Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008

No. 25, 2008

An Act to amend the law 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/)

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Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008

No. 25, 2008

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

[*Assented to 26 May 2008*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Financial Sector Legislation Amendment (Review of Prudential Decisions) Act 2008.*

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.	26 May 2008
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	26 May 2008
3. Schedule 1, item 71	Immediately before the commencement of items 9A, 9B, 9D, 9E, 9F and 9G of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*. However, the provision(s) do not commence at all if those items commence before the day on which this Act receives the Royal Assent.	1 July 2008
4. Schedule 1, items 72 to 83	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2008 (paragraph (b) applies)
5. Schedule 2	The day on which this Act receives the Royal Assent.	26 May 2008

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
6. Schedule 3, Part 1	The day on which this Act receives the Royal Assent.	26 May 2008
7. Schedule 3, Part 2, Division 1	The day on which this Act receives the Royal Assent. However, the provision(s) do not commence at all if items 8 and 13 to 33 of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007* have not commenced before that day.	Does not commence
8. Schedule 3, Part 2, Division 2	The day on which this Act receives the Royal Assent. However, the provision(s) do not commence at all if items 8 and 13 to 33 of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007* commence before that day.	26 May 2008
9. Schedule 3, items 65 and 66	Immediately before the commencement of items 8 and 13 to 33 of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*. However, the provision(s) do not commence at all if those items commence before the day on which this Act receives the Royal Assent.	1 July 2008
10. Schedule 3, item 67	Immediately after the commencement of item 5 of Schedule 2 to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*. However, the provision(s) do not commence at all if that item commences before the day on which this Act receives the Royal Assent.	1 July 2008
11. Schedule 4	The day on which this Act receives the Royal Assent.	26 May 2008

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—Court power of disqualification etc.

Part 1—Amendments commencing on Royal Assent

Banking Act 1959

1 At the end of subsection 17(2)

Add:

; or (c) either:

(i) for a person who is a disqualified person only because he or she was disqualified under section 21—is disqualified from being or acting as an auditor of the ADI; or

(ii) otherwise—is a disqualified person.

2 Subsections 19(1) and (2)

Repeal the subsections, substitute:

(1) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) a director or senior manager of an ADI (other than a foreign ADI);

(ii) a senior manager of the Australian operations of a foreign ADI;

(iii) a director or senior manager of an authorised NOHC;

(iv) an auditor of an ADI or an authorised NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires).

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) a director or senior manager of an ADI (other than a foreign ADI);
(ii) a senior manager of the Australian operations of a foreign ADI;
(iii) a director or senior manager of an authorised NOHC;
(iv) an auditor of an ADI or an authorised NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires).

Penalty: 60 penalty units.

3 Subsections 19(4) and (5)

Repeal the subsections, substitute:

(4) A body corporate commits an offence if:
(a) a person is a disqualified person; and
(b) the person is or acts as one of the following:
(i) if the body corporate is an ADI (other than a foreign ADI)—a director or senior manager of the body corporate;
(ii) if the body corporate is a foreign ADI—a senior manager of the Australian operations of the body corporate;
(iii) if the body corporate is an authorised NOHC—a director or senior manager of the body corporate;
(iv) if the body corporate is an ADI or an authorised NOHC—an auditor of the body corporate; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires); and
(d) in any case—the body corporate allows the person to be or act as a director, senior manager or auditor (as the case requires).

Penalty: 250 penalty units.

(5) A body corporate commits an offence if:
(a) a person is a disqualified person; and

(b) the person is or acts as one of the following:
  (i) if the body corporate is an ADI (other than a foreign ADI)—a director or senior manager of the body corporate;
  (ii) if the body corporate is a foreign ADI—a senior manager of the Australian operations of the body corporate;
  (iii) if the body corporate is an authorised NOHC—a director or senior manager of the body corporate;
  (iv) if the body corporate is an ADI or an authorised NOHC—an auditor of the body corporate; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 21—the person is disqualified from being or acting as that director, senior manager or auditor (as the case requires); and

(d) in any case—the body corporate allows the person to be or act as a director, senior manager or auditor (as the case requires).

Penalty: 60 penalty units.

4 Subsection 19(7)

Repeal the subsection.

5 Paragraph 20(1)(f)

Omit “APRA”, substitute “the Federal Court of Australia”.

6 Subsection 20(1) (note)

Omit “APRA”, substitute “The Federal Court of Australia”.

7 Sections 21 and 22

Repeal the sections, substitute:

21 Court power of disqualification

(1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from being or acting as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied that:

(a) the person is not a fit and proper person to be or act as such a person; and
(b) the disqualification is justified.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as one or more of the following:
(a) a director or senior manager of:
(i) a particular ADI; or
(ii) a class of ADIs; or
(iii) any ADI;
(other than a particular foreign ADI, a class of foreign ADIs or any foreign ADI);
(b) a senior manager of the Australian operations of:
(i) a particular foreign ADI; or
(ii) a class of foreign ADIs; or
(iii) any foreign ADI;
(c) a director or senior manager of:
(i) a particular authorised NOHC; or
(ii) a class of authorised NOHCs; or
(iii) any authorised NOHC;
(d) an auditor of:
(i) a particular ADI or a particular authorised NOHC; or
(ii) a class of ADIs or a class of authorised NOHCs; or
(iii) any ADI or any authorised NOHC.

(3) In deciding whether it is satisfied as mentioned in paragraph (1)(a), the Court may take into account:
(a) any matters specified in the regulations for the purposes of this paragraph; and
(b) any criteria for fitness and propriety set out in the prudential standards; and
(c) any other matters the Court considers relevant.

(4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:
(a) if the application is for the person to be disqualified from being or acting as a director or senior manager—the person's conduct in relation to the management, business or property of any corporation; and

(b) if the application is for the person to be disqualified from being or acting as an auditor—the person's conduct in relation to the functions or duties of the person as required under this Act and the prudential standards; and

(c) in any case—any other matters the Court considers relevant.

(5) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) to be given:

(i) if the person is, or is acting as, a person referred to in subparagraph (2)(a)(i)—to the ADI concerned; or

(ii) if the person is, or is acting as, a person referred to in subparagraph (2)(b)(i)—to the foreign ADI concerned; or

(iii) if the person is, or is acting as, a person referred to in subparagraph (2)(c)(i)—to the authorised NOHC concerned; or

(iv) if the person is, or is acting as, a person referred to in subparagraph (2)(d)(i)—to the ADI or authorised NOHC concerned; and

(b) to be published in the *Gazette*.

22 Court power to revoke or vary a disqualification etc.

(1) A disqualified person, or APRA, may apply to the Federal Court of Australia for:

(a) if the person is a disqualified person only because he or she was disqualified under section 21—a variation or a revocation of the order made under that section; or

(b) otherwise—an order that the person is not a disqualified person.

(2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 20, the person is not a ***disqualified person***.

(3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the disqualified person makes the application—by the person with APRA; or

(b) if APRA makes the application—by APRA with the disqualified person.

(4) An order under paragraph (1)(b) may be expressed to be subject to exceptions and conditions determined by the Court.

8 Paragraph 23(2)(a)

Repeal the paragraph, substitute:

(a) either:

(i) for a person who is a disqualified person only because he or she was disqualified under section 21—is disqualified from being or acting as a director or senior manager of the ADI or NOHC; or

(ii) otherwise—is a disqualified person; or

9 Application and transitional provisions

Disqualifications

(1) For the purposes of the *Banking Act 1959*, a disqualification by APRA that is in force under section 21 of that Act immediately before this item commences continues in force after this item commences.

(2) For the purposes of the *Banking Act 1959*, a reference in column 1 of the table in the provision of the *Banking Act 1959* (as in force immediately after this item commences) referred to in column 2 is taken to include the reference in column 3.

