



Financial Sector Legislation Amendment Act (No. 1) 2003

No. 116, 2003

**An Act to amend certain laws relating to the
financial sector, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend certain laws relating to the financial sector, and for related purposes

[Assented to 27 November 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Sector Legislation
Amendment Act (No. 1) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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	27 November 2003
2. Schedule 1, items 1 to 3	The day after this Act receives the Royal Assent	28 November 2003
3. Schedule 1, item 4	Immediately after the commencement of the <i>Australian Securities and Investments Commission Act 2001</i> .	15 July 2001
4. Schedules 2 and 3	The day after this Act receives the Royal Assent	28 November 2003
5. Schedule 4, item 1	Immediately after the time specified in the <i>Corporations (Repeals, Consequential and Transitional) Act 2001</i> for the commencement of subsection 2(8) of that Act	15 July 2001
6. Schedule 4, item 2	Immediately after the time specified in the <i>Corporations (Repeals, Consequential and Transitional) Act 2001</i> for the commencement of item 284 of Schedule 3 to that Act	15 July 2001
7. Schedule 4, item 3	Immediately after the time specified in the <i>Corporations (Repeals, Consequential and Transitional) Act 2001</i> for the commencement of item 337 of Schedule 3 to that Act	15 July 2001
8. Schedules 5 to 7	The day after this Act receives the Royal Assent	28 November 2003

Note: This table relates only to the provisions of this Act as originally passed by 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 is for additional information that is not part of this Act. This information may be included 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—Australian Securities and Investments Commission Act 2001

1 Subsection 12GM(1)

After “engaged in”, insert “in”.

2 Subsection 127(5)

Omit “(4F)”, substitute “(4FA)”.

3 Paragraph 203(1)(c)

Omit “the Australian Society of Certified Practising Accountants”, substitute “CPA Australia”.

4 Subsection 254(1) (subparagraph (b)(iii) of the definition of *old ASIC legislation*)

After “Part 8”, insert “or Division 6 of Part 11”.

Schedule 2—Banking Act 1959

1 Subsection 5(1) (definition of *prudential matters*)

Repeal the definition, substitute:

prudential matters means matters relating to:

- (a) the conduct by an ADI, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, of any part of its or their affairs in such a way as:
 - (i) to keep the ADI, NOHC, group or member or members of the group in a sound financial position; or
 - (ii) not to cause or promote instability in the Australian financial system; or
- (b) the conduct by an ADI, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, of its or their affairs with integrity, prudence and professional skill.

2 Subsection 5(1)

Insert:

relevant group of bodies corporate has the meaning given by subsection 5(3).

3 Subsection 5(1)

Insert:

senior manager of an ADI or an authorised NOHC or the Australian operations of a foreign ADI means a person who has or exercises any of the senior management responsibilities (within the meaning of the prudential standards) for the ADI or NOHC or for the Australian operations of the foreign ADI, as the case may be.

4 At the end of section 5

Add:

- (3) For the purposes of this Act:

- (a) an ADI and its subsidiaries together constitute a *relevant group of bodies corporate*; and
- (b) an authorised NOHC and its subsidiaries together also constitute a *relevant group of bodies corporate*.

5 Before paragraph 9A(2)(a)

Insert:

- (aa) the body corporate has, whether before or after the commencement of this paragraph, provided, in connection with its application for the authority, information that was false or misleading in a material particular; or

6 Before paragraph 11AB(2)(a)

Insert:

- (aa) the body corporate has, whether before or after the commencement of this paragraph, provided, in connection with its application for the authority, information that was false or misleading in a material particular; or

7 After subsection 11AF(1A)

Insert:

- (1AA) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may require:
 - (a) each ADI or authorised NOHC; or
 - (b) each ADI or authorised NOHC included in a specified class of ADIs or authorised NOHCs; or
 - (c) a specified ADI or authorised NOHC; or
 - (d) each of 2 or more specified ADIs or authorised NOHCs; to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to prudential matters.

8 Subsection 11CA(2)

Repeal the subsection, substitute:

- (2) The kinds of direction that the body corporate may be given are directions to do, or to cause a body corporate that is its subsidiary to do, any one or more of the following:

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

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

9 After subsection 11CA(4)

Insert:

(4A) If the direction requires the body corporate to cause a subsidiary to do, or to refrain from doing, an act or thing:

(a) the body corporate has power to cause the subsidiary to do, or to refrain from doing, the act or thing; and

(b) the subsidiary has power to do, or to refrain from doing, the act or thing;

despite anything in the subsidiary's constitution or any contract or arrangement to which the subsidiary is a party.

10 Subsection 11CD(1)

After "NOHC" (last occurring), insert ", or a subsidiary of the ADI or NOHC,".

11 Subsection 11CD(2)

After "NOHC" (first occurring), insert ", or a subsidiary of an ADI or of an authorised NOHC,".

12 Subsection 11CD(2)

Omit "11CA(2)(k)", substitute "11CA(2)(m)".

12A Section 11CG

Omit "or Subdivision B" (wherever occurring), substitute "or B or section 17 or 23".

12B At the end of subsection 14A(2)

Add:

A requirement to give information may include a requirement to produce books, accounts or documents.

12C Paragraph 14A(2A)(b)

Omit "the ADI statutory manager information", insert "information or to produce books, accounts or documents".

12D After subsection 14A(4)

Insert:

-
- (4A) Subsections (3) and (4) apply to the production of books, accounts or documents in a corresponding way to the way in which they apply to the giving of information.

