



Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007

No. 149, 2007

**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 ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Amendments commencing on Royal Assent		3
	<i>Financial Sector (Collection of Data) Act 2001</i>	3
Schedule 2—Amendments commencing on 1 July 2008		5
	<i>Corporations Act 2001</i>	5
	<i>Insurance Act 1973</i>	6
Schedule 3—Amendment commencing on the 28th day after the day on which this Act receives the Royal Assent		25
	<i>Corporations Act 2001</i>	25



Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007

No. 149, 2007

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

[Assented to 24 September 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Sector Legislation
Amendment (Discretionary Mutual Funds and Direct Offshore
Foreign Insurers) 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.	24 September 2007
2. Schedule 1	The day on which this Act receives the Royal Assent.	24 September 2007
3. Schedule 2	1 July 2008.	1 July 2008
4. Schedule 3	The 28th day after the day on which this Act receives the Royal Assent.	22 October 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 commencing on Royal Assent

Financial Sector (Collection of Data) Act 2001

1 Subsection 3(1)

After “to assist it in the prudential regulation”, insert “or monitoring”.

2 Paragraph 3(2)(b)

After “that it regulates”, insert “or monitors”.

3 At the end of subsection 5(2)

Add:

; or (d) a discretionary mutual fund.

4 At the end of section 5

Add:

(5) A *discretionary mutual fund* is a fund (however constituted) for making payments on the happening of a specified event (where there is uncertainty as to whether, or when, the event will happen), that is a fund:

(a) to which 2 or more persons contribute, and:

(i) out of which payments may be made in respect of liabilities, losses, damages or expenses of the contributors; and

(ii) that is governed by rules under which any such payment for the benefit of a contributor is subject to a discretion of a person or body; or

(b) that is declared to be a discretionary mutual fund, or included in a class of funds that are declared to be discretionary mutual funds, by regulations made for the purposes of this paragraph.

(6) However, a fund (however constituted) is not a discretionary mutual fund if:

(a) a contributor has a right, in law or equity, to a payment of a kind referred to in subparagraph (5)(a)(i); or

- (b) the fund is:
- (i) declared not to be a discretionary mutual fund; or
 - (ii) included in a class of funds that are declared not to be discretionary mutual funds;
- by regulations made for the purposes of this paragraph.

5 At the end of Part 1

Add:

6A Application of Act

This Act does not apply, in relation to a discretionary mutual fund, to State insurance not extending beyond the limits of the State concerned.

6 Section 31

Insert:

discretionary mutual fund has the meaning given by subsections 5(5) and (6).

Schedule 2—Amendments commencing on 1 July 2008

Corporations Act 2001

1 At the end of Division 4 of Part 7.8

Add:

985D Financial services licensees etc. not to deal in general insurance products from unauthorised insurers etc.

- (1) A financial services licensee, or an authorised representative of a financial services licensee, must not deal in a general insurance product if the insurer for the product, or (if there is more than one insurer for the product) each insurer for the product, is not at least one of the following:
- (a) a general insurer within the meaning of the *Insurance Act 1973*;
 - (b) a Lloyd's underwriter within the meaning of that Act;
 - (c) a person in respect of whom a determination is in force, under subsection 7(1) of that Act, that subsection 9(1) or 10(1) or (2) of that Act does not apply (the effect of which is the effect referred to in paragraph 9(1)(c), 10(1)(c) or 10(2)(c) of that Act (as the case requires)).

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (2) Subsection (1) does not apply in relation to a general insurance product if, because of section 3A of the *Insurance Act 1973*, undertaking liability under the contract of insurance concerned is not, or would not be, insurance business for the purposes of that Act.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Paragraph (1)(b) ceases to apply after section 93 of the *Insurance Act 1973* has ceased to have effect.
- (4) An offence based on subsection (1) is an offence of strict liability.

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

2 Schedule 3 (after table item 282B)

Insert:

282BA Subsection 985D(1) 50 penalty units.

Insurance Act 1973

3 Subsection 3(1) (definition of *authorised person*)

Repeal the definition, substitute:

authorised person:

- (a) except in Part VA, means a person authorised under subsection (1A); or
- (b) in Part VA, means APRA, or a person authorised by APRA, in writing, for the purposes of that Part.

3A Subsection 3(1)

Insert:

corporate agent means a body corporate that is appointed under section 118 as an agent in Australia for the purpose of that section.

4 Subsection 3(1) (at the end of paragraphs (a) to (i) of the definition of *insurance business*)

Add “or”.