New references to court orders to include references to disqualifications by APRA

Item	Column 1 Reference	Column 2 Provision of the Banking Act	Column 3 Reference taken to be included
1	a person who was disqualified under section 21	section 19 and paragraph 22(1)(a)	a person who was disqualified under section 21 under a disqualification that is continued in force under subitem (1)
2	a person disqualified under section 21 by the	paragraph 20(1)(f)	a person disqualified under section 21 by APRA under

New references to court orders to include references to disqualifications by APRA			
Item	**Column 1** **Reference**	**Column 2** **Provision of the Banking Act**	**Column 3** **Reference taken to be included**
	Federal Court of Australia		a disqualification that is continued in force under subitem (1)
3	an order made under section 21	paragraph 22(1)(a) and subsection 22(2)	a disqualification made under section 21 that is continued in force under subitem (1)

(3) Section 21 of the *Banking Act 1959* (as in force immediately after this item commences) applies in relation to any conduct engaged in by a person, whether before or after this item commences.

Waivers of disqualifications

(4) If:

(a) a person applies to APRA for a determination under section 22 of the *Banking Act 1959* that the person is not a disqualified person; and

(b) APRA has not made a decision on the application at the time this item commences;

the application is taken to be withdrawn at that time.

Note: See subitem (7) for the treatment of a decision by APRA under section 22 of the *Banking Act 1959* in respect of which review proceedings are on foot at commencement.

(5) A determination under section 22 of the *Banking Act 1959* that is in force immediately before this item commences continues in force after that time. However, APRA may not revoke the determination.

(6) If:

(a) a determination in relation to a person continues in force under subitem (5); and

(b) after this item commences, an order is made under section 21 of the *Banking Act 1959* (as in force at that time) that the

person is disqualified from being or acting as a person referred to in subsection 21(2) of that Act;

the determination ceases to be in force.

Review proceedings on foot at commencement

(7) The amendments to the *Banking Act 1959* made by this Schedule do not affect:

(a) any request, in relation to a decision made under section 21 or 22 of that Act, for a review that is pending under section 51B of that Act immediately before the commencement of this item; or

(b) any proceeding, in relation to a decision under section 21 or 22 of that Act that has been confirmed or varied under subsection 51B(3) of that Act, that is pending before the Administrative Appeals Tribunal immediately before the commencement of this item; or

(c) any appeal to a court in relation to a proceeding referred to in paragraph (b).

(8) If a disqualification by APRA under section 21, or a determination under section 22, of the *Banking Act 1959* is confirmed or varied as a result of a request, proceeding or appeal referred to in subitem (7), the disqualification or determination is, for the purposes of subitem (1) or (5) (as the case requires), taken to have been in force immediately before this item commences.

Insurance Act 1973

10 Subsections 24(1) to (7)

Repeal the subsections, substitute:

(1) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) a director or senior manager of a general insurer (other than a foreign general insurer);

(ii) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer;

(iii) a director or senior manager of an authorised NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (as the case requires).

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) a director or senior manager of a general insurer (other than a foreign general insurer);

(ii) a senior manager, or agent in Australia for the purpose of section 118, of a foreign general insurer;

(iii) a director or senior manager of an authorised NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (as the case requires).

Penalty: 60 penalty units.

(3) 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:

(a) a person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) if the body corporate is a general insurer (other than a foreign general insurer)—a director or senior manager of the insurer;

(ii) if the body corporate is a foreign general insurer—a senior manager, or agent in Australia for the purpose of section 118, of the insurer;

(iii) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (as the case requires); and

(d) in any case—the body corporate allows the person to be or act as a director, senior manager or agent in Australia (as the case requires).

Penalty: 250 penalty units.

(5) A body corporate commits an offence if:

(a) a person is a disqualified person; and

(b) the person is or acts as one of the following:

(i) if the body corporate is a general insurer (other than a foreign general insurer)—a director or senior manager of the insurer;

(ii) if the body corporate is a foreign general insurer—a senior manager, or agent in Australia for the purpose of section 118, of the insurer;

(iii) if the body corporate is an authorised NOHC—a director or senior manager of the NOHC; and

(c) for a person who is a disqualified person only because he or she was disqualified under section 25A—the person is disqualified from being or acting as that director, senior manager or agent in Australia (as the case requires); and

(d) in any case—the body corporate allows the person to be or act as a director, senior manager or agent in Australia (as the case requires).

Penalty: 60 penalty units.

(6) Subsection (5) is an offence of strict liability.

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

11 Paragraph 25(1)(f)

Omit “APRA”, substitute “the Federal Court of Australia”.

12 Subsection 25(1) (note)

Omit “APRA”, substitute “The Federal Court of Australia”.

13 Sections 25A and 26

Repeal the sections, substitute:

25A Court power of disqualification

(1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from being or acting as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied that:
  (a) the person is not a fit and proper person to be or act as such a person; and
  (b) the disqualification is justified.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as one or more of the following:
  (a) a director or senior manager of:
    (i) a particular general insurer; or
    (ii) a class of general insurers; or
    (iii) any general insurer;
    (other than a particular foreign general insurer, a class of foreign general insurers or any foreign general insurer);
  (b) a senior manager, or agent in Australia for the purpose of section 118, of:
    (i) a particular foreign general insurer; or
    (ii) a class of foreign general insurers; or
    (iii) any foreign general insurer;
  (c) a director or senior manager of:
    (i) a particular authorised NOHC; or
    (ii) a class of authorised NOHCs; or
    (iii) any authorised NOHC.

(3) In deciding whether it is satisfied as mentioned in paragraph (1)(a), the Court may take into account:
  (a) any matters specified in the regulations for the purposes of this paragraph; and
  (b) any criteria for fitness and propriety set out in the prudential standards; and
  (c) any other matters the Court considers relevant.

(4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:
  (a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters the Court considers relevant.

(5) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) to be given:

(i) if the person is, or is acting as, a person referred to in subparagraph (2)(a)(i)—to the general insurer concerned; or

(ii) if the person is, or is acting as, a person referred to in subparagraph (2)(b)(i)—to the foreign general insurer concerned; or

(iii) if the person is, or is acting as, a person referred to in paragraph (2)(c)(i)—to the authorised NOHC concerned; and

(b) to be published in the *Gazette*.

26 Court power to revoke or vary a disqualification etc.

(1) A disqualified person, or APRA, may apply to the Federal Court of Australia for:

(a) if the person is a disqualified person only because he or she was disqualified under section 25A—a variation or a revocation of the order made under that section; or

(b) otherwise—an order that the person is not a disqualified person.

(2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 25, the person is not a ***disqualified person***.

(3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the disqualified person makes the application—by the person with APRA; or

(b) if APRA makes the application—by APRA with the disqualified person.

(4) An order under paragraph (1)(b) may be expressed to be subject to exceptions and conditions determined by the Court.

14 Paragraph 27(2)(a)

Repeal the paragraph, substitute:

(a) either:

(i) for a person who is a disqualified person only because he or she was disqualified under section 25A—is disqualified from being or acting as a director or senior manager of the insurer or NOHC; or

(ii) otherwise—is a disqualified person; or

15 Paragraph 39(3)(b)

Omit “determination”, substitute “order”.

16 Paragraph 43(1)(c)

Repeal the paragraph, substitute:

(c) the person is disqualified under section 44 from holding the appointment; or

17 Sections 44 and 45

Repeal the sections, substitute:

43A Disqualified persons must not act as auditor or actuary of general insurer

(1) A person commits an offence if:

(a) the person is disqualified under section 44; and

(b) the person is or acts as an auditor or actuary of a general insurer; and

(c) the person is disqualified from being or acting as that auditor or actuary (as the case requires).

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person is disqualified under section 44; and

(b) the person is or acts as an auditor or actuary of a general insurer; and

(c) the person is disqualified from being or acting as that auditor or actuary (as the case requires).

Penalty: 60 penalty units.

(3) 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:
  (a) a person is disqualified under section 44; and
  (b) the person is or acts as an actuary or auditor of the body corporate; and
  (c) the person is disqualified from being or acting as that actuary or auditor (as the case requires); and
  (d) the body corporate allows the person to be or act as an actuary or auditor (as the case requires).

Penalty: 250 penalty units.

(5) A body corporate commits an offence if:
  (a) a person is disqualified under section 44; and
  (b) the person is or acts as an actuary or auditor of the body corporate; and
  (c) the person is disqualified from being or acting as that actuary or auditor (as the case requires); and
  (d) the body corporate allows the person to be or act as an actuary or auditor (as the case requires).