13 Subsection 16B(1)

Repeal the subsection, substitute:

Duty to give information when required

- (1) APRA may, by notice in writing, require a person who is, or has been, an auditor of:
- (a) an ADI; or
 - (b) an authorised NOHC; or
 - (c) a subsidiary of an ADI or authorised NOHC; or
 - (d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):
 - (i) another subsidiary (a ***relevant Australian-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is incorporated in Australia; or
 - (ii) another subsidiary (a ***relevant foreign-incorporated subsidiary***) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is not incorporated in Australia and carries on business in Australia;

to provide information, or to produce books, accounts or documents, to APRA about the ADI, authorised NOHC, subsidiary of the ADI or authorised NOHC, or relevant Australian-incorporated subsidiary, or about the Australian operations of the relevant foreign-incorporated subsidiary, if APRA considers that the provision of the information, or the production of the books, accounts or documents, will assist APRA in performing its functions under this Act.

14 Subsection 16B(1A)

Omit “who is or has been an auditor of an ADI, an authorised NOHC, or a subsidiary of an ADI or an authorised NOHC,”.

14A Paragraph 16B(1A)(a)

After “information”, insert “or to produce books, accounts or documents”.

15 After subsection 16B(4)

Insert:

Additional duty to give information about Australian-incorporated subsidiaries of certain foreign corporations

- (4A) A person who is or has been an auditor of a relevant Australian-incorporated subsidiary of a foreign corporation commits 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 under the *Financial Sector (Collection of Data) Act 2001*; 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 foreign corporation; 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 foreign-incorporated subsidiaries of certain foreign corporations

- (4B) A person who is or has been an auditor of a relevant foreign-incorporated subsidiary of a foreign corporation commits 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 under the *Financial Sector (Collection of Data) Act 2001*; or
 - (iii) an existing or proposed state of affairs of the Australian operations of the subsidiary may materially prejudice the interests of depositors of any ADI that is a subsidiary of the foreign corporation; 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.

Strict liability

- (4C) Strict liability applies to the physical elements in paragraphs (1A)(c), (2)(c), (3)(c), (4)(c), (4A)(c) and (4B)(c) that no orders making determinations of kinds referred to in the paragraphs concerned are in force under section 11.

15A At the end of section 16B

Add:

- (7) Subsections (5) and (6) apply to the production of books, accounts or documents in a corresponding way to the way in which they apply to the giving of information.

16 Section 16C

Repeal the section, substitute:

16C Auditor may provide information to APRA

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

- (a) an ADI; or
- (b) an authorised NOHC; or
- (c) a subsidiary of an ADI or authorised NOHC; or
- (d) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):
 - (i) another subsidiary (a *relevant Australian-incorporated subsidiary*) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is incorporated in Australia; or
 - (ii) another subsidiary (a *relevant foreign-incorporated subsidiary*) of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)), being a subsidiary that is not incorporated in Australia and carries on business in Australia;

may provide information, or produce books, accounts or documents, to APRA about the ADI, authorised NOHC, subsidiary of the ADI or authorised NOHC, or relevant Australian-incorporated subsidiary, or about the Australian operations of the relevant foreign-incorporated subsidiary, if the person considers that the provision of the information, or the production of the books, accounts or documents, to APRA will assist APRA in performing its functions under this Act or the *Financial Sector (Collection of Data) Act 2001*.

17 After Division 2A of Part II

Insert:

Division 2B—Removal of auditors of ADIs**17 APRA may remove an auditor of an ADI**

- (1) This section applies to a person who is an auditor of an ADI.
- (2) APRA may direct (in writing) that an ADI remove the person from the position if APRA is satisfied that the person:
 - (a) has failed to perform adequately and properly the functions and duties of the position as required under this Act or the prudential standards; or
 - (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.
- (3) Before directing an ADI to remove a person, APRA must give written notice to:
 - (a) the person; and
 - (b) the ADI;giving each of them a reasonable opportunity to make submissions on the matter.
- (4) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.
- (5) A notice given under subsection (3) to a person or an ADI must state that any submissions made in response to the notice may be discussed by APRA with other persons as mentioned in subsection (4).
- (6) A direction takes effect on the day specified in it, which must be not earlier than 7 days after it is made.
- (7) If APRA directs an ADI to remove a person, APRA must give a copy of the direction to the person and to the ADI.
- (7A) An ADI must comply with a direction under this section.

Note: For enforcement of the direction, see section 11CG.

- (7B) The power of an ADI to comply with a direction under this section may be exercised by giving a written notice to the person who is the subject of the direction.
- (7C) Subsection (7B) does not, by implication, limit any other powers of an ADI to remove a person.
- (8) Part VI applies to a direction given by APRA under this section.

18 Referring matters to the professional associations for auditors

- (1) This section applies if APRA directs an ADI under section 17 to remove a person from the position of auditor of the ADI.
- (2) APRA may refer details of the matter to the following:
 - (a) the Companies Auditors and Liquidators Disciplinary Board established by Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001*;
 - (b) those members of the professional association of the auditor who APRA believes will be involved in considering or taking any disciplinary or other action concerning the matter against the auditor.
- (3) When APRA refers details of a matter, APRA must also give written notice of the referral (including the nature of the matter) to the auditor.

Division 3—Governance

19 Disqualified persons must not act for ADIs or authorised NOHCs

- (1) A disqualified person commits an offence if the person is or acts as:
 - (a) a director or senior manager of an ADI (other than a foreign ADI); or
 - (b) a senior manager of the Australian operations of a foreign ADI; or
 - (c) a director or senior manager of an authorised NOHC.

Maximum penalty: Imprisonment for 2 years.

- (2) A disqualified person commits an offence if the person is or acts as:
- (a) a director or senior manager of an ADI (other than a foreign ADI); or
 - (b) a senior manager of the Australian operations of a foreign ADI; or
 - (c) a director or senior manager of an authorised NOHC.