5 Subsection 3(1) (at the end of the definition of *insurance business*)

Add:

- ; or (l) reinsurance business carried on by:
- (i) a body corporate incorporated in a foreign country; or
 - (ii) an unincorporated body established, under a law of a foreign country, that under that law may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose;
- that is not a general insurer.

Note: Particular contracts of insurance, or kinds of contracts of insurance, may be excluded from this definition under section 3A.

5A Subsection 3(1) (definition of *senior manager*)

Repeal the definition, substitute:

senior manager of a general insurer or a corporate agent means a person who has or exercises any of the senior management responsibilities (within the meaning of the prudential standards) for the insurer or agent.

6 At the end of section 3

Add:

- (5) Without limiting the scope of what is incidental to insurance business for the purposes of the definition of *insurance business* in subsection (1), a business of a person is taken, for the purposes of that definition, to be a business incidental to insurance business to the extent that it involves one or more of the following kinds of acts:
- (a) inducing others to enter into contracts of insurance with the person as the insurer;
 - (b) publishing or distributing a statement relating to the person's willingness to enter into a contract of insurance as an insurer;
 - (c) procuring the publication or distribution of such a statement.
- (6) Without limiting the circumstances in which a person is taken, for the purposes of this Act, to carry on insurance business in Australia, a person is taken to carry on insurance business in Australia if:
- (a) the person carries on a business outside Australia that, under this Act, would constitute insurance business if it were carried on in Australia; and
 - (b) another person in Australia acts:
 - (i) directly or indirectly on behalf of the first-mentioned person; or
 - (ii) as a broker of insurance provided by the first-mentioned person, or directly or indirectly on behalf of such a broker;in relation to the business carried on outside Australia.
- (7) In considering for the purposes of this Act whether a person carries on insurance business in Australia, an act of a kind referred to in paragraph (5)(a), (b) or (c) done outside Australia is taken to occur

in Australia to the extent that it has, or is likely to have, its effect in Australia.

7 Transitional—application of item 6

- (1) The amendments made by item 6 do not apply to an entity specified in the regulations, or to an entity included in a class of entities specified in the regulations, for the period (not exceeding 2 years), specified in the regulations in relation to that entity or class of entities.
- (2) Subsection 985D(1) of the *Corporations Act 2001* applies in relation to that entity during that period as if the entity were a general insurer within the meaning of the *Insurance Act 1973*.
- (3) The Governor-General may make regulations for the purposes of subitem (1).

8 After section 3

Insert:

3A Certain insurance contracts not taken to be insurance business

- (1) For the purposes of this Act, insurance business does not include undertaking liability under a contract of insurance, or a kind of contract of insurance:
 - (a) specified in the regulations for the purposes of this subsection; or
 - (b) specified in a determination made under such regulations.
 - (2) Without limiting the ways in which contracts of insurance, or kinds of contracts of insurance, may be specified in regulations made for the purposes of subsection (1), or in determinations made under such regulations, those contracts or kinds of contracts may be specified:
 - (a) as particular general insurance products (within the meaning of Chapter 7 of the *Corporations Act 2001*), or particular kinds of such products; or
 - (b) as contracts or kinds of contracts under which particular persons, or particular kinds of persons, are insured.
 - (3) A determination of a kind referred to in paragraph (1)(b) that specifies a particular contract of insurance (whether specified in a way mentioned in subsection (2) or otherwise):
-

- (a) is not a legislative instrument; and
 - (b) is a determination to which Part VI applies.
- (4) In any other case, a determination of a kind referred to in paragraph (1)(b) is a legislative instrument.

9 At the end of Division 1 of Part III

Add:

11A Injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
- (a) a contravention of section 9 or 10; or
 - (b) attempting to contravene section 9 or 10; or
 - (c) aiding, abetting, counselling or procuring a person to contravene section 9 or 10; or
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene section 9 or 10; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 9 or 10; or
 - (f) conspiring with others to contravene section 9 or 10;
- the Federal Court may, on the application of APRA or a person whose interests have been, are or would be affected by the conduct, grant an injunction in accordance with subsection (2).
- (2) The injunction:
- (a) may restrain the person from engaging in the conduct; and
 - (b) may also require that person to do a particular act or thing, if the Court thinks it desirable to do so.
- The Court may grant the injunction on such terms as it thinks appropriate.
- (3) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

Interim injunctions

- (4) The Court may grant an interim injunction pending determination of an application under subsection (1) if in the Court's opinion it is desirable to do so.

