



Governance Review Implementation (Treasury Portfolio Agencies) Act 2007

No. 74, 2007

**An Act to amend the law relating to statutory
agencies in the Treasury portfolio, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 74, 2007

**An Act to amend the law relating to statutory
agencies in the Treasury portfolio, and for related
purposes**

[Assented to 5 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Governance Review Implementation
(Treasury Portfolio Agencies) Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	5 June 2007
2. Schedules 1 and 2	1 July 2007.	1 July 2007
3. Schedule 3	The day on which this Act receives the Royal Assent.	5 June 2007

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—ASIC

Australian Securities and Investments Commission Act 2001

1 Subsection 5(1) (definition of *trust money*)

Repeal the definition.

2 Section 8

Before “ASIC:”, insert “(1)”.

3 Paragraph 8(c)

After “may”, insert “, subject to subsection (5),”.

4 After paragraph 8(c)

Insert:

(ca) may enter into contracts; and

5 Section 8 (note 1)

Omit “Note 1”, substitute “Note”.

6 Section 8 (note 2)

Repeal the note.

7 At the end of section 8

Add:

(2) ASIC may enter into contracts in its own right.

Note: The Chairperson of ASIC may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

(3) Any real or personal property held by ASIC is held for and on behalf of the Commonwealth.

(4) Any money received by ASIC is received for and on behalf of the Commonwealth.

- (5) ASIC cannot hold real or personal property or money on trust.

Note: Any real or personal property or money that ASIC would otherwise hold on trust is held by the Commonwealth on trust.

- (6) Despite any rule of equity, ASIC may, for and on behalf of the Commonwealth, perform all the duties and exercise all the powers of the Commonwealth as trustee in relation to any real or personal property or money held on trust by the Commonwealth.
- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (3).

8 After section 8

Insert:

8A ASIC's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of ASIC are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

9 After section 10

Insert:

10A Chairperson not subject to direction by ASIC on certain matters

The Chairperson of ASIC is not subject to direction by ASIC in relation to the Chairperson's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
(b) the *Public Service Act 1999*;

in relation to ASIC.

10 Section 94

Omit "section 12", substitute "sections 10A and 12".

11 Subsection 124(7)

Repeal the subsection.

12 Part 8

Repeal the Part, substitute:

Part 8—Finance and reporting requirements

Division 1—Companies and Unclaimed Moneys Special Account

133 Companies and Unclaimed Moneys Special Account

- (1) The Companies and Unclaimed Moneys Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

134 Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) amounts referred to in paragraphs 1339(2)(a) and (b) of the *Corporations Act 2001*;
- (c) interest received by ASIC from the investment of amounts debited from the Account;
- (d) money received by ASIC in relation to property paid for with amounts debited from the Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

135 Purpose of the Account

- (1) This section sets out the purposes of the Account.
 - (2) Amounts standing to the credit of the Account may be debited for the following purposes:
-

- (a) the purpose of subsection 1341(1) of the *Corporations Act 2001*;
- (b) in payment to a person under paragraph 1341(2)(c) of the *Corporations Act 2001*;
- (c) to meet the expenses of administering the Account;
- (d) in respect of amounts credited under paragraph 134(c) of this Act—in payment in relation to proposals determined by the Minister to reduce business costs and improve regulation in one or more of the following areas:
 - (i) corporate governance of managed investment schemes and bodies corporate;
 - (ii) securities;
 - (iii) financial products;
 - (iv) winding up and external administration of managed investment schemes and bodies corporate.

Note: See section 21 of the *Financial Management and Accountability Act 1997*.

Division 2—Reporting requirements

136 Annual reports

Annual report to be given to Minister

- (1) The Chairperson must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on ASIC's operations during that financial year.

Note: Section 34C of the *Acts Interpretation Act 1901* contains provisions relating to annual reports.

