carries on banking business as mentioned in paragraph (b) of the *banking business definition*.

Interpretation

- (5) In this section:
- banking business definition* means the definition of banking business in subsection 5(1).

70A Indemnity

A person is not subject to any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in connection with the exercise of powers or performance of functions under this Act or in compliance with obligations imposed by this Act.

70B Act has effect despite the Corporations Act

This Act has effect despite any provision of the *Corporations Act 2001*.

71 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing penalties for offences against the regulations which, except as otherwise provided by this Act, shall not exceed:
 - (a) if the offender is a natural person—a fine of 50 penalty units;
or
 - (b) if the offender is a body corporate—a fine of 250 penalty units.
- (2) Without limiting the generality of subsection (1), the regulations may confer on APRA functions relating to the supervision of ADIs and NOHCs in relation to prudential matters.
- (3) The Governor-General shall not make regulations for or in relation to requiring ADIs or NOHCs to observe requirements in relation to prudential matters except in accordance with the recommendation of the Treasurer.
- (4) Before making a recommendation for the purposes of subsection (3), the Treasurer shall consult APRA.

The Schedules

Schedule 1—State and Territory laws relating to ADI mergers

Note: See section 38A.

The Commercial Bank of Australia Limited (Merger) Act, 1982 of New South Wales

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of New South Wales

The Commercial Bank of Australia Limited (Merger) Act 1982 of Victoria

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Victoria

Commercial Bank of Australia Limited Merger Act 1982 of Queensland

Commercial Banking Company of Sydney Limited Merger Act 1982 of Queensland

The Commercial Bank of Australia Limited (Merger) Act, 1982 of South Australia

The Commercial Banking Company of Sydney Limited (Merger) Act, 1982 of South Australia

The Commercial Bank of Australia Limited (Merger) Act 1982 of Western Australia

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Western Australia

Commercial Bank of Australia Limited (Merger) Act 1982 of Tasmania

Commercial Banking Company of Sydney Limited (Merger) Act 1982 of Tasmania

The Commercial Bank of Australia Limited (Merger) Act 1982 of the Northern Territory

The Commercial Banking Company of Sydney Limited (Merger) Act 1982 of the Northern Territory

The Commercial Bank of Australia Limited (Merger) Ordinance 1982 of the Australian Capital Territory

The Commercial Banking Company of Sydney Limited (Merger) Ordinance 1982 of the Australian Capital Territory

Table of Acts**Notes to the *Banking Act 1959*****Note 1**

The *Banking Act 1959* as shown in this compilation comprises Act No. 6, 1959 amended as indicated in the Tables below.

The *Banking Act 1959* was amended by the Banking (Statistics) Regulations (as amended). The amendments made by these Regulations were repealed by Statutory Rules 1989 No. 357. The amendments are incorporated in this compilation.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 29 June 1998 is not included in this compilation. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Banking Act 1959</i>	6, 1959	23 Apr 1959	14 Jan 1960 (see <i>Gazette</i> 1960, p. 47)	
<i>Banking Act 1965</i>	127, 1965	18 Dec 1965	14 Feb 1966	—
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Banking Act 1967</i>	84, 1967	8 Nov 1967	8 Nov 1967	—
<i>Banking Act 1973</i>	116, 1973	26 Oct 1973	Ss. 1–3, 5, 6 and 11: Royal Assent Remainder: 1 Nov 1973	—
<i>Banking Act (No. 2) 1973</i>	193, 1973	17 Dec 1973	17 Dec 1973	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
as amended by <i>Statute Law Revision Act 1974</i>	20, 1974	25 July 1974	31 Dec 1973	—
<i>Banking Act 1974</i>	132, 1974	9 Dec 1974	23 Dec 1974 (see <i>Gazette</i> 1974, No. 103D)	Ss. 4–6

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Rural Bank Act 1977</i>	156, 1977	10 Nov 1977	Part III (ss. 12–19): 22 Sept 1978 (see <i>Gazette</i> 1978, No. S185) Remainder: Royal Assent	—
as amended by				
<i>Primary Industry Bank Amendment Act 1978</i>	78, 1978	22 June 1978	22 June 1978	—
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86) Remainder: Royal Assent	S. 124
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part XII (ss. 31–33): 1 Oct 1982 (see <i>Gazette</i> 1982, No. S202) (a)	—
<i>Commonwealth Banks Amendment Act 1984</i>	76, 1984	25 June 1984	29 June 1984 (see <i>Gazette</i> 1984, No. S241)	—
<i>Banking Legislation Amendment Act 1986</i>	166, 1986	18 Dec 1986	Ss. 9–11 and Part III (ss. 13–17): 30 Nov 1988 (see <i>Gazette</i> 1988, No. S362) Remainder: 15 Jan 1987	—
<i>Primary Industry Bank Repeal Act 1987</i>	105, 1987	10 Nov 1987	10 Nov 1987	—
<i>Banking Legislation Amendment Act 1989</i>	129, 1989	7 Nov 1989	Ss. 1–3, 26, 29–33, 35, 38 and 40: Royal Assent S. 23(1): 4 May 1989 S. 39: 23 Jan 1988 Remainder: 28 Dec 1989 (see <i>Gazette</i> 1989, No. S383)	Ss. 5(2), 20(2)–(4), 27 and 28
<i>Commonwealth Banks Restructuring Act 1990</i>	118, 1990	28 Dec 1990	S. 62: (b)	S. 5
<i>Bank Integration Act 1991</i>	210, 1991	24 Dec 1991	S. 32: 1 Jan 1993 (see <i>Gazette</i> 1992, No. GN36, p. 2415) (c) Remainder: Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Banking Legislation Amendment Act 1992</i>	193, 1992	21 Dec 1992	Ss. 4(2), 5(1), 16, 17, 19–21 and 35: 5 Feb 1993 (see s. 2(2), (6) and <i>Gazette</i> 1993, No. GN4, p. 359) Ss. 4(3) and 5(2): 1 July 1994 (see <i>Gazette</i> 1994, No. GN25) Remainder: Royal Assent	Ss. 15–18
<i>Banking (State Bank of South Australia and Other Matters) Act 1994</i>	69, 1994	9 June 1994	Ss. 3, 4, 5(1) and 6(1): 1 July 1994 (see <i>Gazette</i> 1994, No. GN25) Ss. 5(2) and 6(2): 22 June 1995 (see <i>Gazette</i> 1995, No. GN24) Remainder: Royal Assent	Ss. 3, 58 and 61
<i>Banking (Queensland Industry Development Corporation) Amendment Act 1995</i>	99, 1995	15 Sept 1995	15 Sept 1995	—
<i>Commonwealth Bank Sale Act 1995</i>	161, 1995	16 Dec 1995	Schedule (items 3–6): (d)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1992	Schedule 2 (items 20, 21): (e)	—
<i>Retirement Savings Accounts (Consequential Amendments) Act 1997</i>	62, 1997	28 May 1997	2 June 1997 (see s. 2 and <i>Gazette</i> 1997, No. S202)	—
<i>Financial Laws Amendment Act 1997</i>	107, 1997	30 June 1997	Schedule 1: Royal Assent (f)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i>	54, 1998	29 June 1998	Schedule 2 (items 1–85, 87–159): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (g) Schedule 2 (item 86): 1 July 1999 (see <i>Gazette</i> 1999, No. S289) (g) Schedule 19 (items 1–19): Royal Assent (g)	Sch. 19 (items 1–19) [see Table A]
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedules 2 and 8: Royal Assent (h)	Sch. 8 (items 7–9, 22, 23) [see Table A]