Consent injunctions

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

Variation or discharge of injunctions

- (6) The Court may discharge or vary an injunction granted under subsection (1) or (5).

Damages undertakings

- (7) APRA cannot be required, as a condition of granting an interim injunction, to give an undertaking as to damages.

Damages orders

- (8) If the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Federal Court's other powers unaffected

- (9) The powers conferred on the Court by this section are in addition to any other of its powers, and do not derogate from its other powers.

9A At the end of subsection 24(1)

Add:

; or (d) a director or senior manager of a corporate agent.

Note: The heading to section 24 is altered by omitting “**or authorised NOHCs**” and substituting “**, authorised NOHCs or corporate agents**”.

9B At the end of subsection 24(4)

Add:

; or (d) if the body corporate is a corporate agent—a director or senior manager of the corporate agent.

9C Paragraphs 25(1)(c) to (e)

Repeal the paragraphs, substitute:

- (c) in a case where the person is an individual:
- (i) the individual has been or becomes bankrupt; or
 - (ii) the individual has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) the individual has compounded with his or her creditors; or
- (d) in a case where the person is a corporate agent:
- (i) the corporate agent knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a director or senior manager of the corporate agent is a disqualified person; or
 - (ii) a receiver, or a receiver and manager, has been appointed in respect of property owned by the corporate agent; or
 - (iii) an administrator has been appointed in respect of the corporate agent; or
 - (iv) a provisional liquidator has been appointed in respect of the corporate agent; or
 - (v) the corporate agent has begun to be wound up; or

9D Subsection 25A(1)

Omit “or (c)”, substitute “, (c) or (d)”.

9E Subparagraph 25A(5)(a)(iii)

Omit “and”, substitute “or”.

9F At the end of paragraph 25A(5)(a)

Add:

; or (iv) if the person is, or is acting as, a person referred to in paragraph 24(1)(d)—to the corporate agent concerned, and to any foreign general insurer for which the agent is the corporate agent; and

9G Subsections 26(6) and (8)

Omit “or authorised NOHC”, substitute “, authorised NOHC or corporate agent”.

9H At the end of subsection 27(1)

Add:

; or (d) a director or senior manager of a corporate agent.

Note: The heading to section 27 is altered by omitting “or authorised NOHC” and substituting “, authorised NOHC or corporate agent”.

9J Subsection 27(2)

Omit “or authorised NOHC”, substitute “, authorised NOHC or corporate agent”.

9K Paragraph 27(2)(b)

Before “does not meet”, insert “if the person is an individual—”.

9L Subsection 27(3)

Omit “or authorised NOHC”, substitute “, authorised NOHC or corporate agent”.

9M Paragraph 27(3)(b)

Omit “or NOHC”, substitute “, NOHC or agent”.

9N Subsection 27(3B)

Omit “or an authorised NOHC”, substitute “, authorised NOHC or corporate agent”.

9P Subsection 27(5)

Omit “or authorised NOHC”, substitute “, authorised NOHC or corporate agent”.

9Q Subsection 27(5)

Omit “or NOHC”, substitute “, NOHC or agent”.

9R After subsection 27(5B)

Insert:

(5BA) The power of a corporate agent to comply with a direction under this section may be exercised on behalf of the agent 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 agent	by signing a written notice.
2	A majority of the directors of the agent (excluding any director who is the subject of the direction)	by jointly signing a written notice.

9S Subsection 27(5C)

Omit “and (5B)”, substitute “, (5B) and (5BA)”.

9T Subsection 27(5C)

Omit “or an authorised NOHC”, substitute “, authorised NOHC or corporate agent”.

9U Subsection 27(7)

After “general insurer”, insert “or corporate agent”.

9V Paragraphs 27(7)(a) and (b)

After “insurer”, insert “or agent”.

10 Part V (heading)

Repeal the heading, substitute:

Part V—Investigations of general insurers etc.

11 Paragraph 52(2)(a)

Omit “APRA”, substitute “APRA’s”.

12 After Part V

Insert:

Part VA—Investigations of unauthorised insurance

62A Investigations relating to contraventions of section 9 or 10 etc.

- (1) If APRA believes on reasonable grounds that a body corporate or other person has engaged, is engaging or will engage in conduct:
 - (a) in contravention of section 9 or 10; or
 - (b) constituting the aiding, abetting, counselling or procuring of a contravention of section 9 or 10;

APRA may investigate the whole or part of the conduct or proposed conduct, or appoint a person (the *inspector*), in writing, to investigate the whole or part of the conduct or proposed conduct.