Contents of annual report

- (2) A report under subsection (1) must include the following:
 - (a) a description of the specific goals ASIC has pursued, and the priorities it has followed, during the year, in performing its functions, exercising its powers and pursuing the objects referred to in subsection 1(2) of this Act;
 - (b) a description of the progress ASIC has made during that year towards achieving those goals;

- (c) a description of any matters that, during that year, have adversely affected ASIC's effectiveness or have hindered ASIC in pursuing any of those goals and objectives;
- (d) a description of the performance indicators used by ASIC, and ASIC's performance against those indicators;
- (e) information about the exercise during the year of ASIC's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*;
- (f) information about ASIC's monitoring and promotion of market integrity and consumer protection in relation to:
 - (i) the Australian financial system; and
 - (ii) the provision of financial services;
- (g) in relation to ASIC's functions under subsection 11(14), in relation to each agreement or arrangement entered into by ASIC under that subsection, information about the activities that ASIC has undertaken during the reporting period in accordance with that agreement or arrangement;
- (h) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
- (i) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

Annual report to be tabled in Parliament

- (3) The Minister must cause a copy of each annual report to be tabled in each House within 15 sitting days of that House after the day on which the Minister receives the report.

Division 3—Liability to taxation

137 Liability to taxation

- (1) ASIC is not subject to taxation under the laws of the Commonwealth or of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to a specified law.

Note: Despite subsection (1), ASIC may be subject to taxation under certain laws. See, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Corporations Act 2001

13 Section 9

Insert:

Companies and Unclaimed Moneys Special Account means the Account established under section 133 of the *Australian Securities and Investments Commission Act 2001*.

14 Section 9 (definition of *unclaimed money account*)

Repeal the definition.

15 Section 9 (definition of *unclaimed property*)

Repeal the definition, substitute:

unclaimed property means:

- (a) property paid or transferred to ASIC under a provision of this Act that provides for property to be transferred, or for the Court to direct that property be transferred, to ASIC to be dealt with under Part 9.7; or
- (b) any other property that a provision of this Act provides for ASIC to deal with under Part 9.7; or
- (c) property that vests in ASIC under section 1404; or
- (d) an accretion to, or substitution for, property that is unclaimed property because of any other application or applications of this definition; or
- (e) without limiting paragraph (d), amounts credited to the Companies and Unclaimed Moneys Special Account under paragraph 1339(2)(b).

16 Paragraph 588(2)(b)

Repeal the paragraph, substitute:

- (b) if paragraph (a) does not apply and the property was held by the body or liquidator on trust—the Commonwealth; or
- (c) otherwise—ASIC.

17 Subsection 588(3)

After “person,” insert “the Commonwealth or”.

18 Subsection 588(4)

Repeal the subsection, substitute:

- (4) Section 601AE applies to:
- (a) property that vests in the Commonwealth under paragraph (2)(b) of this section as if the property were vested in the Commonwealth under subsection 601AD(1A); and
 - (b) property that vests in ASIC under paragraph (2)(c) of this section as if the property were vested in ASIC under subsection 601AD(2).

19 After subsection 601AD(1)

Insert:

Trust property vests in the Commonwealth

- (1A) On deregistration, all property that the company held on trust immediately before deregistration vests in the Commonwealth. If property is vested in a liquidator on trust immediately before deregistration, that property vests in the Commonwealth. This subsection extends to property situated outside this jurisdiction.

20 Subsection 601AD(2)

Repeal the subsection, substitute:

Other company property vests in ASIC

- (2) On deregistration, all the company's property (other than any property held by the company on trust) vests in ASIC. If company property is vested in a liquidator (other than any company property vested in a liquidator on trust) immediately before deregistration, that property vests in ASIC. This subsection extends to property situated outside this jurisdiction.

21 Subsection 601AD(3)

Omit "subsection (2), ASIC", insert "subsection (1A) or (2), the Commonwealth or ASIC".

Note: The following heading to subsection 601AD(3) is inserted "*Rights and powers in respect of property*".

22 Subsection 601AD(3)

Omit “ASIC takes” (second occurring), substitute “the Commonwealth or ASIC takes”.

23 After subsection 601AD(3)

Insert:

- (3A) The Commonwealth has, subject to its obligations as trustee of the trust, all the powers of an owner over property vested in it under subsection (1A).

Note: Section 601AF confers additional powers on the Commonwealth to fulfil outstanding obligations of the deregistered company.

24 Subsection 601AE(1)

Repeal the subsection, substitute:

Trust property vested in the Commonwealth

- (1) If property vests in the Commonwealth under subsection 601AD(1A), the Commonwealth may:
- (a) continue to act as trustee; or
 - (b) apply to a court for the appointment of a new trustee.

Note: Under paragraph (1)(a), the Commonwealth may be able to transfer the property to a new trustee chosen in accordance with the trust instrument.