Maximum penalty: 60 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

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

- (4) A body corporate commits an offence if it allows a disqualified person to be or act as:
- (a) if the body corporate is an ADI (other than a foreign ADI)—a director or senior manager of the ADI; or
 - (b) if the body corporate is a foreign ADI—a senior manager of the Australian operations of the ADI; or
 - (c) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC.

Maximum penalty: 250 penalty units.

- (5) A body corporate commits an offence if it allows a disqualified person to be or act as:
- (a) if the body corporate is an ADI (other than a foreign ADI)—a director or senior manager of the ADI; or
 - (b) if the body corporate is a foreign ADI—a senior manager of the Australian operations of the ADI; or
 - (c) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC.

Maximum penalty: 60 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

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

- (7) In a prosecution under subsection (4) or (5), it is a defence if:
- (a) the person was a disqualified person only because he or she was disqualified by APRA under section 21; and

(b) the defendant contacted APRA within a reasonable period before allowing the person to be or act as a director or senior manager (as the case may be); and

(c) the defendant was incorrectly advised by APRA that the person was not a disqualified person under section 21.

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

(8) A failure to comply with this section does not affect the validity of an appointment or transaction.

(9) Subsections (1) to (8) have no effect until the end of the 3-month period that begins at the commencement of this section.

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

20 Who is a *disqualified person*?

(1) A person is a *disqualified person* if, at any time (whether before or after the commencement of this section):

(a) the person has been convicted of an offence against or arising out of:

(i) this Act; or

(ii) the *Financial Sector (Collection of Data) Act 2001*; or

(iii) the *Corporations Act 2001*, the Corporations Law that was previously in force, or any law of a foreign country that corresponds to that Act or to that Corporations Law; or

(b) the person has been convicted of an offence against or arising out of a law in force in Australia, or the law of a foreign country, where the offence related or relates to dishonest conduct, or to conduct relating to a company that carries on business in the financial sector; or

(c) the person has been or becomes bankrupt; or

(d) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(e) the person has compounded with his or her creditors; or

(f) APRA has disqualified the person under section 21; or

(g) the person has been disqualified under the law of a foreign country from managing, or taking part in the management of,

an entity that carries on the business of banking or insurance or otherwise deals in financial matters.

Note: APRA may determine that a person is not a disqualified person (see section 22).

- (2) A reference in subsection (1) to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
 - (a) section 19B of the *Crimes Act 1914*; or
 - (b) a corresponding provision of a law of a State, a Territory or a foreign country.
- (3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

21 APRA may disqualify person

- (1) APRA may disqualify a person if it is satisfied that the person is not a fit and proper person to be or to act as someone referred to in paragraph 19(1)(a), (b) or (c) or (2)(a), (b) or (c).
- (1A) In deciding whether it is satisfied as mentioned in subsection (1), APRA may take into account:
 - (a) any matters specified in the regulations for the purposes of this paragraph; and
 - (b) any other matters APRA considers relevant.
- (1B) If regulations specifying matters for the purposes of paragraph (1A)(a) also specify the way in which, the extent to which or the circumstances in which:
 - (a) the matters; or
 - (b) any information or material relating to the matters;may be taken into account by APRA, APRA must comply with the regulations.
- (2) A disqualification takes effect on the day on which it is made.

- (3) APRA may revoke a disqualification on application by the disqualified person or on its own initiative. A revocation takes effect on the day on which it is made.
- (4) APRA must give the person written notice of a disqualification, revocation of a disqualification or a refusal to revoke a disqualification.
- (5) As soon as practicable after a notice is given to a person under subsection (4), APRA must cause particulars of the disqualification, revocation or refusal to which the notice relates:
 - (a) to be given:
 - (i) if the person is, or is acting as, a person referred to in paragraph 19(1)(a) or (2)(a)—to the ADI concerned; or
 - (ii) if the person is, or is acting as, a person referred to in paragraph 19(1)(b) or (2)(b)—to the foreign ADI concerned; or
 - (iii) if the person is, or is acting as, a person referred to in paragraph 19(1)(c) or (2)(c)—to the authorised NOHC; and
 - (b) to be published in the *Gazette*.
- (6) Part VI applies to a disqualification under this section or to a refusal to revoke such a disqualification.

22 APRA may determine that a person is not a *disqualified person*

- (1) Despite section 20, APRA may determine (in writing) that a person is not a *disqualified person*. APRA may do so on its own initiative or on the application of the person.
- (2) However, APRA may only make the determination if it is satisfied that the person is highly unlikely to be a prudential risk to any ADI or authorised NOHC.
- (3) If a person applies for a determination under this section, APRA must:
 - (a) either make, or refuse to make, the determination; and
 - (b) in the case of a refusal, give the person written notice of the refusal.

- (4) APRA may do any of the following:
 - (a) when making a determination under subsection (1), specify in the determination conditions to which the determination is to be subject;
 - (b) at any later time while a determination under subsection (1) is in force, make a further determination specifying conditions or additional conditions to which the determination under subsection (1) is to be subject;
 - (c) at any time make a determination varying or revoking conditions that have been specified under paragraph (a) or (b).
- (5) A determination takes effect on the day on which it is made.
- (6) APRA must, as soon as practicable after a determination is made, give written notice of the making of the determination, and a copy of the determination, to the person concerned and to any affected ADI or authorised NOHC.
- (7) A notice of a refusal to make a determination, or a notice of the making of a determination that specifies or varies conditions, must state the reasons for the refusal or for the specifying or variation of the conditions, as the case may be.
- (8) APRA may revoke a determination under this section by giving written notice to the person concerned and must give a copy of the notice to any affected ADI or authorised NOHC.
- (9) The revocation of a determination takes effect on the day specified in the instrument of revocation, which must be not earlier than 7 days after the instrument is signed.
- (10) Part VI applies to a refusal of APRA to make a determination under this section, to a determination under this section that specifies conditions, to a determination under this section that varies conditions in a way that is more onerous on the person concerned or to the revocation of a determination under this section.