Penalty: 60 penalty units.

(6) Subsection (5) is an offence of strict liability.

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

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

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

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

44 Court power of disqualification

(1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from holding any appointment as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied that:
  (a) any of the following applies:

(i) the person has failed to perform adequately and properly the functions and duties of such an appointment under this Act or the prudential standards;

(ii) the person otherwise does not meet one or more of the criteria for fitness and propriety set out in the prudential standards;

(iii) the person does not meet the eligibility criteria for such an appointment as set out in the prudential standards; and

(b) the disqualification is justified.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as an auditor or actuary of:

(a) a particular general insurer; or

(b) a class of general insurers; or

(c) any general insurer.

(3) In deciding whether it is satisfied as mentioned in paragraph (1)(a), the Court may take into account:

(a) any matters specified in the regulations for the purposes of this paragraph; and

(b) any criteria for fitness and propriety set out in the prudential standards; and

(c) any other matters the Court considers relevant.

(4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:

(a) the person's conduct in relation to the functions or duties that the person is required to perform under this Act and the prudential standards; and

(b) any other matters the Court considers relevant.

(5) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) if the person is, or is acting as, an auditor or actuary of a general insurer—to be given to the general insurer concerned; and

(b) to be published in the *Gazette*.

45 Court power to revoke or vary a disqualification etc.

(1) A person who is disqualified under section 44, or APRA, may apply to the Federal Court of Australia for a variation or a revocation of an order made under that section.

(2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the person who is disqualified makes the application—by the person with APRA; or

(b) if APRA makes the application—by APRA with the person who is disqualified.

18 After paragraph 48(1)(a)

Insert:

(aa) is disqualified under section 44 from being or acting as an auditor of the general insurer; or

19 After paragraph 48(2)(a)

Insert:

(aa) is disqualified under section 44 from being or acting as an actuary of the general insurer; or

20 Subsection 48(4)

Repeal the subsection.

21 Application and transitional provisions

(1) For the purposes of the *Insurance Act 1973*, a disqualification by APRA that is in force under section 25A or 44 of that Act immediately before this item commences continues in force after this item commences.

(2) For the purposes of the *Insurance Act 1973*, a reference in column 1 of the table in the provision of the *Insurance Act 1973* (as in force immediately after this item commences) referred to in column 2 is taken to include the reference in column 3.

New references to court orders to include references to disqualifications by APRA			
Item	**Column 1** **Reference**	**Column 2** **Provision of the Insurance Act**	**Column 3** **Reference taken to be included**
1	a person who was disqualified under section 25A	section 24 and paragraph 26(1)(a)	a person who was disqualified under section 25A under a disqualification that is continued in force under subitem (1)
2	a person disqualified under section 25A by the Federal Court of Australia	paragraph 25(1)(f)	a person disqualified under section 25A by APRA under a disqualification that is continued in force under subitem (1)
3	an order made under section 25A	paragraph 26(1)(a) and subsection 26(2)	a disqualification made under section 25A that is continued in force under subitem (1)
4	an order made under section 44	paragraph 40(2)(b)	a disqualification made under section 44 that is continued in force under subitem (1)
5	a person disqualified under section 44	sections 43, 43A, 45 and 48	a person disqualified under section 44 under a disqualification that is continued in force under subitem (1)

(3) Sections 25A and 44 of the *Insurance Act 1973* (as in force immediately after this item commences) apply in relation to any conduct engaged in by a person, whether before or after this item commences.

Waivers of disqualifications

(4) If:

(a) either:

(i) a person applies to APRA for a determination under section 26 of the *Insurance Act 1973* that the person is not a disqualified person; or

(ii) a person applies to APRA under section 45 of the *Insurance Act 1973* for the revocation of a determination under section 44 of that Act; and

(b) APRA has not made a decision on the application at the time this item commences;

the application is taken to be withdrawn at that time.

Note: See subitem (7) for the treatment of a decision by APRA under section 26 or 45 of the *Insurance Act 1973* in respect of which review proceedings are on foot at commencement.

(5) A determination under section 26 of the *Insurance Act 1973* that is in force immediately before this item commences continues in force after that time. However, APRA may not revoke the determination.

(6) If:

(a) a determination in relation to a person continues in force under subitem (5); and

(b) after this item commences, an order is made under section 25A of the *Insurance Act 1973* (as in force at that time) that the person is disqualified from being or acting as a person referred to in subsection 25A(2) of that Act;

the determination ceases to be in force.

Review proceedings on foot at commencement

(7) The amendments to the *Insurance Act 1973* made by this Schedule do not affect:

(a) any request, in relation to a decision made under section 25A, 26, 44 or 45 of that Act, for a review that is pending under section 63 of that Act immediately before the commencement of this item; or

(b) any proceeding, in relation to a decision under section 25A, 26, 44 or 45 of that Act that has been confirmed or varied under subsection 63(4) of that Act, that is pending before the Administrative Appeals Tribunal immediately before the commencement of this item; or

(c) any appeal to a court in relation to a proceeding referred to in paragraph (b).

(8) If a disqualification by APRA under section 25A or 44, or a determination under section 26, of the *Insurance Act 1973* is confirmed or varied as a result of a request, proceeding or appeal referred to in subitem (7), the disqualification or determination is, for the purposes of subitem (1) or (5) (as the case requires), taken to have been in force immediately before this item commences.

Life Insurance Act 1995

22 Paragraph 84(b)

Repeal the paragraph, substitute:

(b) no order is in force under section 245A that the person is disqualified from being or acting as an auditor of the life company.

23 Paragraph 85(1)(c)

Repeal the paragraph, substitute:

(c) an order takes effect under section 245A that the person is disqualified from being or acting as an auditor of the life company.

24 Section 86

Repeal the section.

25 Paragraph 93(3)(b)

Repeal the paragraph, substitute:

(b) no order is in force under section 245A that the person is disqualified from being or acting as an actuary of the life company.

26 Paragraph 94(1)(c)

Repeal the paragraph, substitute:

(c) an order takes effect under section 245A that the person is disqualified from being or acting as an actuary of the life company.

27 Section 94A

Repeal the section.

28 At the end of Division 8 of Part 6

Add:

125A APRA may direct removal of auditor or actuary

(1) APRA may, if satisfied there is a ground under subsection (2), give a written direction to a life company to end the appointment of a person as:
  (a) the auditor of the company; or
  (b) the appointed actuary of the company.

(2) The grounds for giving a direction to end a person's appointment are:
  (a) either:
    (i) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as an auditor or actuary of the company; or
    (ii) otherwise—the person is a disqualified person; or
  (b) the person is not a fit and proper person to hold the appointment; or
  (c) the person has failed to perform adequately and properly the duties or functions of the appointment under this Act, the regulations or the *Financial Sector (Collection of Data) Act 2001*.

(3) Before directing a life company to end a person's appointment, APRA must:
  (a) give written notice to:
    (i) the life company; and
    (ii) the person; and
  (b) give the life company and the person a reasonable opportunity to make submissions on the matter.

(4) The notice must include a statement that any submissions in response to the notice may be discussed by APRA with other persons as mentioned in paragraph (5)(b).

(5) If a submission is made in response to the notice, APRA:
  (a) must have regard to the submission; and

(b) may discuss any matter contained in the submission with any persons APRA considers appropriate for the purpose of assessing the truth of the matter.

(6) A direction to end a person's appointment takes effect on the day specified in the direction, which must be at least 7 days after the direction is made.

(7) If APRA directs a life company to end a person's appointment, APRA must give the life company and the person a copy of the direction.

(8) A direction to end a person's appointment is not a legislative instrument.

(9) A life company commits an offence if:
(a) the life company does or fails to do an act; and
(b) by doing or failing to do the act, the life company fails to comply with a direction under this section.

Penalty: 60 penalty units.

(10) Subsection (9) is an offence of strict liability.