- (1A) If the Commonwealth continues to act as trustee in respect of the property, subject to its obligations as trustee, the Commonwealth:
- (a) in the case of money—must credit the amount of the money to a Special Account (within the meaning of section 5 of the *Financial Management and Accountability Act 1997*); or
 - (b) otherwise:
 - (i) may sell or dispose of the property as it thinks fit; and
 - (ii) if the Commonwealth does so—must credit the amount of the proceeds to a Special Account (within the meaning of section 5 of the *Financial Management and Accountability Act 1997*).

Note: ASIC may, for and on behalf of the Commonwealth, perform all the duties and exercise all the powers of the Commonwealth as trustee in relation to property held on trust by the Commonwealth (see subsection 8(6) of the ASIC Act).

Note: The heading to section 601AE is altered by inserting “the Commonwealth or” after “What”.

25 Subsection 601AE(2)

Omit “If the company did not hold the property on trust,”, substitute “If property vests in ASIC under subsection 601AD(2),”.

Note: The following heading to subsection 601AE(2) is inserted “*Property vested in ASIC*”.

26 After subsection 601AE(2)

Insert:

Obligations attaching to property vested in the Commonwealth

- (2A) For the purposes of subsection (3), if any liability is imposed on property under a law of the Commonwealth immediately before the property vests in the Commonwealth under subsection 601AD(1A), then:
- (a) immediately after that time, the liability applies to the Commonwealth as if the Commonwealth were a body corporate; and
 - (b) the Commonwealth is liable to make notional payments to discharge that liability.

27 Subsection 601AE(3)

Omit “The property”, substitute “Any property that vests in the Commonwealth or ASIC under subsection 601AD(1A) or (2)”.

28 Subsection 601AE(3)

After “vested in”, insert “the Commonwealth or”.

29 Subsection 601AE(4)

Omit “ASIC’s obligation under subsection (3)”, insert “The Commonwealth’s or ASIC’s obligation under subsection (2A) or (3)”.

Note: The following heading to subsection 601AE(4) is inserted “*Extent of Commonwealth’s and ASIC’s obligation*”.

30 Subsection 601AE(5)

Omit “ASIC”, substitute “The Commonwealth or ASIC (as the case requires)”.

31 Section 601AF

Before “ASIC may”, insert “The Commonwealth or”.

Note: The heading to section 601AF is altered by inserting “**The Commonwealth’s and**” before “ASIC’s”.

32 Section 601AF

After “its liquidator if”, insert “the Commonwealth or”.

33 Section 601AF (note)

Repeal the note, substitute:

Note: This power is a general one and is not limited to acts in relation to property vested in the Commonwealth under subsection 601AD(1A), or ASIC under subsection 601AD(2). The Commonwealth or ASIC has all the powers that automatically flow from the vesting of property under that subsection (see subsections 601AD(3A) and (4)) and may exercise those powers whether or not the company was bound to do so.

34 Subsection 601AH(5)

After “vested in”, insert “the Commonwealth or”.

35 Section 1339

Repeal the section, substitute:

1339 ASIC to deal with unclaimed property

- (1) Unclaimed property held by ASIC is to be dealt with in accordance with this Part.

Note: Unclaimed property is held by ASIC for and on behalf of the Commonwealth (see subsections 8(3) and (4) of the ASIC Act).

- (2) If property becomes unclaimed property, ASIC must:
- (a) in the case of money—credit the amount of the money to the Companies and Unclaimed Moneys Special Account; or
 - (b) otherwise—sell or dispose of the property as it thinks fit and credit the amount of the proceeds to the Companies and Unclaimed Moneys Special Account.

36 Section 1340

Omit “ASIC is not”, substitute “neither the Commonwealth nor ASIC is”.

Note: The heading to section 1340 is altered by omitting “**ASIC not liable**” and substituting “**No liability**”.

37 Subsections 1341(1) and (2)

Repeal the subsections, substitute:

- (1) If an amount is not debited from the Companies and Unclaimed Moneys Special Account in accordance with this section within 6 years after that amount was originally credited to the Account under subsection 1339(2), that amount must be debited from the Account.

Note: Despite being debited from the Companies and Unclaimed Moneys Special Account, the amount remains part of the Consolidated Revenue Fund.