- (2) The inspector is to be a person resident in Australia.

62B Access to premises

- (1) For the purpose of an investigation under this Part:
 - (a) if the investigation is by APRA—an authorised person; or
 - (b) if APRA has appointed an inspector for the investigation—the inspector;

may, with the consent of the occupier of any premises, enter the premises for the purpose of searching for, inspecting, taking extracts from and making copies of any books containing information relevant to the investigation.

- (2) If APRA believes on reasonable grounds that there are, on any premises, books containing information relevant to an investigation

under this Part by APRA, an authorised person may apply to a Magistrate for a warrant under subsection (4).

- (3) If an inspector believes on reasonable grounds that there are, on any premises, books containing information relevant to an investigation under this Part by the inspector, the inspector may apply to a Magistrate for a warrant under subsection (4).
- (4) If, on an application under subsection (2) or (3), the Magistrate is satisfied by information on oath or affirmation:
 - (a) that there are, on the premises, books containing information relevant to the investigation; and
 - (b) that the issue of the warrant is reasonably required for the purposes of the investigation;the Magistrate may grant a warrant authorising the authorised person or inspector, with such assistance as the authorised person or inspector thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, and if necessary by force, for the purpose of searching for, inspecting, taking extracts from and making copies of any such books.
- (5) If the authorised person or inspector has entered premises in accordance with subsection (1) or a warrant under subsection (4), he or she may search for, inspect, take extracts from and make copies of any books containing information relevant to the investigation.

62C Powers of APRA or inspector

- (1) If APRA believes on reasonable grounds that a person has or may have custody or control of information relevant to an investigation under this Part by APRA, APRA may, by written notice given to the person, require the person:
 - (a) to produce to APRA, within the time specified in the notice, all or any of the books containing information relevant to the investigation that are in the custody or under the control of the person; or
 - (b) to give to APRA all reasonable assistance in connection with the investigation; or
 - (c) to appear before a specified authorised person for examination concerning matters relevant to the investigation.
-

- (2) If an inspector believes on reasonable grounds that a person has or may have custody or control of information relevant to an investigation under this Part by the inspector, the inspector may, by written notice given to the person, require the person:
 - (a) to produce to the inspector, within the time specified in the notice, all or any of the books containing information relevant to the investigation that are in the custody or under the control of the person; or
 - (b) to give to the inspector all reasonable assistance in connection with the investigation; or
 - (c) to appear before the inspector for examination concerning matters relevant to the investigation.
- (3) The time specified in a notice for the purposes of paragraph (1)(a) or (2)(a) must be a time that is reasonable in the circumstances.
- (4) If books are produced to APRA or the inspector under this section, APRA, the inspector or an authorised person may make copies of them.
- (5) A person who complies with a requirement of APRA or the inspector under this section does not incur any liability to any other person merely because of that compliance.

62D Persons to comply with requirements of APRA or the inspector

- (1) A person commits an offence if:
 - (a) a requirement of APRA or the inspector under section 62C is applicable to the person; and
 - (b) the person refuses or fails to comply with the requirement to the extent to which the person is able to comply with it.

Penalty: 50 penalty units or imprisonment for 3 months, or both.
- (2) A person is not excused from complying with a requirement under section 62C on the ground that doing so might tend to incriminate the person.
- (3) However, if the person is:
 - (a) an individual; and
 - (b) is required to answer questions under section 62C; and

- (c) before answering the questions, the person informs APRA or the inspector that doing so might tend to incriminate him or her;
- the questions or answers are not admissible in evidence against him or her in criminal proceedings other than a prosecution for:
- (d) an offence against subsection (1); or
 - (e) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

62E Person may be represented by a legal practitioner

- (1) A barrister or solicitor acting for a person being examined by an authorised person or the inspector:
 - (a) may attend the examination; and
 - (b) may, to the extent that the authorised person or the inspector allows:
 - (i) address the authorised person or the inspector; and
 - (ii) examine the person;in relation to matters in respect of which the authorised person or the inspector has questioned the person.
- (2) If, in the opinion of the authorised person or inspector, a person is trying to obstruct the examination by exercising rights under subsection (1), the authorised person or inspector may require the person to stop addressing the authorised person or inspector, or examining the examinee, as the case requires.