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000</i>	24, 2000	3 April 2000	Schedule 2: Royal Assent (<i>i</i>) Schedule 12 (items 1–3): 3 Apr 2000 (<i>i</i>)	Sch. 12 (items 1–3) [see Table A]
<i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	Sch. 1 (item 19) [see Table A]
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 69–78): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (<i>j</i>)	Ss. 4–14
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and <i>Gazette</i> 2002, No. GN24)	Sch. 2 (item 18) and Sch. 3 (items 1–4) [see Table A]
<i>Australian Prudential Regulation Authority Amendment Act 2003</i>	42, 2003	24 June 2003	Schedules 1–3: 1 July 2003 (see <i>Gazette</i> 2003, No. S230) Remainder: Royal Assent	Sch. 3 [see Table A]

Act Notes

- (a) The *Banking Act 1959* was amended by Part XII (sections 31–33) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(4) of which provides as follows:
- (4) Parts XII and XIX shall come into operation on such respective dates as are fixed by Proclamation.
- (b) The *Banking Act 1959* was amended by section 62 only of the *Commonwealth Banks Restructuring Act 1990*, subsection 2(3) of which provides as follows:
- (3) Each of the remaining provisions of this Act commences on a day, or at a time, fixed by Proclamation in relation to the provisions concerned.
- In pursuance of subsection 2(3) the date of commencement was 31 December 1990 (see *Gazette* 1990, No. S346 and Victorian Government Gazette, No. S73, 31.12.90).
- (c) Section 32 of the *Bank Integration Act 1991* provides as follows:
32. On the succession day for the Commonwealth Bank and the Commonwealth Savings Bank, the Acts referred to in Schedule 3 are amended as set out in that Schedule.
- The succession day was 1 January 1993 (see *Gazette* 1992, No. GN36, p. 2415).
- (d) The *Banking Act 1959* was amended by the Schedule (items 3–6) only of the *Commonwealth Bank Sale Act 1995*, subsection 2(2) of which provides as follows:
- (2) Part 3, and all the items of the Schedule (except items 1, 12, 16, 17, 21, 22, 23, 26, 27, 31, 37 and 48), commence at the transfer time.
- The transfer time occurred on 19 July 1996.
- (e) The *Banking Act 1959* was amended by Schedule 2 (items 20 and 21) only of the *Statute Law Revision Act 1996*, subsection 2(2) of which provides as follows:
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Items 20 and 21 are taken to have commenced immediately after the commencement of section 26 of the *Banking Legislation Amendment Act 1989*.
- Section 26 of the *Banking Legislation Amendment Act 1989* commenced on 7 November 1989.
- (f) The *Banking Act 1959* was amended by Schedule 1 only of the *Financial Laws Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (g) The *Banking Act 1959* was amended by Schedule 2 (items 1–159) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsections 2(2)(b), (3) and (4) of which provide as follows:
- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
- (b) Schedule 2, other than item 86;
- (3) Subject to subsection (4), item 86 of Schedule 2 commences on a day to be fixed by Proclamation.
- (h) The *Banking Act 1959* was amended by Schedule 2 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsection 3(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (i) The *Banking Act 1959* was amended by Schedule 2 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsections 2(1), (12) and (13) of which provide as follows:
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Act Notes

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (12) Part 1 of Schedule 12 commences:
 - (a) after all of the Acts listed in subsection (13) have received the Royal Assent; and
 - (b) on the day that is the last day on which any of those Acts received the Royal Assent.
 - (13) These are the relevant Acts for the purposes of paragraph (12)(a):
 - (a) this Act;
 - (b) each of the Acts referred to in the definition of **Validation Act** in item 1 of Schedule 12 to this Act.
- (j) The *Banking Act 1959* was amended by Schedule 3 (items 69–78) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

Table of Amendments**Table of Amendments**

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

Provision affected	How affected
Part I	
S. 3	rep. No. 116, 1973
S. 5	am. No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 76, 1984; No. 105, 1987; No. 129, 1989; No. 118, 1990; No. 210, 1991; No. 193, 1992; No. 69, 1994; Nos. 99 and 161, 1995; No. 54, 1998; No. 44, 1999; No. 24, 2000; No. 55, 2001; No. 42, 2003
S. 6	am. No. 116, 1973; No. 193, 1992; No. 69, 1994; No. 99, 1995; No. 54, 1998
S. 6A	ad. No. 116, 1973 am. No. 129, 1989
S. 6B	ad. No. 44, 1999
Part II	
Division 1	
S. 7.....	am. No. 93, 1966; No. 129, 1989 rs. No. 44, 1999
S. 8.....	am. No. 93, 1966; No. 129, 1989 rs. No. 44, 1999
Note to s. 8.....	ad. No. 54, 1998 rs. No. 44, 1999
S. 9	am. No. 93, 1966; No. 116, 1973; No. 129, 1989; No. 193, 1992; No. 69, 1994; No. 54, 1998; No. 44, 1999
Note to s. 9(2).....	ad. No. 54, 1998
S. 9A	ad. No. 84, 1967 am. No. 116, 1973 rep. No. 193, 1992 ad. No. 54, 1998 am. No. 121, 2001
S. 9B	ad. No. 54, 1998
S. 9C	ad. No. 54, 1998
Heading to s. 10	am. No. 54, 1998
S. 10	am. No. 93, 1966; No. 84, 1967; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987; No. 129, 1989; No. 193, 1992; No. 54, 1998; No. 44, 1999
Heading to s. 11	rs. No. 54, 1998
S. 11	am. No. 93, 1966; No. 129, 1989; No. 54, 1998; No. 44, 1999
Division 1AA	
Div. 1AA of Part II.....	ad. No. 54, 1998
S. 11AA	ad. No. 54, 1998 am. No. 44, 1999
S. 11AB	ad. No. 54, 1998 am. No. 121, 2001
Ss. 11AC, 11AD.....	ad. No. 54, 1998