(2) If:

(a) a person claims to be entitled to an amount credited to the Companies and Unclaimed Moneys Special Account under subsection 1339(2); and

(b) ASIC is satisfied that the person is entitled to that amount;

ASIC must:

(c) unless paragraph (d) applies—pay the amount to the person and debit that amount from the Account; or

(d) if the amount has already been debited from the Account under subsection (1)—pay the amount to the person out of money appropriated by the Parliament for the purpose.

Note: The heading to section 1341 is replaced with the following heading “**Entitlement to unclaimed property**”.

38 Subsection 1341(4)

Omit “ASIC is not”, substitute “neither the Commonwealth nor ASIC is”.

39 Subsection 1341(5)

Repeal the subsection.

Part 2—CAMAC

Australian Securities and Investments Commission Act 2001

40 Section 146

Before “CAMAC”, insert “(1)”.

41 Section 146 (note 2)

Repeal the note, substitute:

Note 2: The Convenor of CAMAC may enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

42 At the end of section 146

Add:

- (2) Any real or personal property held by CAMAC is held for and on behalf of the Commonwealth.
- (3) Any money received by CAMAC is received for and on behalf of the Commonwealth.
- (4) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (2).

43 After section 146

Insert:

146A CAMAC’s liabilities are Commonwealth liabilities

- (1) Any financial liabilities of CAMAC are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

44 After section 147

Insert:

147A Convenor not subject to direction by CAMAC on certain matters

The Convenor of CAMAC is not subject to direction by CAMAC in relation to the Convenor's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
 - (b) the *Public Service Act 1999*;
- in relation to CAMAC.

45 Division 2 of Part 9 (heading)

Repeal the heading, substitute:

Division 2—Staff

46 Sections 159 to 168

Repeal the sections, substitute:

Division 3—Liability to taxation

159 Liability to taxation

- (1) CAMAC is not subject to taxation under the laws of the Commonwealth or of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to a specified law.

Note: Despite subsection (1), CAMAC may be subject to taxation under certain laws. See, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Division 4—Reporting requirements

162 Annual report

Annual report to be given to Minister

- (1) The Convenor must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on CAMAC's operations during that financial year.

Note: Section 34C of the *Acts Interpretation Act 1901* contains provisions relating to annual reports.

Contents of annual report

- (2) A report under subsection (1) must include the following:
 - (a) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*; and
 - (b) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

Annual report to be tabled in Parliament

- (3) The Minister must cause a copy of each annual report to be tabled in each House within 15 sitting days of that House after the day on which the Minister receives the report.

Part 3—APRA

Australian Prudential Regulation Authority Act 1998

47 Subsection 3(1)

Insert:

Account means the Australian Prudential Regulation Authority Special Account established under section 52.

48 Section 7 (note)

Repeal the note.

49 At the end of section 11

Add:

- (3) APRA may enter into contracts in its own right.

Note: The Chair of APRA may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

- (4) Any real or personal property held by APRA is held for and on behalf of the Commonwealth.
- (5) Any money received by APRA is received for and on behalf of the Commonwealth.
- (6) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

50 After section 11

Insert:

11A APRA's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of APRA are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount where the amount, or the method for working out the amount, has been determined.

51 After section 12

Insert:

12A Chair not subject to direction by APRA on certain matters

To avoid doubt, the Chair is not subject to direction by APRA in relation to the Chair's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
 - (b) Part 4 or 4A of this Act;
- in relation to APRA.

52 Section 14

Repeal the section.

53 Subsection 45(1)

Repeal the subsection, substitute:

- (1) The Chair may, on behalf of APRA, appoint such permanent, temporary or casual staff as he or she considers necessary for the performance of APRA's functions.

54 Subsection 45(2)

Omit "APRA", substitute "the Chair".

55 Subsection 47(1)

Repeal the subsection, substitute:

- (1) The Chair may, on behalf of APRA, engage consultants or other people to provide advice to APRA or perform services for APRA.

56 Subsection 47(2)

Omit "APRA", substitute "the Chair".

57 Paragraphs 48(a) and (c)

Omit "APRA", substitute "the Chair".

58 At the end of Part 4

Add:

48AA Delegation by Chair

- (1) The Chair may, in writing, delegate any functions or powers conferred on the Chair by this Part or Part 4A to an APRA member (other than the Chair) or to an APRA staff member.
- (2) In performing or exercising functions or powers delegated under subsection (1), the delegate must comply with any directions given by the Chair.