23 APRA may remove a director or senior manager of an ADI or authorised NOHC

- (1) This section applies to a person who is:
 - (a) a director or senior manager of an ADI (other than a foreign ADI); or
 - (b) a senior manager of the Australian operations of a foreign ADI; or
 - (c) a director or senior manager of an authorised NOHC.
- (2) APRA may direct (in writing) that the ADI or authorised NOHC remove the person from the position if APRA is satisfied that the person:
 - (a) is a disqualified person; or
 - (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.
- (3) Before directing an ADI or authorised NOHC to remove a person, APRA must give written notice to:
 - (a) the person; and
 - (b) the ADI or NOHC;giving each of them a reasonable opportunity to make submissions on the matter.
- (4) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.
- (5) A notice given under subsection (3) to a person, an ADI or an authorised NOHC must state that any submissions made in response to the notice may be discussed by APRA with other persons as mentioned in subsection (4).
- (6) A direction takes effect on the day specified in it, which must be not earlier than 7 days after it is signed.
- (7) If APRA directs an ADI or authorised NOHC to remove a person, APRA must give a copy of the direction to the person and to the ADI or NOHC.

(7A) An ADI or authorised NOHC must comply with a direction under this section.

Note: For enforcement of the direction, see section 11CG.

(7B) The power of an ADI to comply with a direction under this section may be exercised on behalf of the ADI as set out in the table:

Power to comply with a direction		
Item	Who may exercise the power	How the power may be exercised
1	The chair of the board of directors of the ADI	by signing a written notice.
2	A majority of the directors of the ADI (excluding any director who is the subject of the direction)	by jointly signing a written notice.

(7C) The power of an authorised NOHC to comply with a direction under this section may be exercised on behalf of the NOHC as set out in the table:

Power to comply with a direction		
Item	Who may exercise the power	How the power may be exercised
1	The chair of the board of directors of the NOHC	by signing a written notice.
2	A majority of the directors of the NOHC (excluding any director who is the subject of the direction)	by jointly signing a written notice.

(7D) Subsections (7B) and (7C) do not, by implication, limit any other powers of an ADI or authorised NOHC to remove a person.

(8) Part VI applies to a direction given by APRA under this section.

18 After Part V

Insert:

Part VI—Reconsideration and Review of decisions

51A Definitions

In this Part:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

reviewable decision of APRA means a decision of APRA to which, under this Act, this Part applies.

51B Reconsideration of decisions

- (1) A person affected by a reviewable decision of APRA who is dissatisfied with the decision may, by notice in writing given to APRA, within the period of 21 days after the day on which the decision first comes to the notice of the person, or within such further period as APRA allows, request APRA to reconsider the decision.
- (2) The request must set out the reasons for making the request.
- (3) Upon receiving the request, APRA must reconsider the decision and may, subject to subsection (4), confirm or revoke the decision or vary the decision in such manner as APRA thinks fit.
- (4) If APRA does not confirm, revoke or vary a decision before the end of the period of 21 days after the day on which APRA received the request under subsection (1) to reconsider the decision, APRA is taken, at the end of that period, to have confirmed the decision under subsection (3).
- (5) If APRA confirms, revokes or varies a decision before the end of the period referred to in subsection (4), APRA must, by notice served on the person who made the request:
 - (a) tell the person of the result of APRA's reconsideration of the decision; and
 - (b) set out the findings on material questions of fact; and
 - (c) refer to the evidence or other material on which those findings were based; and

-
- (d) give APRA's reasons for confirming, revoking or varying the decision, as the case may be.
- (6) When APRA serves on a person a notice containing information of a kind mentioned in paragraph (5)(b) or (c), APRA may include in the notice conditions to be complied with in relation to the notice or any information disclosed in the notice.
- (7) A person commits an offence if the person fails to comply with a condition imposed under subsection (6).

Maximum penalty: Imprisonment for 2 years.

- (8) Strict liability applies to the physical element of the offence in subsection (7) that the condition is imposed under subsection (6).

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

51C Review of decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of APRA that have been confirmed or varied under subsection 51B(3).
- (2) If a decision is taken, because of the operation of subsection 51B(4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period beginning on the day on which the decision is taken to be confirmed and ending on the 28th day after that day.
- (3) If a person makes a request under subsection 51B(1) in respect of a reviewable decision of APRA, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.
- (4) The hearing of a proceeding relating to a reviewable decision of APRA is to take place in private and the Tribunal may, by order:
- (a) give directions as to the persons who may be present; and
 - (b) give directions of a kind referred to in paragraph 35(2)(b) or (c) of the *Administrative Appeals Tribunal Act 1975*.

51D Statements to accompany notification of decisions

- (1) If a reviewable decision of APRA is made and notice in writing of the decision is given to a person affected by the decision, the notice is to include a statement to the effect that:
 - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by APRA in accordance with subsection 51B(1); and
 - (b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by APRA upon that reconsideration confirming or varying the first-mentioned decision, apply to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.
- (2) A notice given to a person under subsection (1) may impose conditions relating to the disclosure of any information setting out reasons for the decision that is contained in, or in a document accompanying, the notice.
- (3) A person commits an offence if the person fails to comply with a condition imposed under subsection (2).