Table of Amendments

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

Provision affected	How affected
Division 1A	
Heading to Div. 1A of Part II.....	rs. No. 54, 1998
Div. 1A of Part II	ad. No. 129, 1989
S. 11AF	ad. No. 54, 1998 am. No. 44, 1999
Heading to s. 11A	am. No. 54, 1998
S. 11A.....	ad. No. 129, 1989 am. No. 54, 1998
Heading to s. 11B	am. No. 54, 1998
S. 11B.....	ad. No. 129, 1989 am. No. 54, 1998
S. 11C	ad. No. 129, 1989
Division 1BA	
Div. 1BA of Part II	ad. No. 54, 1998
Subdivision A	
Heading to Subdiv. A of	rs. No. 44, 1999
Div. 1BA of Part II	
S. 11CA.....	ad. No. 54, 1998 am. No. 44, 1999; No. 160, 2000; Nos. 55 and 121, 2001
Subdivision B	
Heading to Subdiv. B of	rs. No. 44, 1999
Div. 1BA of Part II	
Heading to s. 11CB.....	am. No. 44, 1999
S. 11CB.....	ad. No. 54, 1998 am. No. 44, 1999
Heading to s. 11CC	am. No. 44, 1999
S. 11CC.....	ad. No. 54, 1998 am. No. 44, 1999
Subdivision C	
Ss. 11CD–11CF.....	ad. No. 54, 1998
S. 11CG.....	ad. No. 54, 1998 am. No. 44, 1999; No. 55, 2001
Division 1B	
Heading to Div. 1B of Part II.....	rs. No. 54, 1998
Div. 1B of Part II	ad. No. 193, 1992
S. 11D	ad. No. 193, 1992 am. No. 54, 1998
Heading to s. 11E	am. No. 54, 1998
S. 11E.....	ad. No. 193, 1992 am. No. 54, 1998; No. 44, 1999
Heading to s. 11F	am. No. 54, 1998
S. 11F.....	ad. No. 193, 1992 am. No. 54, 1998
Heading to Subdiv. A of	ad. No. 54, 1998
Div. 2 of Part II	

Table of Amendments

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

Provision affected	How affected
Division 2	
Subdivision A	
Heading to s. 12	am. No. 54, 1998
S.12.....	am. No. 54, 1998
S. 13	am. No. 116, 1973; No. 129, 1989 rs. No. 54, 1998 am. No. 44, 1999; No. 160, 2000
Heading to s. 13A	am. No. 160, 2000
S. 13A.....	ad. No. 54, 1998 am. No. 44, 1999; No. 160, 2000
S. 13B.....	ad. No. 54, 1998 am. No. 44, 1999; No. 160, 2000
S. 13C	ad. No. 54, 1998 am. No. 55, 2001
S. 14	am. No. 93, 1966; No. 116, 1973; No. 19, 1979; No. 129, 1989 rep. No. 54, 1998
Subdivision B	
Subdiv. B of Div. 2 of Part II.....	ad. No. 54, 1998
S. 14A.....	ad. No. 54, 1998 am. No. 44, 1999
S. 14B.....	ad. No. 54, 1998
Subhead. to s. 14C(4)	am. No. 55, 2001
S. 14C	ad. No. 54, 1998 am. No. 55, 2001
Ss. 14D, 14E	ad. No. 54, 1998
S. 14F.....	ad. No. 54, 1998 am. No. 55, 2001
S. 15.....	am. No. 129, 1989 rs. No. 54, 1998 am. No. 55, 2001
S. 15A.....	ad. No. 54, 1998 am. No. 55, 2001
Ss. 15B, 15C	ad. No. 54, 1998
S. 16.....	am. No. 93, 1966; No. 129, 1989 rs. No. 54, 1998
S. 16A.....	ad. No. 54, 1998
Division 2A	
Div. 2A of Part II.....	ad. No. 54, 1998
S. 16B.....	ad. No. 54, 1998 am. No. 44, 1999; No. 121, 2001
S. 16C	ad. No. 54, 1998 am. No. 121, 2001
Div. 3 of Part II	rs. No. 129, 1989 rep. No. 54, 1998

Table of Amendments

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

Provision affected	How affected
S. 17	am. No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987 rs. No. 129, 1989 rep. No. 54, 1998
S. 18.....	rs. No. 129, 1989 rep. No. 54, 1998
Heading to s. 19	am. No. 54, 1998 rep. No. 54, 1998
S.19.....	rs. No. 129, 1989 am. No. 54, 1998 rep. No. 54, 1998
S. 20.....	rs. No. 129, 1989 am. No. 54, 1998 rep. No. 54, 1998
S. 21	rs. No. 129, 1989 am. No. 54, 1998 rep. No. 54, 1998
Heading to s. 22	am. No. 54, 1998 rep. No. 54, 1998
S. 22	am. No. 116, 1973 rs. No. 129, 1989 am. No. 54, 1998 rep. No. 54, 1998
S. 23.....	rs. No. 129, 1989 am. No. 54, 1998; No. 44, 1999 rep. No. 54, 1998
S. 24.....	rs. No. 129, 1989 am. No. 54, 1998 rep. No. 54, 1998
S. 25	am. No. 116, 1973; No. 216, 1973 (as am. by No. 20, 1974) rs. No. 129, 1989 am. No. 54, 1998 rep. No. 54, 1998
S. 26	am. No. 93, 1966; No. 116, 1973 rep. No. 129, 1989
S. 27	am. No. 127, 1965 rep. No. 129, 1989
Ss. 28, 29	rep. No. 129, 1989
Ss. 30, 31	am. No. 116, 1973 rep. No. 129, 1989
Division 4	
S. 32.....	am. No. 54, 1998
S. 33	am. No. 93, 1966; No. 116, 1973; No. 129, 1989; No. 54, 1998; No. 44, 1999
S. 34	am. No. 129, 1989; No. 54, 1998
S. 35.....	am. No. 54, 1998