Note: For information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901*.

48AB APRA Values

- (1) The Chair must determine, in writing, the APRA Values.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

- (2) The Chair must uphold and promote the APRA Values.
- (3) APRA members (other than the Chair) and staff appointed under section 45 must uphold the APRA Values.
- (4) To avoid doubt, an instrument under subsection (1) is not a legislative instrument.

48AC APRA Code of Conduct

- (1) The Chair must determine, in writing, the APRA Code of Conduct.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* provides for the repeal, variation etc. of instruments.

- (2) The APRA Code of Conduct applies to APRA members and staff appointed under section 45.
- (3) To avoid doubt, an instrument under subsection (1) is not a legislative instrument.

59 Section 48C

Repeal the section.

60 Section 48D

Omit “APRA must”, substitute “The Chair must”.

Note: The heading to section 48D is altered by omitting “APRA to ensure” and substituting “The Chair to ensure”.

61 At the end of section 48D

Add:

Note: Under section 48AA, the Chair can delegate the power conferred on him or her by this section.

62 Sections 49 and 50

Repeal the sections, substitute:

50 APRA’s share of levy money

Determination of Commonwealth costs

- (1) The Minister is to make, by legislative instrument, for each financial year, either of the following determinations:
 - (a) a determination specifying the amount of the levy money payable to the Commonwealth, in respect of levy for that financial year, to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions;
 - (b) a determination, in respect of each class of levy for that financial year, specifying the amount of the levy money payable to the Commonwealth in respect of that class of levy for that financial year, to cover the costs to the Commonwealth of providing market integrity and consumer protection functions for prudentially regulated institutions.

Crediting to Account

- (2) An amount determined under paragraph (1)(a) or (b) is not to be credited to the Account.
- (3) The amount of levy money paid to APRA, on behalf of the Commonwealth, for a financial year that exceeds the amount determined under paragraph (1)(a), or the total of the amounts determined under paragraph (1)(b), for that financial year is to be credited to the Account.

Note: The annual financial statements of APRA, in respect of the Account, must be prepared in accordance with the Finance Minister's Orders (see section 49 of the *Financial Management and Accountability Act 1997*).

- (4) If:
- (a) the Commonwealth refunds any levy money that has been paid to APRA; and
 - (b) apart from this subsection an amount equal to that levy money would otherwise be credited to the Account;
- that amount is not to be credited to the Account.
- (5) If:
- (a) the Commonwealth refunds any levy money that has been paid to APRA; and
 - (b) that levy money has already been credited to the Account;
- that amount is to be debited from the Account.

Definitions

- (6) In this section:

levy means levy paid or payable under the *Financial Institutions Supervisory Levies Collection Act 1998*, other than levy imposed by the *Superannuation (Financial Assistance Funding) Levy Act 1993*.

levy money:

- (a) in relation to levy, means any amount paid or payable to the Commonwealth in respect of levy; or
- (b) in relation to a particular class of levy, means any amount paid or payable to the Commonwealth in respect of that class of levy.

63 Sections 52 to 54

Repeal the sections, substitute:

52 Australian Prudential Regulation Authority Special Account

- (1) The Australian Prudential Regulation Authority Special Account is established by this section.

- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

53 Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) amounts received under an agreement or contract entered into under section 9A or 11;
- (c) amounts required to be credited to the Account in accordance with section 50;
- (d) amounts of any fees, charges or penalties paid to APRA, on behalf of the Commonwealth, under section 51 or any other law of the Commonwealth.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

54 Purposes of the Account

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by APRA in the performance of its functions or the exercise of its powers;
 - (b) in payment of any remuneration or allowances payable to persons appointed or engaged under this Act;
 - (c) in making any other payments which APRA is authorised or required to make under this Act or any other law of the Commonwealth.

Note: See section 21 of the *Financial Management and Accountability Act 1997*.

64 Subsection 55(1A)

Repeal the subsection.

65 At the end of subsection 55(2)

Add:

Note: Despite subsection (1), APRA may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*).

66 Section 59

Repeal the section, substitute:

59 Annual reports

Annual report to be given to Minister

- (1) The Chair must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on APRA's operations during that financial year.

Note: Section 34C of the *Acts Interpretation Act 1901* contains provisions relating to annual reports.