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

29 Subsection 236(1) (after paragraph (z) of the definition of *reviewable decision*)

Insert:

(za) a decision to give a direction under section 125A;

30 Subsection 245(1)

Omit "this section", substitute "this Act".

31 At the end of subsection 245(1)

Add:

; or (d) the Federal Court of Australia has disqualified the person under section 245A.

Note: The heading to section 245 is altered by omitting "**Bankrupts and persons convicted of certain offences**" and substituting "**Disqualified persons**".

32 Subsections 245(2) to (5)

Repeal the subsections, substitute:

(2) A person commits an offence if:
  (a) the person is a disqualified person; and
  (b) the person is or acts as:
    (i) a director of a company registered under this Act; or
    (ii) a principal executive officer of a company registered under this Act; or
    (iii) an appointed actuary of a company registered under this Act; or
    (iv) an auditor of a company registered under this Act; and
  (c) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires).

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:
  (a) the person is a disqualified person; and
  (b) the person is or acts as:
    (i) a director of a company registered under this Act; or
    (ii) a principal executive officer of a company registered under this Act; or
    (iii) an appointed actuary of a company registered under this Act; or
    (iv) an auditor of a company registered under this Act; and
  (c) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires).

Penalty: 60 penalty units.

(4) Subsection (3) is an offence of strict liability.

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

(5) A company commits an offence if:
  (a) the company is registered under this Act; and
  (b) a person is a disqualified person; and
  (c) the person is or acts as:

(i) a director of the company; or
(ii) a principal executive officer of the company; or
(iii) an appointed actuary of the company; or
(iv) an auditor of the company; and

(d) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires); and

(e) in any case—the company allows the person to be or act as a director, principal executive officer, actuary or auditor (as the case requires).

Penalty: 250 penalty units.

(5A) A company commits an offence if:

(a) the company is registered under this Act; and

(b) a person is a disqualified person; and

(c) the person is or acts as:

(i) a director of the company; or
(ii) a principal executive officer of the company; or
(iii) an appointed actuary of the company; or
(iv) an auditor of the company; and

(d) for a person who is a disqualified person only because he or she was disqualified under section 245A—the person is disqualified from being or acting as that director, principal executive officer, actuary or auditor (as the case requires); and

(e) in any case—the company allows the person to be or act as a director, principal executive officer, actuary or auditor (as the case requires).

Penalty: 60 penalty units.

(5B) Subsection (5A) is an offence of strict liability.

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

33 After section 245

Insert:

245A Court power of disqualification

(1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from being or acting as someone referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied that:
   (a) the person is not a fit and proper person to be or act as such a person; and
   (b) the disqualification is justified.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as a director, principal executive officer, appointed actuary or auditor of:
   (a) a particular company registered under this Act; or
   (b) a class of companies registered under this Act; or
   (c) any company registered under this Act.

(3) In deciding whether it is satisfied as mentioned in paragraph (1)(a), the Court may take into account:
   (a) any matters specified in the regulations for the purposes of this paragraph; and
   (b) any criteria for fitness and propriety specified in the prudential standards; and
   (c) any other matters the Court considers relevant.

(4) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:
   (a) if the application is for the person to be disqualified from being or acting as a director or principal executive officer—the person's conduct in relation to the management, business or property of any corporation; and
   (b) if the application is for the person to be disqualified from being or acting as an appointed actuary or auditor—the person's conduct in relation to the functions or duties of an actuary or auditor under this Act; and
   (c) in any case—any other matters the Court considers relevant.

(5) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) if the person is, or is acting as, a director, principal executive officer, appointed actuary or auditor of a company registered under this Act—to be given to the company concerned; and

(b) to be published in the *Gazette*.

245B Court power to revoke or vary a disqualification etc.

(1) A disqualified person, or APRA, may apply to the Federal Court of Australia for:

(a) if the person is a disqualified person only because he or she was disqualified under section 245A—a variation or a revocation of the order made under that section; or

(b) otherwise—an order that the person is not a disqualified person.

(2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 245, the person is not a ***disqualified person***.

(3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the disqualified person makes the application—by the person with APRA; or

(b) if APRA makes the application—by APRA with the disqualified person.

(4) An order under paragraph (1)(b) may be expressed to be subject to exceptions and conditions determined by the Court.

34 Application

Section 245A of the *Life Insurance Act 1995* (as inserted by this Act) applies in relation to any conduct engaged in by a person, whether before or after this item commences.

Retirement Savings Accounts Act 1997

35 Section 16 (definition of *approved auditor*)

Omit “in respect of whom a disqualification order is in force under section 67”, substitute “who is disqualified from being or acting as an auditor of all RSA providers under section 67”.

36 Section 16 (paragraphs (i) and (j) of the definition of *reviewable decision*)

Repeal the paragraphs.

37 After subsection 65(1)

Insert:

(1A) For the purposes of subsection (1), a person is not an approved auditor, in relation to an RSA provider, if the person is disqualified from being or acting as an approved auditor of that RSA provider under section 67.

38 Section 67

Repeal the section, substitute:

67 Court power of disqualification

(1) On application by APRA, the Federal Court of Australia may, by order, disqualify a person from holding any appointment as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied:

(a) as mentioned in subsection (3); and

(b) that the disqualification is justified.

Note: For offences relating to persons disqualified under this section, see section 67B.

(2) For the purposes of subsection (1), the Court may disqualify a person from being or acting as an auditor of:

(a) a particular RSA provider; or

(b) a class of RSA providers; or

(c) any RSA provider.

(3) The Court may disqualify a person, in accordance with subsection (1), if the Court is satisfied that:

(a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:

(i) the duties of an auditor under this Act or the regulations; or

(ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor; or

(iii) any functions that an auditor is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the person is otherwise not a fit and proper person to be an approved auditor for the purposes of this Act.

(4) In deciding whether it is satisfied as mentioned in subsection (3), the Court may take into account:

(a) any matters specified in the regulations for the purposes of this paragraph; and

(b) any other matters the Court considers relevant.

(5) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:

(a) the person's conduct in relation to the functions or duties that the person is required to perform under this Act or the regulations; and

(b) any other matters the Court considers relevant.

(6) As soon as practicable after the Court disqualifies a person under this section, APRA must cause particulars of the disqualification:

(a) if the person is, or is acting as, an auditor of an RSA provider—to be given to the RSA provider concerned; and

(b) to be published in the *Gazette*.

67A Court power to revoke or vary a disqualification etc.

(1) A person who is disqualified under section 67, or APRA, may apply to the Federal Court of Australia for a variation or a revocation of an order made under that section.

(2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the person who is disqualified makes the application—by the person with APRA; or

(b) if APRA makes the application—by APRA with the person who is disqualified.

67B Disqualified persons not to be auditor of RSA provider

(1) A person commits an offence if:
  (a) the person is, or acts as, an auditor of an RSA provider for the purposes of this Act; and
  (b) the person is disqualified under section 67 from being or acting as an auditor of that RSA provider; and
  (c) the person knows that he or she is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
  (a) the person is, or acts as, an auditor of an RSA provider for the purposes of this Act; and
  (b) the person is disqualified under section 67 from being or acting as an auditor of that RSA provider; and
  (c) the person knows that he or she is so disqualified.

Penalty: 60 penalty units.

(3) Subsection (2) is an offence of strict liability.

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

39 Subsection 68(3)

Repeal the subsection, substitute:

(3) The power of APRA under subsection (1) may be exercised whether or not an order disqualifying the auditor has been made under section 67.

40 Application and transitional provisions

(1) For the purposes of the *Retirement Savings Accounts Act 1997*, a disqualification by APRA that is in force under section 67 of that Act immediately before this item commences continues in force after this item commences.

(2) For the purposes of the *Retirement Savings Accounts Act 1997*, a reference in column 1 of the table in the provision of the *Retirement Savings Accounts Act 1997* (as in force immediately after this item commences) referred to in column 2 is taken to include the reference in column 3.