Table of Amendments

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

Provision affected	How affected
Division 5	
S. 36	am. No. 93, 1966; No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987; No. 129, 1989; No. 54, 1998; No. 44, 1999
Div. 6 of Part II	rep. No. 129, 1989
S. 37	am. No. 93, 1966; No. 116, 1973 rep. No. 129, 1989
S. 38	rep. No. 129, 1989
Part IIA	
Heading to Part IIA	rs. No. 54, 1998
Part IIA	ad. No. 80, 1982
Heading to s. 38A	am. No. 44, 1999
S. 38A	ad. No. 80, 1982 am. No. 107, 1997; No. 54, 1998
Part III	
Part III	rs. No. 132, 1974
S. 39	am. No. 93, 1966; No. 193, 1973 rs. No. 132, 1974 am. No. 129, 1989; No. 107, 1997
Ss. 39A, 39B	ad. No. 132, 1974 am. No. 129, 1989
Part IV	
S. 40	am. No. 129, 1989
S. 41	am. No. 44, 1999
S. 42	am. No. 129, 1989; No. 43, 1996; No. 107, 1997; No. 44, 1999
S. 43	am. No. 129, 1989
S. 44	am. No. 116, 1973
Ss. 45, 46	am. No. 129, 1989; No. 44, 1999
S. 49	am. No. 93, 1966; No. 116, 1973 rep. No. 129, 1989
Part V	
S. 50	am. No. 93, 1966; No. 129, 1989; No. 54, 1998
Part VI	rs. No. 129, 1989 rep. No. 121, 2001
Heading to Part VI	rs. No. 44, 1999 rep. No. 121, 2001
Heading to s. 51	am. No. 54, 1998 rep. No. 121, 2001
S. 51	am. No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 105, 1987 rs. No. 129, 1989 am. No. 54, 1998 rep. No. 121, 2001
S. 52	am. Statutory Rules 1962 No. 92; No. 93, 1966; No. 166, 1986

Table of Amendments

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

Provision affected	How affected
	rs. No. 129, 1989 rep. No. 54, 1998
S. 53	am. Statutory Rules 1962 No. 92; No. 93, 1966; No. 116, 1973 rep. No. 129, 1989
S. 54	am. No. 93, 1966; No. 166, 1986 rep. No. 129, 1989
S. 55	am. No. 166, 1986 rep. No. 129, 1989
Ss. 56, 57	rep. No. 129, 1989
S. 58	am. No. 166, 1986 rep. No. 129, 1989
Ss. 59, 60	rep. No. 129, 1989
Part VII	
S. 61	am. No. 93, 1966 rs. No. 129, 1989; No. 54, 1998 am. No. 44, 1999
S. 62	am. No. 93, 1966; No. 129, 1989 rs. No. 54, 1998 am. No. 44, 1999; No. 160, 2000; No. 121, 2001
Heading to s. 63	am. No. 54, 1998
S. 63	am. No. 93, 1966; No. 116, 1973; No. 129, 1989; No. 69, 1994; No. 54, 1998; No. 44, 1999; Nos. 24 and 160, 2000; No. 55, 2001; No. 42, 2003
S. 63A	ad. No. 84, 1967 am. No. 129, 1989 rep. No. 193, 1992
S. 63B	ad. No. 156, 1977 (as am. by No. 78, 1978) rep. No. 105, 1987
S. 64	am. No. 93, 1966; No. 129, 1989 rep. No. 54, 1998 ad. No. 160, 2000
Heading to s. 65	am. No. 54, 1998
S. 65	am. No. 116, 1973; No. 19, 1979; No. 129, 1989; No. 54, 1998
S. 65A	ad. No. 160, 2000
Heading to s. 66	rs. No. 54, 1998
S. 66	am. No. 93, 1966 rs. No. 129, 1989 am. No. 54, 1998; No. 44, 1999
S. 66A	ad. No. 54, 1998 am. No. 44, 1999
S. 67	am. No. 93, 1966 rs. No. 129, 1989 am. No. 54, 1998; No. 44, 1999
S. 68	am. No. 116, 1973; No. 44, 1999

Table of Amendments

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

Provision affected	How affected
S. 69	am. No. 93, 1966; No. 84, 1967; No. 116, 1973; No. 156, 1977 (as am. by No. 78, 1978); No. 19, 1979; No. 105, 1987; No. 129, 1989; No. 193, 1992; No. 62, 1997; No. 44, 1999; No. 160, 2000
S. 69AA	ad. No. 54, 1998
S. 69A	ad. No. 129, 1989 am. No. 193, 1992; No. 107, 1997; No. 54, 1998; No. 44, 1999
S. 69B	ad. No. 129, 1989 rep. No. 107, 1997
S. 69C	ad. No. 129, 1989 am. No. 44, 1999
Note to s. 69C	ad. No. 44, 1999
S. 69D	ad. No. 193, 1992 rs. No. 107, 1997 am. No. 54, 1998
Ss. 69E, 69F	ad. No. 54, 1998
S. 70	am. No. 116, 1973; No. 129, 1989 rep. No. 69, 1994
S. 70A	ad. No. 129, 1989 rs. No. 54, 1998
Heading to s. 70B	am. No. 55, 2001
S. 70B	ad. No. 54, 1998 am. No. 55, 2001
S. 71	am. No. 93, 1966; No. 129, 1989; No. 107, 1997; No. 54, 1998; No. 44, 1999
The Schedules	
First Schedule	am. No. 216, 1973 (as am. by No. 20, 1974) rs. No. 129, 1989; No. 193, 1992 rep. No. 54, 1998
Second Schedule	am. Statutory Rules 1962 No. 92; No. 127, 1965; No. 93, 1966; No. 84, 1967; No. 116, 1973; No. 76, 1984 rep. No. 129, 1989
Heading to Third Schedule	rep. No. 54, 1998
Heading to Schedule 1	ad. No. 54, 1998 rs. No. 44, 1999
Third Schedule	ad. No. 80, 1982

Note 2

Note 2

Section 40(3) of the *Banking Act 1959* ceased operation on 30 January 1976 (*see Gazette* 1976, No. S17).

Note 3

Section 33(6)—Schedule 2 (item 99) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998* provides as follows:

99 Subsection 33(6)

Omit “a bank”, substitute “an ADI”.

The proposed amendment was misdescribed and is not incorporated in this compilation.

Table A**Table A****Application, saving or transitional provisions**

Financial Sector Reform (Amendments and Transitional Provisions) Act 1998
(No. 54, 1998)

Schedule 19**1 Interpretation**

In this Part:

amended Act means the *Banking Act 1959* as in force immediately after the APRA commencement.

APRA means the Australian Prudential Regulation Authority.

APRA commencement means the commencement of the *Australian Prudential Regulation Authority Act 1998*.

old Act means the *Banking Act 1959* as in force immediately before the APRA commencement.

2 Treatment of section 9 authorities

- (1) This item applies to an authority that, immediately before the APRA commencement, was:
 - (a) in force under section 9 of the old Act; or
 - (b) deemed by subsection 9(1) of the old Act to be an authority under section 9 of that Act.
- (2) The authority is to be taken, after that commencement, to be an authority under subsection 9(3) of the amended Act.
- (3) Any conditions to which the authority was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions imposed under subsection 9(4) of the amended Act.