Contents of annual report

- (2) A report under subsection (1) must include the following:
 - (a) information on the following matters under the *Banking Act 1959*:
 - (i) the activities of ADI statutory managers (within the meaning of the *Banking Act 1959*), and persons conducting investigations, under Division 2 of Part II of the *Banking Act 1959*;
 - (ii) the activities of persons conducting investigations under section 61 of the *Banking Act 1959*;
 - (b) information on the exercise during the year of APRA's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*;
 - (c) information on any other matters required by the regulations;
 - (d) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
 - (e) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.
- (3) Paragraph (2)(a) does not authorise the inclusion in the annual report of information with respect to the affairs of a particular ADI

or authorised NOHC, a particular subsidiary of an ADI or authorised NOHC, or a particular customer of an ADI.

Annual report to be tabled in Parliament

- (4) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (5) In this section:

ADI has the same meaning as in the *Banking Act 1959*.

authorised NOHC has the same meaning as in the *Banking Act 1959*.

Australian Securities and Investments Commission Act 2001

67 Paragraph 102(2)(d)

After “appointed by”, insert “the Chair of”.

Financial Institutions Supervisory Levies Collection Act 1998

68 Subsection 11(1)

Omit “(1)”.

69 Subsection 11(2)

Repeal the subsection (not including the note).

70 Subsection 13(3)

Repeal the subsection.

Schedule 2—Application and transitional provisions

Part 1—Definitions

1 Definitions

In this Schedule:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Agency means:

- (a) ASIC as established under the *Australian Securities and Investments Commission Act 2001* immediately before the commencement time; or
- (b) CAMAC as established under the *Australian Securities and Investments Commission Act 2001* immediately before the commencement time; or
- (c) APRA as established under the *Australian Prudential Regulation Authority Act 1998* immediately before the commencement time.

Agency head means:

- (a) in relation to ASIC—the Chairperson of ASIC; or
- (b) in relation to CAMAC—the Convenor of CAMAC; or
- (c) in relation to APRA—the Chair of APRA.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the time when this Schedule commences.

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

member means:

- (a) in relation to ASIC—a member of ASIC; or
- (b) in relation to CAMAC—a member of CAMAC; or
- (c) in relation to APRA—an APRA member.

Part 2—Application and transitional provisions for ASIC and CAMAC

Division 1—Application provision for ASIC and CAMAC

2 Pre-existing property, money and financial liabilities

- (1) Subject to items 3, 4 and 5 of this Schedule, any real or personal property or money that is held by ASIC or CAMAC immediately before the commencement time is taken, immediately after that time, to be held by ASIC or CAMAC for and on behalf of the Commonwealth.
- (2) Subject to items 3, 4 and 5 of this Schedule, any financial liabilities of ASIC or CAMAC that exist immediately before the commencement time are taken, immediately after that time, to be liabilities of the Commonwealth.
- (3) If an amount of money (the *original amount*) that is held by ASIC immediately before the commencement time is held by ASIC for and on behalf of the Commonwealth immediately after the commencement time, an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of ASIC.
- (4) If an amount of money (the *original amount*) that is held by CAMAC immediately before the commencement time is held by CAMAC for and on behalf of the Commonwealth immediately after the commencement time, an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of CAMAC.

Division 2—Transitional provisions for ASIC

3 Trust property held under Part 9.7 of the Corporations Act

Any unclaimed property held, immediately before the commencement time, on trust by ASIC to be dealt with under Part 9.7 of the *Corporations Act 2001* (as in force at that time) is taken, immediately after that time, to be held by ASIC for and on behalf of the Commonwealth to be dealt with in accordance with Part 9.7 of the *Corporations Act 2001* (as amended by Schedule 1 to this Act).

4 Vesting of other assets held on trust by ASIC

- (1) This item applies to any other assets held on trust by ASIC immediately before the commencement time.
- (2) At the commencement time, the assets to which this item applies cease to be assets held on trust by ASIC and become assets held on trust by the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to those assets.

Note: ASIC may, for and on behalf of the Commonwealth, perform all the duties and exercise all the powers of the Commonwealth as trustee in relation to assets held on trust by the Commonwealth (see subsection 8(6) of the *Australian Securities and Investments Commission Act 2001*).