New references to court orders to include references to disqualifications by APRA			
Item	**Column 1** **Reference**	**Column 2** **Provision of the Retirement Savings Accounts Act**	**Column 3** **Reference taken to be included**
1	a person disqualified under section 67	sections 67A and 67B	a person disqualified under section 67 under a disqualification that is continued in force under subitem (1)
2	an order made under section 67	subsection 67A(1)	a disqualification made under section 67 that is continued in force under subitem (1)

(3) Section 67 of the *Retirement Savings Accounts Act 1997* (as in force immediately after this item commences) applies in relation to any conduct engaged in by a person, whether before or after this item commences.

Waivers of disqualifications

(4) If:

(a) a person applies to APRA under section 67 of the *Retirement Savings Accounts Act 1997* for the revocation of a disqualification order under section 67 of that Act; and

(b) APRA has not made a decision on the application at the time this item commences;

the application is taken to be withdrawn at that time.

Note: See subitem (5) for the treatment of a decision by APRA under section 67 of the *Retirement Savings Accounts Act 1997* in respect of which review proceedings are on foot at commencement.

Review proceedings on foot at commencement

(5) The amendments to the *Retirement Savings Accounts Act 1997* made by this Schedule do not affect:

(a) any request, in relation to a decision made under section 67 of that Act, for a review that is pending under section 189 of that Act immediately before the commencement of this item; or

(b) any proceeding, in relation to a decision under section 67 of that Act that has been confirmed or varied under subsection 189(4) of that Act, that is pending before the Administrative Appeals Tribunal immediately before the commencement of this item; or

(c) any appeal to a court in relation to a proceeding referred to in paragraph (b).

(6) If a disqualification by APRA under section 67 of the *Retirement Savings Accounts Act 1997* is confirmed or varied as a result of a request, proceeding or appeal referred to in subitem (5), the disqualification is, for the purposes of subitem (1), taken to have been in force immediately before this item commences.

Superannuation Industry (Supervision) Act 1993

41 Subsection 10(1) (definition of *approved auditor*)

Repeal the definition, substitute:

approved auditor means a person included in a class of persons specified in regulations made for the purposes of this definition, but does not include:

(a) a person who is disqualified from being or acting as an auditor of all superannuation entities under section 130D; or

(b) a person in respect of whom a disqualification order is in force under section 131.

42 Saving regulations

The amendment made by item 41 of this Schedule does not affect the continuity of any regulations made for the purposes of the definition of ***approved auditor*** in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993* that are in force immediately before this item commences.

43 Subsection 10(1) (paragraphs (pa) and (pb) of the definition of *reviewable decision*)

Repeal the paragraphs.

44 Subsection 10(1) (after paragraph (q) of the definition of *reviewable decision*)

Insert:

(qa) a decision of the Regulator under subsection 126A(1), (2) or (3) to disqualify an individual; or

(qb) a decision of the Regulator under subsection 126A(5) refusing to revoke the disqualification of an individual; or

45 Application

The amendments made by items 43 and 44 of this Schedule apply to decisions made after this item commences.

46 After subsection 35C(1)

Insert:

(1A) For the purposes of subsection (1), a person is not an approved auditor, in relation to a superannuation entity, if the person is disqualified from being or acting as an approved auditor of that superannuation entity under section 130D.

47 After subsection 113(1)

Insert:

(1AA) For the purposes of subsection (1), a person is not an approved auditor, in relation to a superannuation entity, if the person is disqualified from being or acting as an approved auditor of that superannuation entity under section 130D.

48 Before section 119

Insert:

Division 1—Object of Part and definition of disqualified person

49 Paragraph 120(1)(c)

Repeal the paragraph, substitute:

(c) either:

(i) to the extent that the Regulator is the Commissioner of Taxation—the Regulator has disqualified the individual under section 126A; or

(ii) to the extent that the Regulator is APRA—the Federal Court of Australia has disqualified the individual under section 126H.

50 Paragraph 120(2)(a)

Repeal the paragraph, substitute:

(a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is:

(i) for a person who is a disqualified person only because he or she was disqualified under section 126H—disqualified from being or acting as a responsible officer of the body corporate; or

(ii) otherwise—a disqualified person; or

51 Subsection 120(2A)

Repeal the subsection (not including the heading).

52 Sections 120A and 121

Repeal the sections.

53 Before section 122

Insert:

Division 2—Requirements for custodians and investment managers

54 Sections 126 and 126A

Repeal the sections, substitute:

Division 3—Disqualified persons

Subdivision A—Disqualification by the Commissioner of Taxation

126 Application of this Subdivision

This Subdivision applies to the extent that the Regulator is the Commissioner of Taxation.

126A The Regulator may disqualify individuals

(1) The Regulator may disqualify an individual if satisfied that:
  (a) the person has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
  (b) the nature or seriousness of the contravention or contraventions, or the number of contraventions, provides grounds for disqualifying the individual.

Note: For offences relating to disqualified persons, see Subdivision C.

(2) The Regulator may disqualify an individual who is, or was, a responsible officer of a trustee, investment manager or custodian (the ***body corporate***) if satisfied that:
  (a) the body corporate has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
  (b) at the time of one or more of the contraventions, the individual was a responsible officer of the body corporate; and
  (c) in respect of the contravention or contraventions that occurred while the individual was a responsible officer of the body corporate—the nature or seriousness of it or them, or the number of them, provides grounds for the disqualification of the individual.

(3) The Regulator may disqualify an individual if satisfied that the individual is otherwise not a fit and proper person to be a trustee, investment manager or custodian, or a responsible officer of a body corporate that is a trustee, investment manager or custodian.

(4) A disqualification takes effect on the day on which it is made.

(5) The Regulator may revoke a disqualification on application by the disqualified individual or on its own initiative. A revocation takes effect on the day on which it is made.

(6) The Regulator must give the individual written notice of a disqualification, revocation of a disqualification or a refusal to revoke a disqualification.

(7) The Regulator must cause particulars of a notice given under subsection (6) or 344(6) (result of internal review) to be published in the *Gazette* as soon as practicable.

55 Subsection 126D(1)

Repeal the subsection.

56 Subsection 126D(1A)

Repeal the subsection, substitute:

(1A) If, having regard to any of the following:

(a) the offence to which the application relates;

(b) the time that has passed since the applicant committed the offence;

(c) the applicant's age when the applicant committed the offence;

(d) the orders made by the court in relation to the offence;

(e) any other relevant matter;

the Regulator is satisfied that the applicant is highly unlikely to:

(f) contravene this Act; and

(g) do anything that would result in a self managed superannuation fund not complying with this Act;

the Regulator must, by notice in writing given to the applicant, make a declaration waiving the applicant's status as a disqualified person for the purposes of this Part.

57 After section 126F

Insert:

Subdivision B—Disqualification by the Federal Court of Australia

126G Application of this Subdivision

This Subdivision applies to the extent that the Regulator is APRA.

126H Court power of disqualification

(1) On application by the Regulator, the Federal Court of Australia may, by order, disqualify an individual from being or acting as a person referred to in subsection (2), for a period that the Court considers appropriate, if the Court is satisfied:
  (a) as mentioned in subsection (3), (4) or (5); and
  (b) that the disqualification is justified.

Note: For offences relating to disqualified persons, see Subdivision C.

(2) For the purposes of subsection (1), the Court may disqualify an individual from being or acting as:
  (a) a trustee of:
    (i) a particular superannuation entity; or
    (ii) a class of superannuation entities; or
    (iii) any superannuation entity; or
  (b) a responsible officer of:
    (i) a particular body corporate that is a trustee, an investment manager or a custodian of a superannuation entity; or
    (ii) a class of bodies corporate that are trustees, investment managers or custodians of superannuation entities; or
    (iii) any body corporate that is a trustee, investment manager or custodian of a superannuation entity.

(3) The Court may disqualify an individual, in accordance with subsection (1), if satisfied:
  (a) that the individual has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and
  (b) that the nature or seriousness of the contravention or contraventions, or the number of contraventions, provides grounds for disqualifying the individual.

(4) The Court may disqualify an individual, in accordance with subsection (1), who is, or was, a responsible officer of a trustee, investment manager or custodian (the ***body corporate***) if satisfied that:

(a) the body corporate has contravened this Act or the *Financial Sector (Collection of Data) Act 2001* on one or more occasions; and

(b) at the time of one or more of the contraventions, the individual was a responsible officer of the body corporate; and

(c) in respect of the contravention or contraventions that occurred while the individual was a responsible officer of the body corporate—the nature or seriousness of it or them, or the number of them, provides grounds for the disqualification of the individual.