Table A

3 Treatment of undetermined applications for section 9 authorities

An application for an authority under section 9 of the old Act made, but not determined, before the APRA commencement is to be treated, after that commencement, as if it were an application for an authority under subsection 9(3) of the amended Act.

4 Treatment of obligations to publish notices in relation to section 9 authorities

An obligation under section 9 of the old Act to publish notice of a matter in relation to, or to the holder of, an authority, being an obligation that is undischarged as at the APRA commencement, becomes, on that commencement, an obligation that APRA is to discharge.

5 Treatment of bodies covered by State and Territory Financial Institutions Codes

- (1) Subject to subitem (2), APRA may, in writing, determine that a specified FIC body, or each body in a specified class of FIC bodies, is taken to be granted an authority under subsection 9(3) of the amended Act on a specified date.
- (2) APRA's power to make a determination under subitem (1) that covers a particular FIC body (whether individually or as a member of a class of bodies) is subject to the following qualifications:
 - (a) APRA must not make a determination covering the FIC body unless the Treasurer and the relevant State or Territory Minister have agreed that the body, or a class of bodies that includes the body, should be covered by the amended Act from a specified date; and
 - (b) the date specified in the determination as mentioned in subitem (1) must be the specified date referred to in paragraph (a).
- (3) The determination may specify conditions to which an authority that is taken to have been granted because of subitem (1) is subject.
- (4) The determination has effect accordingly.

Table A

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- (5) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Subsection 9(7) of the amended Act does not apply to:
- (a) a grant of an authority that is taken to have occurred under subitem (1); or
 - (b) the imposition of conditions on an authority under subitem (3).
- (7) In this item:

FIC body means a body that is a financial institution for the purposes of any of the Financial Institutions Codes.

Financial Institutions Code means any of the following Codes of a State or Territory:

- (a) the Financial Institutions (NSW) Code of New South Wales;
- (b) the Financial Institutions (Victoria) Code of Victoria;
- (c) the Financial Institutions (Queensland) Code of Queensland;
- (d) the Financial Institutions (Western Australia) Code of Western Australia;
- (e) the Financial Institutions (South Australia) Code of South Australia;
- (f) the Financial Institutions (Tasmania) Code of Tasmania;
- (g) the Financial Institutions (ACT) Code of the Australian Capital Territory;
- (h) the Financial Institutions (NT) Code of the Northern Territory.

relevant State or Territory Minister, in relation to a body that is a financial institution under the Financial Institutions Code of a particular State or Territory, means the State or Territory Minister with responsibility for the administration of that Financial Institutions Code.

6 Treatment of exemptions under section 11

- (1) An order in force immediately before the APRA commencement under section 11 of the old Act continues to have effect after that commencement as if it were an order under subsection 11(1) of the amended Act.

Table A

- (2) Any conditions to which the order was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions applying under subsection 11(2) of the amended Act.

7 Treatment of subsection 11E(2) approvals

An approval by the Governor of the Reserve Bank in force under subsection 11E(2) of the old Act immediately before the APRA commencement is to be taken, after that commencement, to be an approval by APRA under subsection 11E(2) of the amended Act.

8 Treatment of matters under depositor protection provisions

- (1) The following provisions apply in relation to matters under provisions of Division 2 of Part II of the old Act (including matters under those provisions as applying for the purpose of subsection 65(3) of the old Act):
- (a) an obligation to provide information to the Reserve Bank, or to inform the Reserve Bank of a matter, under a provision of the Division, being an obligation that is undischarged as at the APRA commencement, becomes, on the APRA commencement, an obligation to provide the information to APRA, or to inform APRA of the matter;
 - (b) an appointment of an investigator under a provision of the Division, being an appointment that is still in force immediately before the APRA commencement, has effect after that commencement as if it were an appointment by APRA under section 13 or 13A of the amended Act;
 - (c) if the Reserve Bank is, immediately before the APRA commencement, in control of an institution's business under a provision of the Division, the Reserve Bank is to transfer the control of the institution's business to APRA, and the provisions of Division 2 of Part II of the amended Act apply in relation to APRA being in control of the institution's business;
 - (d) proceedings under subsection 14(6) of the old Act that have not been completed by the APRA commencement lapse;
 - (e) an obligation on the Reserve Bank under a provision of the Division to publish notice of a matter, being an obligation that is undischarged as at the APRA commencement,

Table A

becomes, on that commencement, an obligation that APRA is to discharge;

- (f) an authorisation that is in force under subsection 16(2) of the old Act immediately before the APRA commencement has effect, after that commencement, as if it were an authorisation under subsection 13A(4) of the amended Act.
- (2) The regulations may make provision dealing with how the transfer of control of an institution's business as mentioned in paragraph (1)(c) is to occur, or otherwise relating to such a transfer.
- (3) Section 15 of the old Act continues to have effect (despite its repeal) after the APRA commencement in relation to things done or omitted to be done before that commencement.

9 Treatment of instruments under Division 3 of Part II

An instrument in force immediately before the APRA commencement under a provision of Division 3 of Part II of the old Act, being a provision that is amended by this Act, continues to have effect after that commencement (as far as practicable and subject to later instruments) as if it covered ADIs in the same way as it covers banks.

10 Reserve Bank to repay non-callable deposits on repeal of Division 3 of Part II

On the repeal of Division 3 of Part II of the *Banking Act 1959*, the Reserve Bank is to repay to an ADI the amount then standing to the credit of the ADI's Non-callable Deposit Account. The repayment is to be made as soon as practicable after the repeal takes effect.

Note: Schedule 2 provides for the repeal of the Division. The repeal takes effect on a separate day to be Proclaimed (rather than on the APRA commencement).

Table A

11 Treatment of regulations under Part V

Regulations in force immediately before the APRA commencement under section 50 of the old Act continue to have effect after that commencement (as far as practicable and subject to later regulations) as if they covered ADIs in the same way as they cover banks.

12 Treatment of regulations under Part VI

Regulations in force immediately before the APRA commencement under section 51 of the old Act continue to have effect after that commencement (as far as practicable and subject to later regulations) as if they covered ADIs in the same way as they cover banks.

13 Treatment of investigations under section 61

An appointment of an investigator under section 61 of the old Act, being an appointment that is still in force immediately before the APRA commencement, has effect after that commencement as if it were an appointment by APRA under section 61 of the amended Act.

14 Treatment of obligations under section 62

An obligation to provide information to the Reserve Bank under section 62 of the old Act, being an obligation that is undischarged as at the APRA commencement, becomes, on the APRA commencement, an obligation to provide the information to APRA.