Maximum penalty: Imprisonment for 2 years.

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

- (4) If APRA confirms or varies a decision under subsection 51B(3) and gives to a person notice in writing of the confirmation or variation of the decision, the notice is to include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision.
- (5) Any failure to comply with the requirements of subsection (1) or (4) in relation to a decision does not affect the validity of the decision.

19 Section 61

Repeal the section, substitute:

61 APRA may conduct investigations

- (1) APRA may appoint a person to investigate and report on prudential matters in relation to:
- (a) a body corporate that is:
 - (i) an ADI; or
 - (ii) an authorised NOHC; or
 - (iii) a subsidiary of an ADI or of an authorised NOHC; or
 - (b) if a body corporate that is an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):
 - (i) another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), being a subsidiary that is incorporated in Australia; or
 - (ii) the Australian operations of another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), being a subsidiary that is not incorporated in Australia and carries on business in Australia;
- 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.
- (3) A body corporate commits 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: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) Strict liability applies to:
- (a) the physical element in subparagraph (3)(b)(ii) that the requirement was made under subsection (2); and
 - (b) the physical element in paragraph (3)(c) that no orders making determinations of a kind referred to in that paragraph are in force under section 11.
- (5) 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 (3), the body corporate commits 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) Nothing in this section is intended to limit the operation of any other provision of this Act.

20 At the end of paragraph 62(1)(a)

Add “or in respect of any member of a relevant group of bodies corporate of which the ADI is a member”.

21 At the end of paragraph 62(1)(b)

Add “or in respect of any member of a relevant group of bodies corporate of which the NOHC is a member”.

22 At the end of paragraph 62(1)(c)

Add “or in respect of any member of a relevant group of bodies corporate of which the subsidiary is a member”.

23 After paragraph 62(1)(c)

Insert:

- (ca) if an ADI is a subsidiary of a foreign corporation (whether or not the ADI is itself a foreign ADI):
 - (i) another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c) that is incorporated in Australia may be required to give APRA information in respect of the subsidiary; or
 - (ii) another subsidiary of the foreign corporation (other than a body mentioned in paragraph (a), (b) or (c)) that is not incorporated in Australia and carries on business in Australia may be required to give APRA information in respect of its Australian operations;

23A Subsection 62(2)

Omit “relating to the ADI.”, substitute:

relating to:

- (a) the ADI; or
- (b) any member of a relevant group of bodies corporate of which the ADI is a member.

24 After section 62

Insert:

62A Notices to APRA

- (1) A member of a relevant group of bodies corporate commits an offence if:
 - (a) it becomes aware of any of the following matters:
 - (i) it, or another member of the group, has committed a breach of a prudential standard applying to it or to the other member, as the case may be;
 - (ii) it, another member of the group, or the group as a whole, may not be in a sound financial position;
 - (iii) another member of the group has committed a breach of this Act, the regulations, a direction under Division 1BA or a condition of an authority granted under this Act to the other member; and

- (b) it fails to notify APRA of the matter immediately after it becomes aware of the matter.

Penalty: 200 penalty units.

- (2) If an individual:
 - (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);he or she is punishable, on conviction, by a fine not exceeding 40 penalty units.
- (3) A notification given to APRA of a matter mentioned in paragraph (1)(a) must not include information, books, accounts or documents 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:
 - (a) the ADI; or
 - (b) any member of a relevant group of bodies corporate of which the ADI is a member.

25 After subsection 69F(3)

Insert:

References to a subsidiary of a foreign corporation

- (3A) 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 a foreign corporation were expressly limited to a reference to a subsidiary of a foreign corporation, being a subsidiary that is a corporation to which paragraph 51(xx) of the Constitution applies;
 - (b) the Act has effect as if a reference to a subsidiary of a foreign corporation were expressly limited to a reference to a subsidiary of a foreign corporation, being a subsidiary that

carries on banking business as mentioned in paragraph (a) of the *banking business definition*;

- (c) the Act has effect as if a reference to a subsidiary of a foreign corporation were expressly limited to a reference to a subsidiary of a foreign corporation, being a subsidiary that carries on banking business as mentioned in paragraph (b) of the *banking business definition*.

References to a body corporate that is a member of a relevant group of bodies corporate

- (3B) 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 body corporate that is a member of a relevant group of bodies corporate were expressly limited to a reference to a body corporate, being a body corporate that is a corporation to which paragraph 51(xx) of the Constitution applies;
- (b) the Act has effect as if a reference to a body corporate that is a member of a relevant group of bodies corporate were expressly limited to a reference to a body corporate, being a body corporate that carries on banking business as mentioned in paragraph (a) of the *banking business definition*;
- (c) the Act has effect as if a reference to a body corporate that is a member of a relevant group of bodies corporate were expressly limited to a reference to a body corporate, being a body corporate that carries on banking business as mentioned in paragraph (b) of the *banking business definition*;

26 Section 70A

Repeal the section, substitute:

70A Protection from liability

- (1) A person is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith and without negligence in the exercise or performance, or the purported exercise or performance, of powers, functions or duties under this Act.

- (2) To avoid doubt, any information provided by a person to APRA under section 16C is taken, for the purposes of subsection (1), to be provided in the exercise of a power or the performance of a function under this Act.
- (3) Subsection (1) does not apply to a person referred to in section 58 of the *Australian Prudential Regulation Authority Act 1998* and, to avoid doubt, does not affect the operation of that section.

Schedule 3—Corporations Act 2001

1 Section 9 (subparagraph (a)(ii) of the definition of administrator)

Repeal the subparagraph.