62F Notes of examination of person

- (1) An authorised person or the inspector may:
 - (a) cause notes of an examination of a person under this Part to be recorded in writing and read to or by that person; and
 - (b) require that person to sign the notes.
- (2) Subject to subsection 62D(3), notes signed by that person may be used in evidence in proceedings under this Act against that person.
- (3) A copy of the notes signed by a person must be given without charge to that person if he or she makes a written request to APRA or the inspector.

- (4) If the inspector causes notes to be recorded under this section, he or she must give the notes to APRA.

62G Delegation

- (1) Powers under this Part may be delegated as follows:
- (a) APRA's powers may be delegated under section 15 of the *Australian Prudential Regulation Authority Act 1998*;
 - (b) an inspector may, by signed instrument, delegate his or her powers to:
 - (i) an APRA member or an APRA staff member; or
 - (ii) a person included in a class of persons approved under subsection (2).
- (2) APRA may, by legislative instrument, approve a class of persons for the purposes of subparagraph (1)(b)(ii).
- (3) A delegate must, on the request of a person in relation to whom the delegated powers are exercisable or of a person affected by the exercise of those powers, produce the instrument of delegation, or a copy of the instrument, for inspection.

62H Investigations to be completed within a reasonable time

- (1) An investigation under this Part must be completed within a reasonable time after the investigation commenced.
- (2) Within a reasonable time after the investigation has been completed, APRA must give to each person whose conduct or proposed conduct was the subject of the investigation a written notice stating:
- (a) that the investigation has been completed; and
 - (b) whether APRA proposes that further action be taken relating to the conduct or proposed conduct.

62J Report of the inspector

An inspector must, on a completion or termination of the investigation, report in writing to APRA on the result of the investigation.

13 Subsection 63(1)

Insert:

decision maker, in relation to a reviewable decision, means the Treasurer, APRA or a person who makes a determination referred to in subsection 3A(3) (whichever is applicable).

14 Subsection 63(1)

Insert:

person affected by a reviewable decision, in relation to a reviewable decision of a decision maker, means:

- (a) in the case of a determination referred to in subsection 3A(3)—the person who applied for the determination; or
- (b) in the case of a determination under subsection 93(3)—Lloyd’s or any Lloyd’s underwriter; or
- (c) in any other case—the person in relation to whom the decision was made.

15 Subsection 63(1) (definition of *person affected by a reviewable decision of the Treasurer or APRA*)

Repeal the definition.

16 Subsection 63(1)

Insert:

reviewable decision means a decision of:

- (a) the Treasurer; or
- (b) APRA; or
- (c) a person who makes a determination referred to in subsection 3A(3);

that is a decision to which, under this Act, this Part applies.

17 Subsection 63(1) (definition of *reviewable decision of the Treasurer or APRA*)

Repeal the definition.

18 Subsection 63(2)

Omit “of the Treasurer or APRA”.

19 Subsection 63(2)

Omit “Treasurer or APRA, as the case may be,” (wherever occurring), substitute “decision maker”.

20 Subsection 63(4)

Omit “, the Treasurer or APRA, as the case may be,”, substitute “the decision maker”.

21 Subsection 63(4)

Omit “Treasurer or APRA” (last occurring), substitute “decision maker”.

22 Subsection 63(5)

Omit “Treasurer or APRA, as the case may be,”, substitute “decision maker”.

23 Subsection 63(5)

Omit “Treasurer or APRA” (second and last occurring), substitute “decision maker”.

24 Subsection 63(6)

Omit “Treasurer or APRA, as the case may be,”, substitute “decision maker”.

25 Subsection 63(6)

Omit “Treasurer or APRA” (second occurring), substitute “decision maker”.

26 Subsection 63(6)

Omit “Treasurer’s or APRA’s” (wherever occurring), substitute “decision maker’s”.

27 Subsection 63(7)

Omit “the Treasurer and decisions of APRA”, substitute “a decision maker”.

28 Subsections 63(9), (12), (13) and (14)

Omit “of the Treasurer or APRA”.

29 Subsection 64(1)

Omit “of the Treasurer or APRA”.

30 Paragraph 64(1)(a)

Omit “Treasurer or APRA, as the case may be,” substitute “decision maker”.

31 Paragraph 64(1)(b)

Omit “Treasurer or APRA”, substitute “decision maker”.

32 Subsection 64(2)

Omit “the Treasurer or APRA”, substitute “a decision maker”.

33 At the end of section 64

Add:

(4) In this section:

decision maker has the meaning given by section 63.

34 Section 103

Omit “Part V”, substitute “Parts V and VA”.