15 Assumption of control of business under section 65

- (1) An order in force in relation to an institution immediately before the APRA commencement under section 65 of the old Act continues to have effect after that commencement as if it authorised APRA to assume control of, and to carry on, the institution's business.
- (2) If the Reserve Bank is, immediately before the APRA commencement, in control of an institution's business under section 65 of the old Act, the Reserve Bank is to transfer the control of the institution's business to APRA, and the provisions of Subdivision B of Division 2 of the amended Act apply in relation to APRA being in control of the institution's business in accordance with subsection 65(3) of that Act.
- (3) The regulations may make provision dealing with how the transfer of control of an institution's business as mentioned in subitem (2) is to occur, or otherwise relating to such a transfer.

Table A**16 Treatment of consents under section 66**

- (1) A consent in force immediately before the APRA commencement under section 66 of the old Act continues to have effect after that commencement as if it were a consent under section 66 of the amended Act.
- (2) Any conditions to which the consent was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions applying under section 66 of the amended Act.

17 Continued use of words by banks

- (1) This item applies to an institution that, immediately before the APRA commencement was a bank that was assuming or using a bank-related word in relation to a financial business (within the meaning of section 66 of the old Act).
- (2) The institution is taken, on the APRA commencement, to have been granted a consent under section 66 of the amended Act covering the assumption or use of the word.

18 Treatment of consents under section 67

- (1) A consent in force immediately before the APRA commencement under section 67 of the old Act continues to have effect after that commencement as if it were a consent under section 67 of the amended Act.
- (2) Any conditions to which the consent was subject immediately before the APRA commencement are to be taken, after that commencement, to be conditions applying under section 67 of the amended Act.

19 Treatment of regulations under section 71

Regulations in force immediately before the APRA commencement under section 71 of the old Act continue to have effect after that commencement (as far as practicable and subject to later regulations) as if:

- (a) they covered ADIs in the same way as they cover banks; and
- (b) references in them to the Reserve Bank were instead references to APRA.

Table A

Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1)
1999 (No. 44, 1999)

Schedule 8

7 Certain bodies taken to have authorities to carry on banking business

- (1) This item applies to the following bodies:
- (a) all bodies that were FIC bodies immediately before the transfer date;
 - (b) The Cairns Cooperative Weekly Penny Savings Bank Limited (*CCWPSBL*), but only if a determination under subitem (2) is in force immediately before the transfer date.

Note: The Cairns Cooperative Weekly Penny Savings Bank Limited is a body incorporated under the *Financial Intermediaries Act 1996* of Queensland.

- (2) APRA may, in writing, determine that this item applies to *CCWPSBL*, but only if the Treasurer and the Queensland Minister responsible for the administration of the *Financial Intermediaries Act 1996* of Queensland have agreed that *CCWPSBL* should be covered by the *Banking Act 1959* from the transfer date.
- (3) On the transfer date, a body to which this item applies is taken to have been granted an authority under subsection 9(3) of the *Banking Act 1959*.
- (4) APRA may, in writing, determine conditions to which the authority is subject. The determination has effect accordingly.
- (5) The authority may be dealt with under the *Banking Act 1959* as if it had actually been granted under subsection 9(3) of that Act.
- (6) Conditions determined under subitem (4) may be dealt with under the *Banking Act 1959* as if they were imposed under subsection 9(4) of that Act.
- (7) Subsection 9(7) of the *Banking Act 1959* does not apply to:
- (a) the grant of an authority that is taken to have occurred under subitem (3); or
 - (b) the imposition of conditions on that authority under subitem (4).

Table A

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- (8) APRA must give the body written notice of the following:
- (a) the fact that the body is taken, by subitem (3), to have been granted an authority under subsection 9(3) of the *Banking Act 1959*; and
 - (b) the determination under subitem (4) of conditions to which the authority is subject.
- (9) APRA may also give notice of a matter referred to in paragraph (8)(a) or (b) in such other way as APRA considers appropriate.

8 Bodies taken to have consent for use of certain expressions

- (1) A body that, immediately before the transfer date:
- (a) was a society, services corporation or association as defined in section 3 of a Financial Institutions Code; and
 - (b) was trading or carrying on business (within the meaning of section 144 of that Code) under a name or title of which words, abbreviations or symbols covered by paragraph 144(2)(a) of that Code formed part;
- is taken, on the transfer date, to have been granted a consent under section 66 of the *Banking Act 1959* covering the body trading or carrying on business under that name or title. The consent may be dealt with under that Act as if it had actually been granted under section 66 of that Act.
- (2) An exemption in force under subsection 144(4) of a Financial Institutions Code immediately before the transfer date continues to have effect from that date, and may be dealt with, as if it were a consent under section 66 of the *Banking Act 1959*. Any conditions to which the exemption was subject immediately before the transfer date are to be taken, from that date, to be, and may be dealt with as if they were, conditions applying under section 66 of the *Banking Act 1959*.

9 Unclaimed money

- (1) This item applies to each body that is taken by subitem 7(3) to have been granted an authority under subsection 9(3) of the *Banking Act 1959*.
- (2) An amount of money in respect of which notification action has been taken before the transfer date by a body to which this item applies under
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Table A

an unclaimed money law is not unclaimed moneys for the purposes of section 69 of the *Banking Act 1959*.

- (3) For the avoidance of doubt, it is declared that, subject to subitem (2), an amount of money that, on the transfer date, satisfies the description of unclaimed moneys in section 69 of the *Banking Act 1959* is unclaimed moneys for the purposes of that section even though, for any reason, the amount was not, immediately before that date, unclaimed money, or unclaimed moneys, within the meaning of an unclaimed money law.
- (4) If, but for this item, a body to which this item applies would be required to deliver a Commonwealth unclaimed money statement on or before the 31 March next following the transfer date, then:
- (a) the body may, but is taken not to be required to, deliver a Commonwealth unclaimed money statement on or before that 31 March; and
 - (b) if the body does not deliver a Commonwealth unclaimed money statement on or before that 31 March—the amounts that would have been included in that statement must (if they are still unclaimed money) be included in the next Commonwealth unclaimed money statement delivered by the body.
- (5) The Treasurer, or an authorized officer (within the meaning of section 69 of the *Banking Act 1959*), may, in relation to a specified body to which this item applies, determine in writing that subsection 69(5) of the *Banking Act 1959* has effect in relation to the first Commonwealth unclaimed money statement delivered by the body after the transfer date as if it required the amount shown in the statement to be paid to the Commonwealth:
- (a) on a specified date or at the end of a specified period; or
 - (b) in accordance with a specified scheme for payment by instalments.
- Note: A body may be specified by name, by inclusion in a specified class or in some other way.
- (6) A person must not, under subitem (5), make a determination that would result in an amount being required to be paid to the Commonwealth more than 5 years after the date on which the amount would otherwise have had to be paid to the Commonwealth.
- (7) A determination under subitem (5) has effect accordingly.
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Table A