(5) The Court may disqualify an individual, in accordance with subsection (1), if satisfied that the individual is otherwise not a fit and proper person to be a person referred to in subsection (2).

(6) In deciding whether it is satisfied as mentioned in subsection (3), (4) or (5), the Court may take into account:

(a) any matters specified in the regulations for the purposes of this paragraph; and

(b) any other matters the Court considers relevant.

(7) In deciding whether the disqualification is justified as mentioned in paragraph (1)(b), the Court may have regard to:

(a) the individual's conduct in relation to the management, business or property of any corporation; and

(b) any other matters the Court considers relevant.

(8) As soon as practicable after the Court disqualifies an individual under this section, the Regulator must cause particulars of the disqualification to which the notice relates:

(a) to be given:

(i) if the individual is, or is acting as, a trustee of a superannuation entity—to the entity concerned; or

(ii) if the individual is, or is acting as, a responsible officer of a body corporate that is a trustee, an investment

manager or a custodian of a superannuation entity—to the body corporate concerned; and

(b) to be published in the *Gazette*.

126J Court power to revoke or vary a disqualification etc.

(1) A disqualified person, or the Regulator, may apply to the Federal Court of Australia for:

(a) if an individual is a disqualified person only because he or she was disqualified under section 126H—a variation or a revocation of the order made under that section; or

(b) otherwise—an order that the person is not a disqualified person.

(2) If the Court revokes an order under paragraph (1)(a) or makes an order under paragraph (1)(b), then, despite section 120, the person is not a ***disqualified person***.

(3) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the disqualified person makes the application—by the person with the Regulator; or

(b) if the Regulator makes the application—by the Regulator with the disqualified person.

(4) An order under paragraph (1)(b) may be expressed to be subject to exceptions and conditions determined by the Court.

Subdivision C—Offences relating to disqualified persons

126K Disqualified persons not to be trustees, investment managers or custodians of superannuation entities

(1) A person commits an offence if:

(a) the person is a disqualified person; and

(b) the person knows he or she is a disqualified person; and

(c) the person is or acts as a trustee, investment manager or custodian of a superannuation entity; and

(d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under

section 126H—the person is disqualified from being or acting as a trustee of that superannuation entity.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person is a disqualified person; and
(b) the person knows he or she is a disqualified person; and
(c) the person is or acts as a trustee, investment manager or custodian of a superannuation entity; and
(d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the person is disqualified from being or acting as a trustee of that superannuation entity.

Penalty: 60 penalty units.

(3) Subsection (2) is an offence of strict liability.

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

(4) A person commits an offence if:
(a) the person is a disqualified person; and
(b) the person knows he or she is a disqualified person; and
(c) the person is or acts as a responsible officer of a body corporate that is a trustee, investment manager or custodian of a superannuation entity; and
(d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the person is disqualified from being or acting as that responsible officer.

Penalty: Imprisonment for 2 years.

(5) A person commits an offence if:
(a) the person is a disqualified person; and
(b) the person knows he or she is a disqualified person; and
(c) the person is or acts as a responsible officer of a body corporate that is a trustee, investment manager or custodian of a superannuation entity; and
(d) for a person who is an individual and who is a disqualified person only because he or she was disqualified under

section 126H—the person is disqualified from being or acting as that responsible officer.

Penalty: 60 penalty units.

(6) Subsection (5) is an offence of strict liability.

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

(7) A person commits an offence if:

(a) the person is a trustee of a superannuation entity; and

(b) the person is or becomes a disqualified person; and

(c) the person does not tell the Regulator in writing immediately.

Penalty: 50 penalty units.

(8) Subsection (7) is an offence of strict liability.

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

Note 2: For ***strict liability***, see section 6.1 of the *Criminal Code*.

58 Before section 127

Insert:

Division 4—Non-compliance not to invalidate appointment or transaction

59 Before section 128

Insert:

Division 1—Object of Part

60 Before section 129

Insert:

Division 2—Obligations of actuaries and auditors

61 After section 130C

Insert:

Division 3—Disqualifying and removing actuaries and auditors

130D Court power of disqualification

(1) This section applies to the extent that the Regulator is APRA.

(2) On application by the Regulator, the Federal Court of Australia may, by order, disqualify a person from being or acting as a person referred to in subsection (3), for a period that the Court considers appropriate, if the Court is satisfied:
  (a) as mentioned in subsection (4); and
  (b) that the disqualification is justified.

Note: For offences relating to persons disqualified under this section, see section 131C.

(3) For the purposes of subsection (2), the Court may disqualify a person from being or acting as an approved auditor or actuary, for the purposes of this Act, of:
  (a) a particular superannuation entity; or
  (b) a class of superannuation entities; or
  (c) any superannuation entity.

(4) The Court may disqualify a person, in accordance with subsection (2), if the Court is satisfied that:
  (a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
    (i) the duties of an auditor or actuary under this Act or the regulations; or
    (ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor or actuary; or
    (iii) any functions that an auditor or actuary is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or
  (b) the person is otherwise not a fit and proper person to be a person referred to in subsection (3).

(5) In deciding whether it is satisfied as mentioned in subsection (4), the Court may take into account:

(a) any matters specified in the regulations for the purposes of this paragraph; and

(b) any other matters the Court considers relevant.

(6) In deciding whether the disqualification is justified as mentioned in paragraph (2)(b), the Court may have regard to:

(a) the person's conduct in relation to his or her duties under this Act and the regulations; and

(b) any other matters the Court considers relevant.

(7) As soon as practicable after the Court disqualifies a person under this section, the Regulator must cause particulars of the disqualification to which the notice relates to be published in the *Gazette*.

130E Court power to revoke or vary a disqualification etc.

(1) A person who is disqualified under section 130D, or the Regulator (to the extent that the Regulator is APRA), may apply to the Federal Court of Australia for a variation or a revocation of an order made under section 130D.

(2) At least 21 days before commencing the proceedings, written notice of the application must be lodged:

(a) if the person who is disqualified makes the application—by the person with the Regulator; or

(b) if the Regulator makes the application—by the Regulator with the person who is disqualified.

62 Subsection 131(1)

Repeal the subsection, substitute:

Application of section

(1A) This section applies to the extent that the Regulator is the Commissioner of Taxation.

Disqualification order

(1) The Regulator may make a written order (a ***disqualification order***) disqualifying a person from being an approved auditor or actuary for the purposes of this Act if:

(a) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:

(i) the duties of an auditor or an actuary (as the case requires) under this Act or the regulations; or

(ii) any duties required by a law of the Commonwealth, a State or a Territory to be carried out or performed by an auditor or an actuary (as the case requires); or

(iii) any functions that an auditor or actuary (as the case requires) is entitled to perform in relation to this Act or the regulations or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the person is otherwise not a fit and proper person to be an approved auditor or actuary for the purposes of this Act.

Note: For offences relating to persons disqualified under this section, see section 131C.

Note: The heading to section 131 is altered by inserting "**and actuaries**" after "**Auditors**".

63 Paragraphs 131(7)(a) and (b)

After "auditor", insert "or actuary (as the case requires)".

64 Before 131A

Insert:

Division 4—Offences and failure to carry out duties etc.

65 Subsection 131A(3)

Repeal the subsection, substitute:

(3) In relation to an approved auditor or actuary, the power of the Regulator under subsection (1) may be exercised whether or not an order disqualifying the auditor or actuary has been made under section 130D or 131.