Note: The heading to section 103 is altered by omitting “**Part V**” and substituting “**Parts V and VA**”.

35 At the end of section 103

Add “or other person”.

36 After section 115

Insert:

115AA Information relating to contraventions of section 9 or 10 etc.

If APRA believes on reasonable grounds that a person has, or may have, custody or control of information or documents relating to conduct of the person or another person that constitutes, or may constitute:

- (a) a contravention of section 9 or 10; or
- (b) the aiding, abetting, counselling or procuring of a contravention of section 9 or 10;

APRA or an authorised person may, by written notice given to the person, require the person to give the information in writing signed by that person, or to produce the documents, within the time and in the manner specified in the notice.

115AB Persons to comply with requirements of APRA or authorised person

- (1) A person commits an offence if he or she refuses or fails to comply with a notice given to the person under section 115AA, to the extent to which the person is able to comply with it.

Penalty: 50 penalty units.

- (2) A person is not excused from complying with a notice on the ground that doing so might tend to incriminate the person.
- (3) However, if the person is an individual and informs APRA or the authorised person, before giving information, that the information might tend to incriminate him or her, the information is not admissible in evidence against him or her in criminal proceedings other than a prosecution for:
- (a) an offence against subsection (1); or
 - (b) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

37 Subsection 115A(2)

Omit “Justice of the Peace”, substitute “magistrate”.

38 Subsection 115A(3)

Omit “Justice of the Peace” (wherever occurring), substitute “magistrate”.

39 Subsection 118(1)

Omit “by an individual resident in Australia and appointed by it as its agent”, substitute “by an agent appointed by it”.

40 Subsection 118(2)

Omit “his or her duties as”, substitute “the duties of”.

41 Subsection 118(2)

Omit “person” (first occurring), substitute “agent”.

42 Subsection 118(2)

Omit “person (not being a body corporate) resident in Australia”, substitute “agent”.

43 Subsection 118(3)

Omit “a person”, substitute “an agent”.

44 Subsection 118(3)

Omit “person” (last occurring), substitute “agent”.

45 Subsection 118(3A)

Omit “a person (not being a body corporate)”, substitute “an agent”.

46 Subsection 118(3A)

Omit “his or her duties as”, substitute “the duties of”.

47 Subsection 118(3B)

Omit “his or her”, substitute “such an”.

48 Subsection 118(3B)

Omit “a person”, substitute “an agent”.

49 Subsection 118(4)

Repeal the subsection, substitute:

- (4) An appointment under this section is taken not to have been duly made or revoked until the body corporate has given written notice of the appointment or revocation to APRA, specifying the agent’s name and:
 - (a) in the case of an appointment of an individual resident in Australia—the place of residence of the individual appointed; or
 - (b) in the case of an appointment of a body corporate incorporated in Australia—either the head office, registered office or principal office of the body corporate in Australia.

49A Subsection 118(4A)

Repeal the subsection, substitute:

(4A) If:

- (a) a foreign general insurer has given written notice under subsection (4) of the appointment of an agent of the foreign general insurer and the notice specifies:
 - (i) the name of the agent; and
 - (ii) the place of residence, head office, registered office or principal office of the agent; and
- (b) a body corporate that is a subsidiary of the foreign general insurer is not incorporated in Australia; and
- (c) no written notice has been given to APRA of the appointment of an agent of the subsidiary;

the agent specified in the notice referred to in paragraph (a) is taken, from the time when that notice was or is given:

- (d) to have been, or to be, the agent of the subsidiary for the purposes of this Act; and
- (e) to have had, or to have, the place of residence, head office, registered office or principal office specified in that notice.

50 Subsection 118(5)

Omit “the agent, or a person acting as the agent, of a body corporate in his or her”, substitute “an agent appointed under this section in that agent’s”.

51 Subsection 118(5)

Omit “or person”.

52 At the end of section 118

Add:

- (6) An agent appointed under this section must be:
 - (a) an individual resident in Australia; or
 - (b) a body corporate incorporated in Australia.

Schedule 3—Amendment commencing on the 28th day after the day on which this Act receives the Royal Assent

Corporations Act 2001

1 Subsection 889J(2) (note)

Repeal the note, substitute:

Note: For the imposition and amount of the levy, see the *Corporations (National Guarantee Fund Levies) Act 2001*. There is a limit on the amount of levy that is payable to the SEGC in a financial year under that Act.

*[Minister's second reading speech made in—
House of Representatives on 21 June 2007
Senate on 13 September 2007]*

(138/07)