(8) In this item:

Commonwealth unclaimed money statement means a statement under subsection 69(3) of the *Banking Act 1959*.

notification action means:

- (a) in relation to the unclaimed money law of Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory or the Northern Territory—enter, or enter particulars of, unclaimed money, or unclaimed moneys, (within the meaning of that law) in a register in accordance with that law; or
- (b) in relation to the unclaimed money law of New South Wales—lodge a return with the Chief Commissioner (within the meaning of that law) relating to unclaimed money (within the meaning of that law) in accordance with that law; or
- (c) in relation to the unclaimed money law of Western Australia—notify the Treasurer of particulars of unclaimed money (within the meaning of that law) in accordance with that law.

unclaimed money law means:

- (a) the *Unclaimed Money Act 1995* of New South Wales;
- (b) the **Unclaimed Moneys Act 1962** of Victoria;
- (c) Part 8 of the *Public Trustee Act 1978* of Queensland;
- (d) the *Unclaimed Money Act 1990* of Western Australia;
- (e) the *Unclaimed Moneys Act 1891* of South Australia;
- (f) the *Unclaimed Moneys Act 1918* of Tasmania;
- (g) the *Unclaimed Moneys Act 1950* of the Australian Capital Territory;
- (h) the *Companies (Unclaimed Assets and Moneys) Act* of the Northern Territory.

Note: For the transitional provisions relating to the operation of the *Financial Sector (Shareholdings) Act 1998*, see the amendment made by item 45 of Schedule 7 to this Act.

22 Regulations may deal with transitional, saving or application matters

(1) The regulations may deal with matters of a transitional, saving or application nature relating to:

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- (a) the transition from the application of provisions of the replaced legislation to the application of provisions of the *Banking Act 1959*, the *Life Insurance Act 1995*, the *Financial Sector (Transfers of Business) Act 1999*, the *Financial Sector (Shareholdings) Act 1998* or the *Australian Prudential Regulation Authority Act 1998*; or
 - (b) the transition, for The Cairns Cooperative Weekly Penny Savings Bank Limited, from the application of provisions of the *Financial Intermediaries Act 1996* of Queensland to the application of provisions of any of the Acts referred to in paragraph (a); or
 - (c) the amendments and repeals made by the Schedules to this Act.
- (2) Without limiting subitem (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
- (a) by applying (with or without modifications) to the matter:
 - (i) provisions of a law of the Commonwealth, or of a State or Territory; or
 - (ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
 - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
 - (b) by otherwise specifying rules for dealing with the matter;
 - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.
- (3) Without limiting subitems (1) and (2), the regulations may provide for the continued effect, for the purposes of a provision of a law of the Commonwealth, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a law of a State or Territory. In the case of an instrument or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.
- (4) Without limiting subitem (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the
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Table A

following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:

- (a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;
 - (b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;
 - (c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.
- (5) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations for the purposes of this item:
- (a) may be expressed to take effect from a date before the regulations are notified in the *Gazette*; and
 - (b) may provide for a determination of a kind referred to in subitem (4) to take effect from a date before the determination is made (including a date before the regulations are notified in the *Gazette*).
- (6) In this item, a reference to a *law*, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.
- (7) In this item:
- replaced legislation* means:
- (a) the AFIC Codes; and
 - (b) the Financial Institutions Codes; and
 - (c) the Friendly Societies Codes; and
 - (d) the *Australian Financial Institutions Commission Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 21 of the *Australian Financial Institutions Commission Act 1992* of Queensland; and
 - (e) the *Financial Institutions (Queensland) Act 1992* of Queensland, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992* of Queensland; and
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Table A

- (f) the **Friendly Societies (Victoria) Act 1996** of Victoria, and any Act of another State or of a Territory that provides for the application, as a law of the State or Territory, of the Code set out in the Schedule to the **Friendly Societies (Victoria) Act 1996** of Victoria; and
- (g) the *Friendly Societies (Western Australia) Act 1999*; and
- (h) any other law of a State or Territory prescribed by the regulations for the purposes of this definition.

23 Power to make regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed.

Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000 (No. 24, 2000)

Schedule 12

1 Definitions

In this Part:

Collection Act means the *Financial Institutions Supervisory Levies Collection Act 1998*.

deferred payment day means the day that is 6 weeks after the day on which this Part commences.

Imposition Act means any of the following Acts:

- (a) the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*;
- (b) the *General Insurance Supervisory Levy Imposition Act 1998*;
- (c) the *Life Insurance Supervisory Levy Imposition Act 1998*;
- (d) the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*;
- (e) the *Superannuation Supervisory Levy Imposition Act 1998*.

levy paying entity has the same meaning as in the *Collection Act*.

Validation Act means any of the following Acts:

Table A

- (a) the *Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Act 2000*;
- (b) the *General Insurance Supervisory Levy Determination Validation Act 2000*;
- (c) the *Life Insurance Supervisory Levy Determination Validation Act 2000*;
- (d) the *Retirement Savings Account Providers Supervisory Levy Determination Validation Act 2000*;
- (e) the *Superannuation Supervisory Levy Determination Validation Act 2000*.

2 Deferral of date for paying levy

- (1) This item applies to a levy paying entity if, because of section 4 of a Validation Act:
 - (a) the entity is liable to pay levy imposed by an Imposition Act; and
 - (b) the levy payable by the entity would, apart from this item, have been due and payable under section 9 of the Collection Act before the deferred payment day.
- (2) The levy payable by the entity is taken to be due and payable on the deferred payment day, despite section 9 of the Collection Act.

Note: This provision affects the calculation of late payment penalty (if any) under section 10 of the Collection Act.

3 No retrospective criminal liability

Nothing in this Part or the Validation Acts is taken to make a person criminally liable in respect of acts or omissions of the person before the day on which this Part commences, if the person would not have been so liable had this Part and the Validation Acts not been enacted.

Financial Sector Legislation Amendment Act (No. 1) 2000 (No. 160, 2000)

Table A

Schedule 1

19 Application of new section 64

Section 64 of the *Banking Act 1959* does not apply to a consent given before the commencement of that section.

Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act (No. 1) 2001 (No. 121, 2001)

Schedule 2

18 Application

- (1) The amendments made by this Part apply to a financial sector entity (within the meaning of the *Financial Sector (Collection of Data) Act 2001*) that is a body referred to in subitem (2) only on and after the day on which the reporting standards determined under section 13 of that Act begin to apply under section 15 of that Act to a class or kind of financial sector entities in which that body is included.
- (2) The bodies are:
 - (a) ADIs; and
 - (b) authorised NOHCs; and
 - (c) subsidiaries of ADIs; and
 - (d) subsidiaries of authorised NOHCs.
- (3) Expressions used in subitem (2) have the same meanings as in the *Banking Act 1959*.