66 Paragraph 131AA(2)(a)

Repeal the paragraph, substitute:

(a) the person is disqualified under section 130D or 131 from being, or acting as, an approved auditor or actuary of the superannuation entity; or

67 At the end of Part 16

Add:

131C Disqualified persons not to be auditor or actuary of superannuation entities

(1) A person commits an offence if:
  (a) the person is, or acts as, an auditor or actuary of a superannuation entity for the purposes of this Act; and
  (b) either:
    (i) for a person who is disqualified under section 130D—the person is disqualified from being or acting as an auditor or actuary (as the case requires) of that superannuation entity; or
    (ii) otherwise—the person is disqualified under section 131 from being or acting as an auditor or actuary (as the case requires); and
  (c) the person knows that he or she is so disqualified.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
  (a) the person is, or acts as, an auditor or actuary of a superannuation entity for the purposes of this Act; and
  (b) either:
    (i) for a person who is disqualified under section 130D—the person is disqualified from being or acting as an auditor or actuary (as the case requires) of that superannuation entity; or
    (ii) otherwise—the person is disqualified under section 131 from being or acting as an auditor or actuary (as the case requires); and
  (c) the person knows that he or she is so disqualified.

Penalty: 60 penalty units.

(3) Subsection (2) is an offence of strict liability.

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

68 Paragraph 133(1)(a)

Repeal the paragraph, substitute:
  (a) either:

(i) for a trustee who is an individual and who is a disqualified person only because he or she was disqualified under section 126H—the individual is disqualified from being or acting as a trustee of that superannuation entity; and

(ii) otherwise—the trustee is a disqualified person within the meaning of Part 15; or

69 Subsection 344(12)

Omit "(pa), (pb), (q),", substitute "(q), (qa), (qb),".

70 Application and transitional provisions

(1) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a disqualification by the Commissioner of Taxation that is in force under section 120A of that Act immediately before this item commences continues in force after this item commences as if it were made under section 126A of that Act (as in force at that time).

(2) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a disqualification by APRA that is in force under section 120A of that Act immediately before this item commences continues in force after this item commences.

(3) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a disqualification by APRA or the Commissioner of Taxation that is in force under section 131 of that Act immediately before this item commences continues in force after this item commences.

(4) For the purposes of the *Superannuation Industry (Supervision) Act 1993*, a reference in column 1 of the table in the provision of the *Superannuation Industry (Supervision) Act 1993* (as in force immediately after this item commences) referred to in column 2 is taken to include the reference in column 3.

New references to court orders to include references to disqualifications by the Regulator			
References			
Item	**Column 1** **Reference**	**Column 2** **Provision of the Superannuation Industry (Supervision) Act**	**Column 3** **Reference taken to be included**
1	an individual disqualified under section 126A by the Commissioner of Taxation	subparagraph 120(1)(c)(i)	an individual disqualified under section 120A by the Commissioner of Taxation under a disqualification that is continued in force under subitem (1)
2	an individual disqualified under section 126H by the Federal Court of Australia	subparagraph 120(1)(c)(ii)	an individual disqualified under section 120A by APRA under a disqualification that is continued in force under subitem (2)
3	an individual disqualified under section 126H	paragraph 126J(1)(a)	an individual disqualified by APRA under section 120A under a disqualification that is continued in force under subitem (2)
4	an order made under section 126H	paragraph 126J(1)(a) and subsection 126J(2)	a disqualification made by APRA under section 120A that is continued in force under subitem (2)
5	a person disqualified under section 130D	section 130E, section 131C	a person disqualified by APRA under section 131 under a disqualification that is continued in force under subitem (3)
6	an order made under section 130D	section 130E	a disqualification made by APRA under section 131 that is continued in force under subitem (3)

(5) Sections 126A, 126H, 130D and 131 of the *Superannuation Industry (Supervision) Act 1993* (as in force immediately after this item commences) apply in relation to any conduct engaged in by a person, whether before or after this item commences.

Waivers of disqualifications

(6) If:

(a) either:

(i) a person applies to APRA for a declaration under section 126D of the *Superannuation Industry (Supervision) Act 1993* waiving his or her status as a disqualified person; or

(ii) a person applies to APRA under section 131 of the *Superannuation Industry (Supervision) Act 1993* for the revocation of an order under section 131 of that Act; and

(b) APRA has not made a decision on the application at the time this item commences;

the application is taken to be withdrawn at that time.

Note: See subitem (9) for the treatment of a decision by APRA under section 126D or 131 of the *Superannuation Industry (Supervision) Act 1993* in respect of which review proceedings are on foot at commencement.

(7) A declaration by APRA under section 126D of the *Superannuation Industry (Supervision) Act 1993* that is in force immediately before this item commences continues in force after that time. However, APRA may not revoke the declaration.

(8) If:

(a) a declaration in relation to a person continues in force under subitem (7); and

(b) after this item commences, an order is made under section 126H or 130D of the *Superannuation Industry (Supervision) Act 1993* (as in force at that time) that the person is disqualified from being or acting as a person referred to in subsection 126H(2) or 130D(3) (as the case requires) of that Act;

the declaration ceases to be in force.

Review proceedings on foot at commencement

(9) The amendments to the *Superannuation Industry (Supervision) Act 1993* made by this Schedule do not affect:

(a) any request, in relation to a decision made by APRA or the Commissioner of Taxation under section 120A, 126D or 131 of that Act, for a review that is pending under section 344 of that Act immediately before the commencement of this item; or

(b) any proceeding, in relation to a decision by APRA or the Commissioner of Taxation under section 120A, 126D or 131 of that Act that has been confirmed or varied under subsection 344(4) of that Act, that is pending before the Administrative Appeals Tribunal immediately before the commencement of this item; or

(c) any appeal to a court in relation to a proceeding referred to in paragraph (b).

(10) If a disqualification under section 120A or 131, or a declaration under section 126D, of the *Superannuation Industry (Supervision) Act 1993* is confirmed or varied as a result of a request, proceeding or appeal referred to in subitem (9), the disqualification or declaration is, for the purposes of subitem (1), (2), (3) or (7) (as the case requires), taken to have been in force immediately before this item commences.

Part 2—Amendments contingent on the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007

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

71 Items 9A, 9B, 9D, 9E, 9F and 9G of Schedule 2

Repeal the items.

Insurance Act 1973

72 Subparagraph 24(1)(b)(iii)

Omit “and”.

73 At the end of paragraph 24(1)(b)

Add:

(iv) a director or senior manager of a corporate agent; and

74 Subparagraph 24(2)(b)(iii)

Omit “and”.

75 At the end of paragraph 24(2)(b)

Add:

(iv) a director or senior manager of a corporate agent; and

76 Subparagraph 24(4)(b)(iii)

Omit “and”.

77 At the end of paragraph 24(4)(b)

Add:

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

78 Subparagraph 24(5)(b)(iii)

Omit "and".

79 At the end of paragraph 24(5)(b)

Add:

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

80 At the end of subsection 25A(2)

Add:

; (d) a director or senior manager of:

(i) a particular corporate agent; or

(ii) a class of corporate agents; or

(iii) any corporate agent.

81 Subparagraph 25A(5)(a)(iii)

Omit "and".

82 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 (2)(d)(i)—to the corporate agent concerned, and to any foreign general insurer for which the agent is the corporate agent; and

83 Subparagraph 27(2)(a)(i)

Omit "insurer or NOHC", substitute "insurer, NOHC or corporate agent".

Schedule 2—Direction powers

Banking Act 1959

1 Subsection 11CA(1)

Repeal the subsection, substitute:

(1) APRA may give a body corporate that is an ADI or an authorised NOHC a direction of a kind specified in subsection (2) if APRA has reason to believe that:

(a) the body corporate has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the body corporate has contravened a prudential requirement regulation or a prudential standard; or

(c) the body corporate is likely to contravene this Act, a prudential requirement regulation, a prudential standard or the *Financial Sector (Collection of Data) Act 2001*, and such a contravention is likely to give rise to a prudential risk; or

(d) the body corporate has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(e) the direction is necessary in the interests of:

(i) if the body corporate is an ADI—depositors of the ADI; or

(ii) if the body corporate is an authorised NOHC—depositors of any ADI that is a subsidiary of the NOHC; or

(f) the body corporate is, or is about to become, unable to meet its liabilities; or

(g) there is, or there might be, a material risk to the security of the body corporate's assets; or

(h) there has been, or there might be, a sudden material deterioration in the body corporate's financial condition; or

(i) the body corporate is conducting its affairs in an improper or financially unsound way; or

(j) the failure to issue a direction would materially prejudice the interests of:

(i) if the body corporate is an ADI—depositors of the ADI; or

(ii) if the body corporate is an authorised NOHC—depositors of any ADI that is a subsidiary of the NOHC; or

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

(1A) The direction must:

(a) be given by notice in writing to the body corporate; and

(b) specify the ground referred to in subsection (1) as a result of which the direction is given.