5 Vesting of liabilities relating to assets held on trust

- (1) This item applies to the liabilities of ASIC in relation to assets mentioned in item 4 of this Schedule that are held on trust by ASIC immediately before the commencement time.
- (2) At the commencement time, the liabilities to which this item applies cease to be liabilities of ASIC in relation to the assets and become liabilities of the Commonwealth in relation to the assets, without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

6 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 9 of this Schedule.

- (2) The land registration official may:
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- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate.

7 Certificates relating to vesting of assets other than land

- (1) This item applies if:
 - (a) any asset other than land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 9 of this Schedule.

- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.

8 Substitution of Commonwealth as a party to pending proceedings

If any proceedings relating to an asset covered by item 4 of this Schedule, to which ASIC was a party, were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for ASIC, from the commencement time, as a party to the proceedings.

9 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

Division 3—Transitional provision for CAMAC

10 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of CAMAC, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Convenor.

Part 3—Application and transitional provisions for APRA

11 Pre-existing property, money and financial liabilities

- (1) Any real or personal property or money that is held by APRA immediately before the commencement time is taken, immediately after that time, to be held by APRA for and on behalf of the Commonwealth.
- (2) Any financial liabilities of APRA that exist immediately before the commencement time are taken, immediately after that time, to be liabilities of the Commonwealth.
- (3) After the commencement time, there must be credited to the Australian Prudential Regulation Authority Special Account an amount equal to the total of all money held by APRA immediately before the commencement time.

12 Appointment and engagement of staff and consultants

- (1) A person who is appointed or engaged by APRA under section 45 or 47 of the *Australian Prudential Regulation Authority Act 1998* immediately before the commencement time, is taken to be appointed or engaged (as the case requires) by the Chair, on behalf of APRA, immediately after the commencement time.
- (2) If:
 - (a) an instrument is in force under section 45 or 47 of the *Australian Prudential Regulation Authority Act 1998* immediately before the commencement time; and
 - (b) the instrument contains a reference to APRA;so far as the context permits, the instrument has effect from the commencement time as if the reference to APRA were a reference to the Chair of APRA.
- (3) To avoid doubt, the amendments made by items 53 to 56 of Schedule 1 do not constitute a transmission of business for the purposes of the *Workplace Relations Act 1996*.

13 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of APRA, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Chair of APRA.

Part 4—Transitional provisions for ASIC, CAMAC and APRA

14 Financial statements and other reporting requirements

Reporting requirements

- (1) If:
- (a) immediately before the commencement time, a law required an Agency or a member of the Agency to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;
- the Agency head must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), the Agency head is required to provide a report for a part of a period; and
 - (b) the Agency head is also required to provide a similar report for the remainder of the period;
- the Agency head may meet the requirements in a single report for the period.

Outstanding reporting requirements

- (3) If:
- (a) a law required the Agency or a member of the Agency to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;
- the Agency head must provide the report as required.

Application of law to Agency head

- (4) To avoid doubt, if, under this item, an Agency head is required to provide a report under a law, the law applies to the Agency head in respect of the report in the same way as the law would have applied to the Agency or the member of the Agency in respect of the report.

15 New annual report requirements to apply from 2007-2008 and later financial years

Sections 136 and 162 of the *Australian Securities and Investments Commission Act 2001* (as inserted by items 12 and 46 of Schedule 1 to this Act), and item 66 of Schedule 1 to this Act, apply to the 2007-2008 financial year and later financial years.

16 Continuing obligation to keep records

If, immediately before this item commences, an Agency has kept accounting records under subsection 20(1) of the *Commonwealth Authorities and Companies Act 1997*, then, after this item commences, section 20 of that Act (as in force from time to time), continues to apply, in respect of those records, as if the Agency continued to be subject to that Act.

17 Constitutional safety net—acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

18 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Schedule; or
- (b) the operation of this Schedule in any other respect.

19 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule, in relation to an Agency, to the Agency head.
 - (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
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20 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 1 to this Act.

Schedule 3—Technical amendments relating to legislative instruments

Australian Prudential Regulation Authority Act 1998

1 Subsection 51(1)

Omit “written”, substitute “legislative”.

2 Subsection 51(3)

Repeal the subsection.

3 Subsection 57(1)

Omit “(1)”.

4 Subsection 57(1)

After “APRA may”, insert “, by legislative instrument,”.

5 Subsection 57(2)

Repeal the subsection.

*[Minister’s second reading speech made in—
House of Representatives on 1 March 2007
Senate on 29 March 2007]*

(28/07)