2 Section 9 (paragraph (d) of the definition of Corporations legislation)

After “of a State”, insert “, or by the Supreme Court of the Northern Territory”.

3 Section 9 (definition of *State Fair Trading Act*, column 3 of table item 7)

Omit “Fair Trading Act 1990”, substitute “Consumer Affairs and Fair Trading Act 1990”.

4 Section 53

Omit “53AA”, substitute “53AA,”.

5 Section 91

Repeal the section.

6 Subsection 109X(2)

Omit “(in addition to the methods of service set out in subsection (4))”.

7 Subsection 109X(6)

Repeal the subsection, substitute:

- (6) This section does not affect:
- (a) any other provision of this Act, or any provision of another law, that permits; or
 - (b) the power of a court to authorise;
a document to be served in a different way.

8 Part 1.5 (paragraph 1.6, note in square brackets)

Repeal the note, substitute:

[sections 134-141 and 198E]

9 Part 1.5 (paragraph 1.8, note in square brackets)

Repeal the note, substitute:

[sections 198A, 198E, 202C, subsection 202F(1), sections 248A-248G, 251A]

10 Part 1.5 (paragraph 3.7)

Omit “in this jurisdiction”, substitute “in Australia”.

11 Part 1.5 (paragraph 3.7, note)

Repeal the note.

12 Part 1.5 (paragraph 5.1, note in square brackets)

Repeal the note, substitute:

[sections 9, 201A, 201B, 201D, 205A, 205B and 206A-206G, 228-230 and 242
and subsection 1317EA(3)]

13 Part 1.5 (paragraph 5.2, note in square brackets)

Omit “224C”, substitute “201G”.

14 Part 1.5 (paragraph 5.4)

Omit “A company must have a company secretary.”, substitute “A company other than a proprietary company must have a company secretary. However, a proprietary company may choose to have a company secretary.”.

15 Part 1.5 (paragraph 5.4, note in square brackets)

Omit “222A, 240, 242, 242C”, substitute “188, 204A-204G, 205A, 205B”.

16 Part 1.5 (section 7, first note in square brackets)

Omit “, 240”.

17 Part 1.5 (section 9, first note in square brackets)

Omit “1317H”, substitute “1317E, 1317G, 1317H, 1317P”.

18 Part 1.5 (paragraph 11.1, note in square brackets)

Omit “246AA”, substitute “232-235”.

19 Part 1.5 (paragraph 12.3, note in square brackets)

Repeal the note, substitute:

[Parts 5.4, 5.4B, 5.5].

20 Part 1.5 (paragraph 12.4, note)

Omit “5.5”, substitute “5.6”.

21 Section 141 (table items 32 (second occurring) and 33 (second occurring))

Renumber as 33A and 33B respectively.

22 Subsection 188(1) (note)

Omit “203C”, substitute “204A”.

23 Subsection 219(2)

Omit “(1)(d)”, substitute “(1)(e)”.

24 Subsection 252Z(3) (second occurring)

Renumber as subsection (3A).

25 Paragraph 254G(2)(e)

Omit “classes or”, substitute “classes of”.

26 Subsection 273A(1) (note)

Omit “273E”, substitute “273D”.

27 Subsection 273B(1) (note)

Omit “273E”, substitute “273D”.

28 Subsections 273B(5) and (6)

Repeal the subsections.

29 Subsection 273C(1) (note)

Omit “273E”, substitute “273D”.

30 Subsections 273C(5) and (6)

Repeal the subsections.

31 Subsections 319(5) and (6)

Repeal the subsections.

33 Paragraphs 411(5)(a) and (b)

Omit “meetings is”, substitute “meetings are”.

34 Subparagraph 1280(2)(a)(i)

Omit “the Australian Society of Certified Practising Accountants”, substitute “CPA Australia”.

35 Subparagraph 1282(2)(a)(i)

Omit “the Australian Society of Certified Practising Accountants”, substitute “CPA Australia”.

36 Subsection 1306(4)

Omit “are to be construed”, substitute “is to be construed”.

37 Subsection 1335(2)

Omit “is to be borne”, substitute “are to be borne”.

38 Division 2 of Part 9.6A (heading)

Repeal the heading, substitute:

Division 2—Criminal jurisdiction

39 Section 1408 (table item 7)

Repeal the item, substitute:

7 Subsections 319(4), (5) and (6)

40 Schedule 3 (table item 112)

Omit “Subsections 318(1) and (5)”, substitute “Subsection 319(1)”.

41 Schedule 3 (after table item 112)

Insert:

112A	Section 320	25 penalty units or imprisonment for 6 months, or both
112B	Section 321	10 penalty units or imprisonment for 3 months, or both

42 Schedule 4 (paragraphs 36(2)(a) and (b))

Omit “*Life Insurance Act 1996*”, substitute “*Life Insurance Act 1995*”.

Schedule 4—Corporations (Repeals, Consequentials and Transitionals) Act 2001

1 Subsection 2(8)

Omit “Schedule 2”, substitute “Schedule 1”.

2 Item 284 of Schedule 3

Omit “a prescribed interest as defined in”, substitute “a prescribed interest as defined by”.

3 Item 337 of Schedule 3

Omit “a law referred to in paragraph (a)”, substitute “a law referred to in paragraph (1)(a)”.

Schedule 5—Insurance Act 1973

1 Subsection 14(1) (penalty)

Omit “60”, substitute “300”.

2 After subsection 14(1)

Insert:

(1A) If an individual:

- (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
- (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

3 Subsection 14(2) (note 3)

Repeal the note.

4 Subsection 17(8) (penalty)

Omit “60”, substitute “300”.