Schedule 3

1 Treatment of certain exemptions and determinations in connection with obligations of corporations to register

An exemption or determination by the Reserve Bank that was in force immediately before the commencement of this Schedule under paragraph 8(2)(l) of the *Financial Corporations Act 1974* continues to have effect as if it were an exemption or determination by APRA under paragraph 7(2)(j) of the *Financial Sector (Collection of Data) Act 2001*.

Table A**2 Former Register of Corporations**

On the commencement of this Schedule, the Register of Corporations that, immediately before that commencement, was kept by the Reserve Bank under subsection 9(9) of the *Financial Corporations Act 1974* continues in existence as the Register of Entities kept by APRA under section 8 of the *Financial Sector (Collection of Data) Act 2001*.

3 Former list of registered corporations and categories

- (1) On the commencement of this Schedule:
 - (a) the list (the *former list*) of registered corporations, divided into categories, that, immediately before that commencement, was prepared by the Reserve Bank under section 10 of the *Financial Corporations Act 1974* continues in existence as a list (the *new list*) of the names of registered entities, divided into categories, kept by APRA under subsection 11(1) of the *Financial Sector (Collection of Data) Act 2001*; and
 - (b) a reference in any instrument having effect under an Act to a corporation included in a particular category in the former list is taken to be a reference to that corporation in its capacity as a registered entity included in the corresponding category in the new list.
- (2) An obligation on the Reserve Bank to publish notice, or to notify a person, of a matter under section 10 of the *Financial Corporations Act 1974*, being an obligation that is undischarged as at the commencement of this Schedule, becomes, on that commencement, an obligation that APRA is to discharge in respect of the corresponding matter under section 11 of the *Financial Sector (Collection of Data) Act 2001*.
- (3) A determination by the Reserve Bank that was in force under a provision of section 10 of the *Financial Corporations Act 1974* immediately before the commencement of this Schedule continues to have effect, after that commencement, as if it were a determination by APRA under the corresponding provision of section 11 of the *Financial Sector (Collection of Data) Act 2001*.
- (4) A request to the Reserve Bank under subsection 10(7) of the *Financial Corporations Act 1974* that has not been dealt with by the commencement of this Schedule is, after that commencement, to be

Table A

dealt with by APRA as if it were a request under subsection 11(7) of the *Financial Sector (Collection of Data) Act 2001*.

4 Definitions

In this Schedule:

APRA means the Australian Prudential Regulation Authority.

Reserve Bank means the Reserve Bank of Australia.

Australian Prudential Regulation Authority Amendment Act 2003
(No. 42, 2003)

Schedule 3

1 Definitions

In this Schedule:

amended Act means the *Australian Prudential Regulation Authority Act 1998* as in force after the commencement of the amendments.

commencement of the amendments means the commencement of the amendments made by Schedule 1.

old Act means the *Australian Prudential Regulation Authority Act 1998* as in force immediately before the commencement of the amendments.

2 APRA's corporate existence is continued

- (1) The body corporate that was, immediately before the commencement of the amendments, the Australian Prudential Regulation Authority (**APRA**) continues in existence after that commencement by force of this item under the corporate structure provided for by the amended Act.

Note: Rights, liabilities and obligations as between APRA and other people, and things done by or on behalf of APRA, or in relation to APRA, are therefore not affected by the restructure of APRA.

- (2) However, this does not imply that any person who, immediately before the commencement of the amendments, was a member of APRA's Board, or was APRA's Chief Executive Officer, continues to hold office after that commencement.

Note: These people cease to hold office on the commencement of the amendments because of the repeal of the provisions under which they were appointed.

Table A**3 Continued protection from liability**

Section 58 of the old Act continues to apply in relation to conduct, before the commencement of the amendments, of APRA's Board, a member of APRA's Board or an agent of a member of APRA's Board.

Note: The reference to a member of APRA's Board covers APRA's Chief Executive Officer.

4 Continued effect of certain delegations

- (1) A delegation in force, immediately before the commencement of the amendments, under subsection 15(1) or (2) of the old Act continues to have effect after that commencement as if it were a delegation under APRA's seal under that subsection of the amended Act. If the delegation was to one or more members of APRA's Board, it continues to have effect as if it were a delegation to any APRA member.
- (2) A direction in force, immediately before the commencement of the amendments, under subsection 15(3) of the old Act continues to have effect after that commencement, in relation to a delegation to which subitem (1) applies, as if it were a direction given by APRA under that subsection of the amended Act.
- (3) A delegation to one or more members of APRA's Board in force, immediately before the commencement of the amendments, under a provision amended by Schedule 2 continues to have effect after that commencement as if it were a delegation under the amended provision to any APRA member.

Note: Delegations in favour of APRA, or APRA staff members, are not affected by the Schedule 2 amendments.

5 Continued effect of determinations of terms and conditions for staff and consultants

A determination of terms and conditions in force, immediately before the commencement of the amendments, under subsection 45(2) or 47(2) of the old Act continues to have effect after that commencement as if it were a determination by APRA under that subsection of the amended Act.

Table A

6 Continued effect of approvals under paragraph 56(5)(b)

An approval in force, immediately before the commencement of the amendments, under paragraph 56(5)(b) of the old Act continues to have effect after that commencement as if it were an approval by APRA under that paragraph of the amended Act.

7 Continued or extended effect of certain regulations

- (1) Regulations in force, immediately before the commencement of the amendments, under paragraph (k) of the definition of *Act covered by this section* in subsection 56(1) of the old Act continue to have effect after that commencement as if they were made under paragraph (o) of the definition of *prudential regulation framework law* in subsection 3(1) of the amended Act, but only as that paragraph applies for the purposes of section 56 of the amended Act.
- (2) Regulations in force, immediately before the commencement of the amendments, under paragraph 56(5)(a) of the old Act have effect after that commencement (in addition to the effect they continue to have for that paragraph of the amended Act) as if they were also made under subsection 10A(1) of the amended Act.

8 Delegations by ASIC to APRA staff members

- (1) Subsection 102(2A) of the *Australian Securities and Investments Commission Act 2001* has effect after the commencement of the amendments as if the reference in that subsection to the Chief Executive Officer of APRA were instead a reference to APRA.
- (2) For the purposes of that subsection as it continues to have effect, an agreement to a delegation, in force under that subsection immediately before the commencement of the amendments, continues to have effect after that commencement as if it were given by APRA.