



**Financial Sector Legislation Amendment
(Trans-Tasman Banking Supervision)
Act 2006**

No. 147, 2006

**An Act to amend the law relating to prudential
regulation for the purpose of facilitating
trans-Tasman cooperation, 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. 147, 2006

**An Act to amend the law relating to prudential
regulation for the purpose of facilitating
trans-Tasman cooperation, and for related
purposes**

[Assented to 6 December 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Act 2006*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Australian Prudential Regulation Authority Act 1998

1 Subsection 3(1)

Insert:

action that is likely to have a detrimental effect on financial system stability in New Zealand includes an action that prevents or interferes with an outsourcing arrangement.

2 Subsection 3(1)

Insert:

New Zealand financial institution means a financial institution, as defined in section 2 of the Reserve Bank of New Zealand Act 1989 of New Zealand, that carries on a business in New Zealand.

3 Subsection 3(1)

Insert:

outsourcing arrangement means an arrangement for the business of a New Zealand financial institution, or functions relating to such business, to be carried on by an entity other than the institution.

4 Subsection 3(1)

Insert:

prescribed New Zealand authority means the following:

- (a) the Reserve Bank of New Zealand;
- (b) an authority of the government of New Zealand that:
 - (i) has statutory responsibilities relating to prudential regulation or financial system stability; and
 - (ii) is prescribed by the regulations for the purposes of this definition.

5 At the end of subsection 8(2)

Add “and, in balancing these objectives, is to promote financial system stability in Australia”.

6 After section 8

Insert:

8A Trans-Tasman cooperation

- (1) In performing and exercising its functions and powers, APRA must:
 - (a) support the prescribed New Zealand authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in New Zealand; and
 - (b) to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in New Zealand.
- (2) APRA must balance the requirements of subsection (1) with the requirements specified in section 8.
- (3) If:
 - (a) APRA proposes to take an action; and
 - (b) APRA has reasonable cause to believe that the action is likely to have a detrimental effect on financial system stability in New Zealand;APRA must, to the extent that APRA considers reasonably practicable in the circumstances, having regard to urgency or other similar constraint, consult with and consider the advice of each prescribed New Zealand authority APRA considers to be relevant in the circumstances before taking the action.
- (4) The performance of a function or the exercise of a power by APRA is not invalid merely because of a failure by APRA to comply with this section.

7 Section 46

After “Commonwealth”, insert “or prescribed New Zealand authorities”.

Banking Act 1959

8 Subsection 5(1)

Insert:

action that is likely to have a detrimental effect on financial system stability in New Zealand includes an action that prevents or interferes with an outsourcing arrangement.

9 Subsection 5(1)

Insert:

New Zealand registered bank means a registered bank, as defined in section 2 of the Reserve Bank of New Zealand Act 1989 of New Zealand, that carries on a business in New Zealand.

10 Subsection 5(1)

Insert:

outsourcing arrangement means an arrangement for the business of a New Zealand registered bank, or functions relating to such business, to be carried on by an entity other than the bank.

11 Subsection 5(1)

Insert:

prescribed New Zealand authority means the following:

- (a) the Reserve Bank of New Zealand;
- (b) an authority of the government of New Zealand that:
 - (i) has statutory responsibilities relating to prudential regulation or financial system stability; and
 - (ii) is prescribed by the regulations for the purposes of this definition.

12 Subsection 5(1) (at the end of paragraph (a) of the definition of *prudential matters*)

Add:

- (iii) not to cause or promote instability in the New Zealand financial system; or

13 Subsection 5(1) (definition of *prudential regulation*)

Repeal the definition.

14 Subsection 5(1)

Insert:

prudential requirement regulation means a regulation under section 11A.

15 After paragraph 9A(2)(b)

Insert:

- (ba) it would be contrary to financial system stability in Australia for the authority to remain in force; or

16 After paragraph 11AB(2)(c)

Insert:

- (ca) it would be contrary to financial system stability in Australia for the authority to remain in force; or

17 Paragraphs 11CA(1)(a) and (aa)

Omit “prudential regulation”, substitute “prudential requirement regulation”.

18 After paragraph 11CA(1)(d)

Insert:

- (da) the body corporate is conducting its affairs in a way that may cause or promote instability in the Australian financial system; or

19 Paragraph 11CA(2)(a)

Omit “prudential regulation”, substitute “prudential requirement regulation”.

20 Section 12

Before “It is the duty”, insert “(1)”.

21 Section 12

Omit “several ADI’s”, substitute “several ADIs and for the promotion of financial system stability in Australia”.

22 At the end of section 12

Add:

- (2) To avoid doubt, section 8A of the *Australian Prudential Regulation Authority Act 1998* (which deals with trans-Tasman
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cooperation) applies to the performance of functions and the exercise of powers by APRA under this Division.

23 After section 14D

Insert:

14DA Administrator in control—additional duties where action may affect financial system stability in New Zealand

- (1) If an administrator of an ADI's business has reasonable cause to believe that an action that the administrator proposes to take is an action that is likely to have a detrimental effect on financial system stability in New Zealand, the administrator must:
 - (a) notify APRA as soon as practicable; and
 - (b) obtain APRA's written consent before taking the action.
- (2) The administrator is not required to comply with subsection (1) if the administrator is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.
- (3) The performance of a function or the exercise of a power by an administrator is not invalid merely because of a failure by the administrator to comply with this section.
- (4) If APRA receives a notice under paragraph (1)(a), it must provide details of the notice to every prescribed New Zealand authority that APRA considers to be relevant in the circumstances before granting written consent to the administrator.
- (5) APRA is not required to comply with subsection (4) if APRA is satisfied that it is not reasonably practicable to do so, having regard to urgency or other similar constraint.
- (6) The performance of a function or the exercise of a power by APRA is not invalid merely because of a failure by APRA to comply with this section.
- (7) An administrator of an ADI's business may consult a prescribed New Zealand authority about whether an action the administrator proposes to take is likely to have a detrimental effect on financial system stability in New Zealand.

Financial Sector (Transfers of Business) Act 1999

24 At the end of Part 1

Add:

7A Application of sections 8 and 8A of the APRA Act

To avoid doubt, sections 8 and 8A of the *Australian Prudential Regulation Authority Act 1998* (which deal with APRA's objectives and trans-Tasman cooperation respectively) apply to the performance of functions and the exercise of powers by APRA under this Act.

*[Minister's second reading speech made in—
Senate on 14 September 2006
House of Representatives on 28 November 2006]*

(131/06)