5 After subsection 17(8)

Insert:

(8A) If an individual:

- (a) commits an offence against subsection (8) because of Part 2.4 of the *Criminal Code*; or
- (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (8);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

6 Subsection 17(9)

Omit “subsection (8)”, substitute “this section”.

7 Subsection 17(9) (note 3)

Repeal the note.

8 Subsection 20(1) (penalty)

Omit “60”, substitute “300”.

9 After subsection 20(1)

Insert:

(1A) If an individual:

(a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

10 Subsection 20(2) (note 3)

Repeal the note.

11 After subsection 27(3)

Insert:

(3A) If a submission is made to APRA in response to the notice, APRA must have regard to the submission and may discuss any matter contained in the submission with such persons as it considers appropriate for the purpose of assessing the truth of the matter.

(3B) A notice given under subsection (3) to a person, a general insurer or an authorised NOHC must state that any submissions made in response to the notice may be discussed by APRA with other persons as mentioned in subsection (3A).

11A After subsection 27(5)

Insert:

(5A) The power of a general insurer to comply with a direction under this section may be exercised on behalf of the general insurer as set out in the table:

Power to comply with a direction		
Item	Who may exercise the power	How the power may be exercised
1	The chair of the board of directors of the general insurer	by signing a written notice.
2	A majority of the directors of the general insurer (excluding any director who is the subject of the direction)	by jointly signing a written notice.

(5B) The power of an authorised NOHC to comply with a direction under this section may be exercised on behalf of the NOHC as set out in the table:

Power to comply with a direction		
Item	Who may exercise the power	How the power may be exercised
1	The chair of the board of directors of the NOHC	by signing a written notice.
2	A majority of the directors of the NOHC (excluding any director who is the subject of the direction)	by jointly signing a written notice.

(5C) Subsections (5A) and (5B) do not, by implication, limit any other powers of a general insurer or an authorised NOHC to remove a person.

12 Subsection 27(7) (penalty)

Omit “60”, substitute “300”.

13 After subsection 27(7)

Insert:

- (7A) If an individual:
- (a) commits an offence against subsection (7) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (7);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

14 Subsection 27(8)

Omit “subsection (7)”, substitute “this section”.

15 Subsection 27(8) (note 3)

Repeal the note.

16 At the end of Division 1 of Part III

Add:

35A Notice of breach of prudential standard

- (1) A general insurer, an authorised NOHC or a subsidiary of a general insurer or of an authorised NOHC commits an offence if:
- (a) it becomes aware of:
 - (i) a breach by it of a prudential standard; or
 - (ii) any other matter or occurrence that materially affects its financial position; and
 - (b) it fails to notify APRA, as soon as practicable, in writing of the breach or of the other matter or occurrence, as the case may be.

Penalty: 200 penalty units.

- (2) If an individual:
- (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
 - (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);
- he or she is punishable, on conviction, by a fine not exceeding 40 penalty units.

- (3) A notification given to APRA of a matter mentioned in paragraph (1)(a) must not include information, books, accounts or documents with respect to the affairs of an individual insured person, unless the information, books, accounts or documents are in respect of prudential matters relating to the general insurer, the authorised NOHC or the subsidiary, as the case may be.

17 Subsections 37(1), (2) and (3) (penalty)

Omit “60”, substitute “300”.

18 After subsection 37(3)

Insert:

(3A) If an individual:

(a) commits an offence against subsection (1), (2) or (3) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1), (2) or (3);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

19 Subsection 37(4) (note 3)

Repeal the note.

20 Subsection 47(5) (penalty)

Omit “60”, substitute “300”.

21 After subsection 47(5)

Insert:

(5A) If an individual:

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

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (5);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

22 Subsection 47(6)

Omit “subsection (5)”, substitute “this section”.

23 Subsection 47(6) (note 3)

Repeal the note.

23A Subsection 49(1)

After “information” (first occurring), insert “, or to produce books, accounts or documents,”.

23B Subsection 49(1)

After “information” (second occurring), insert “, or the production of the books, accounts or documents,”.

23C Section 49B

After “information” (first occurring), insert “, or produce books, accounts or documents,”.

23D Section 49B

After “information” (second occurring), insert “, or the production of the books, accounts or documents,”.

24 Section 49L (penalty)

Omit “60”, substitute “300”.

25 After subsection 49L(1)

Insert:

(1A) If an individual:

(a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or

(b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

26 Subsection 49L(2)

Omit “Subsection (1)”, substitute “An offence against this section”.

27 Subsection 49L(2) (note 3)

Repeal the note.

28 Section 49P (penalty)

Omit “60”, substitute “300”.

29 After subsection 49P(1)

Insert:

(1A) If an individual:

- (a) commits an offence against subsection (1) because of Part 2.4 of the *Criminal Code*; or
- (b) commits an offence under Part 2.4 of the *Criminal Code* in relation to an offence against subsection (1);

he or she is punishable, on conviction, by a fine not exceeding 60 penalty units.

30 Subsection 49P(2) (note 3)

Repeal the note.

Schedule 6—Superannuation Industry (Supervision) Act 1993

1 Section 337A

Repeal the section, substitute:

337A Trustee may give effect to award made under arbitration agreement

If:

- (a) the Superannuation Complaints Tribunal made an award in an arbitration conducted under an arbitration agreement entered into under the former Part 7A of the *Superannuation (Resolution of Complaints) Act 1993*; and
- (b) the award is still in force;

nothing in this Act or any other law of the Commonwealth, in any law of a State or Territory (whether written or unwritten) or in the governing rules of a fund, scheme or trust prevents a trustee of a fund, scheme or trust from giving effect to the award.

Schedule 7—Superannuation (Resolution of Complaints) Act 1993

1 Subsection 3(2) (definition of *arbitration*)

Repeal the definition.

2 Subsection 3(2) (definition of *arbitration agreement*)

Repeal the definition.

3 Subsection 3(2) (definition of *nominated State or Territory*)

Repeal the definition.

4 Subsection 3(2) (definition of *party* in relation to an *arbitration*)

Repeal the definition.

5 Subsections 7(2) and (2A)

Repeal the subsections, substitute:

- (2) The Tribunal Chairperson and the Tribunal Deputy Chairperson are to be appointed by the Governor-General.
- (2A) The Tribunal Chairperson may be appointed to hold office either on a full-time basis or on a part time-basis.
- (2B) The Tribunal Deputy Chairperson may be appointed to hold office either on a full-time basis or on a part time-basis.

6 Paragraph 11(b)

Repeal the paragraph, substitute:

- (b) if a complaint cannot be resolved by conciliation—the review of the decision or conduct to which the complaint relates;

7 Paragraph 12(1)(b)

Repeal the paragraph, substitute:

- (b) if the complaint cannot be resolved by conciliation—to review the decision or conduct to which the complaint relates;

8 Paragraph 13(1)(c)

Omit “resolved; and”, substitute “resolved.”.

9 Paragraph 13(1)(d)

Repeal the paragraph.

10 Paragraph 14(6A)(b)

Omit “one year”, substitute “2 years”.

11 Paragraph 14(6B)(b)

Omit “one year”, substitute “2 years”.

13 Section 28

Repeal the section, substitute:

28 Tribunal may require attendance at conciliation conferences

- (1) The purpose of this section is to help the Tribunal to settle a complaint in accordance with section 27.
- (2) The Tribunal may, if it thinks it desirable to do so after considering any documents given to it, by notice in writing given to:
 - (a) each party to the complaint; and
 - (b) any other person:
 - (i) who, in the Tribunal’s opinion, is likely to be able to provide information relevant to the settlement of the complaint; or
 - (ii) whose presence at the conference would, in the Tribunal’s opinion, be likely to be conducive to settling the complaint;require the party or other person to attend a conciliation conference.
- (3) The notice must also fix the date, time and place for the conference.

- (4) If the complainant fails to attend the conference, the Tribunal may deal with the complaint as if it had been withdrawn by the complainant under section 21.
- (5) A person, other than the complainant, commits an offence if he or she does not attend a conference when required to do so under this section.
- Penalty: 30 penalty units or imprisonment for 6 months.
- (6) If a party attending a conference is not proficient in English, the Tribunal may recommend that communication with the party at the conference proceed through an interpreter.
- (7) The Tribunal is to formulate in writing, and make available to the public in any way that it thinks appropriate, guidelines indicating the kinds of circumstances in which it would ordinarily require persons to attend a conciliation conference.

14 Subsection 30(2)

Repeal the subsection.

15 Subsections 32(1) and (2)

Omit "Chairperson".

16 Part 7A

Repeal the Part.

17 Subsection 59(1)

Omit "12(a)", substitute "12(1)(a)".

18 Subsection 59(1)

Omit "and 29", substitute ", 29 and 32".

19 Paragraph 59(2)(b)

Omit "Deputy Chairperson; and", substitute "Deputy Chairperson.".

20 Paragraph 59(2)(c)

Repeal the paragraph.

21 Subsection 63(2)

After “64”, insert “, 64A”.

22 Paragraph 63(2)(a)

Omit “or arbitration”.

23 After paragraph 63(3)(a)

Insert:

(aa) to APRA if requested by APRA to do so; or

24 Sections 64 and 64A

Repeal the sections, substitute:

64 Reference by Tribunal Chairperson of contraventions of the law or of the governing rules of a fund to APRA or ASIC or both

If, in connection with a complaint made to the Tribunal under this Act, a Tribunal member becomes aware that a contravention of any law or of the governing rules of a fund may have occurred, the Tribunal member:

- (a) if he or she is not the Tribunal Chairperson—must give particulars of the contravention to the Tribunal Chairperson; or
- (b) if he or she is the Tribunal Chairperson:
 - (i) in the case of a contravention of a law that is administered by APRA—must give particulars of the contravention to APRA and, if he or she thinks it appropriate to do so, may also give particulars of the contravention to ASIC; or
 - (ii) in any other case—must give particulars of the contravention to ASIC and, if he or she thinks it appropriate to do so, may also give particulars of the contravention to APRA.

64A Reference by Tribunal Chairperson of breaches of terms and conditions to APRA or ASIC or both

If, in connection with a complaint made to the Tribunal under this Act, a Tribunal member becomes aware of a breach in the terms and conditions relating to an annuity policy, a life policy or an RSA, the Tribunal member:

- (a) if he or she is not the Tribunal Chairperson—must give particulars of the breach to the Tribunal Chairperson; or
- (b) if he or she is the Tribunal Chairperson—must do one of the following:
 - (i) give particulars of the breach to APRA;
 - (ii) give particulars of the breach to ASIC;
 - (iii) give particulars of the breach to both APRA and ASIC;as he or she thinks appropriate.

25 Paragraph 65(1)(b)

Repeal the paragraph, substitute:

- (b) if he or she is the Tribunal Chairperson—do one of the following:
 - (i) give particulars of the refusal or failure to APRA;
 - (ii) give particulars of the refusal or failure to ASIC;
 - (iii) give particulars of the refusal or failure to both APRA and ASIC;as he or she thinks appropriate.

*[Minister's second reading speech made in—
House of Representatives on 26 June 2002
Senate on 2 December 2002]*