2 Before paragraph 11CA(2)(a)

Insert:

(aa) to comply with the whole or a part of this Act or the *Financial Sector (Collection of Data) Act 2001*;

(ab) to comply with the whole or a part of a condition or direction referred to in paragraph (1)(d);

3 Paragraphs 11CA(2)(c), (d) and (e)

Omit “director, secretary, executive officer or employee”, substitute “director or senior manager”.

4 After subsection 11CA(4A)

Insert:

(4B) APRA may, by notice in writing to the body corporate, vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

5 Subsection 11CA(6)

Repeal the subsection, substitute:

(6) In this section, ***director*** has the same meaning as it has in the *Corporations Act 2001*, and the ***affairs*** of a body corporate include those set out in section 53 of that Act.

Note 1: ***Senior manager*** is defined in section 5 of this Act.

Note 2: For further information about directions, see Subdivision C.

6 Application

(1) The amendments made by items 1 to 3 and 5 of this Schedule apply to any direction given after this item commences.

(2) The amendment made by item 4 of this Schedule applies to any direction, whether given before or after this item commences.

Insurance Act 1973

7 Division 2 of Part IIIA

Repeal the Division.

8 Sections 49M to 49P

Repeal the sections.

9 Section 51

Repeal the section.

10 Subparagraph 60(2)(c)(ii)

Omit “section 62”, substitute “section 104”.

11 Section 62

Repeal the section.

12 After Part VIII

Insert:

Part IX—Directions

104 APRA may give directions in certain circumstances

Basis on which directions may be given

(1) APRA may give a body corporate that is a general insurer or an authorised NOHC a direction of a kind specified in subsection (3) if APRA has reason to believe that:

(a) the body corporate has contravened a provision of this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the body corporate is likely to contravene this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*, and such a contravention is likely to give rise to a prudential risk; or

(c) the body corporate has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(d) the direction is necessary in the interests of:

(i) if the body corporate is a general insurer—policyholders of the general insurer; or

(ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or

(e) the body corporate is, or is about to become, unable to meet its liabilities; or

(f) there is, or there might be, a material risk to the security of the body corporate's assets; or

(g) there has been, or there might be, a sudden material deterioration in the body corporate's financial condition; or

(h) the body corporate is conducting its affairs in an improper or financially unsound way; or

(i) the failure to issue a direction would materially prejudice the interests of:

(i) if the body corporate is a general insurer—policyholders of the general insurer; or

(ii) if the body corporate is an authorised NOHC—policyholders of any general insurer that is a subsidiary of the NOHC; or

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

Requirements for direction

(2) The direction must:

(a) be given by notice in writing to the body corporate; and

(b) specify the ground referred to in subsection (1) as a result of which the direction is given.

Contents of directions

(3) 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 this Act, regulations made under this Act, prudential standards, or the *Financial Sector (Collection of Data) Act 2001*;

(b) to comply with a condition or direction referred to in paragraph (1)(c);

(c) to order an audit of the affairs of the body corporate, at the expense of the body corporate, by an auditor chosen by APRA;

(d) to remove a director or senior manager from office;

(e) to ensure a director or senior manager 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;

(f) to appoint a person or persons as a director or senior manager of the body corporate for such term as APRA directs;

(g) to remove any auditor of the body corporate from office and appoint another auditor to hold office for such term as APRA directs;

(h) not to give financial accommodation to any person;

(i) not to renew any policy;

(j) not to borrow any amount;

(k) not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;

(l) not to repay any amount paid on shares;

(m) not to pay a dividend on any shares;

(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) to provide, or further provide, in its accounts for the purposes of this Act, regulations made under this Act and the prudential standards, a specified amount or an amount

determined in a specified way in respect of its liabilities or the value of a specified asset of the body corporate;

(q) to order an actuarial investigation of the affairs of the body corporate, at the expense of the body corporate, by an actuary chosen by APRA;

(r) to terminate the appointment of the actuary appointed by the body corporate and to appoint another actuary to hold office for such terms as APRA directs;

(s) not to issue any policy, undertake any liability under any contract of insurance or collect any premium;

(t) not to discharge any policy or other liability;

(u) to do, or to refrain from doing, an act that relates 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.

(4) Without limiting subsection (3), a direction referred to in a paragraph of that subsection may:

(a) deal with only some of the matters referred to in that paragraph; or

(b) deal with a particular class or particular classes of those matters; or

(c) make different provision with respect to different matters or different classes of matters.

(5) The direction may deal with the time by which, or period during which, it is to be complied with.

Body corporate and subsidiary have power to comply with direction

(6) The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

(7) 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.

Variation and revocation of directions

(8) APRA may, by notice in writing to the body corporate, vary the direction if, at the time of the variation, it considers that the variation is necessary or appropriate.

(9) APRA may, by notice in writing to the body corporate, revoke the direction if, at the time of the revocation, it considers that the direction is no longer necessary or appropriate.

Reviewable decisions

(10) Part VI applies to a decision to give a direction under subsection (1) as a result of the ground referred to in paragraph (1)(a), (b), (c) or (d).

Definitions

(11) In this section, the expression ***director*** has the same meaning as it has in the *Corporations Act 2001*, and the ***affairs*** of a body corporate include those set out in section 53 of that Act.

Note: ***Senior manager*** is defined in section 3 of this Act.

105 Direction not grounds for denial of obligations

(1) Subject to subsections (2) and (3), the fact that a general insurer or an authorised NOHC is subject to a direction by APRA under section 104 is not a ground for any other party to a contract to which the insurer or NOHC, or a subsidiary of the insurer or the NOHC, is a party:

(a) to deny any obligations under that contract; or

(b) to accelerate any debt under that contract; or

(c) to close out any transaction relating to that contract.

(2) If a general insurer or an authorised NOHC, or a subsidiary of a general insurer or authorised NOHC, is prevented from fulfilling its obligations under a contract because of a direction under section 104, other than a direction under paragraph 104(3)(t), the

other party or parties to the contract are, subject to any orders made under subsection (3) of this section, relieved from obligations owed to the insurer or NOHC under the contract.

(3) A party to a contract to which subsection (2) applies may apply to the Federal Court of Australia for an order relating to the effect on the contract of a direction under section 104. The order may deal with matters including (but not limited to):

(a) requiring a party to the contract to fulfil an obligation under the contract despite subsection (2); or

(b) obliging a party to the contract to take some other action (for example, paying money or transferring property) in view of obligations that were fulfilled under the contract before the direction was made.

The order must not require a person to take action that would contravene the direction, or any other direction under section 104.

106 Supply of information about issue and revocation of directions

Power to publish notice of directions in Gazette

(1) APRA may publish in the *Gazette* notice of any direction made under section 104. The notice must include the name of the general insurer or authorised NOHC given the direction and a summary of the direction.

Requirement to publish notice of revocation of certain directions in Gazette

(2) If APRA publishes notice of a direction made under section 104 and then later revokes the direction, APRA must publish in the *Gazette* notice of that revocation as soon as practicable after the revocation. Failure to publish notice of the revocation does not affect the validity of the revocation.

Requirement to provide information about direction to Treasurer

(3) If the Treasurer requests APRA to provide information about:

(a) any directions given under section 104 to a particular general insurer or authorised NOHC; or

(b) any directions given under section 104, during a specified period, to any general insurers or authorised NOHCs;

APRA must comply with the request.

Power to inform Treasurer of direction

(4) APRA may provide any information that it considers appropriate to the Treasurer about:
  (a) any directions given under section 104 to any general insurer or authorised NOHC at any time; or
  (b) any revocations of any such directions.

Requirement to inform Treasurer of revocation of direction if informed of making of direction

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

107 Secrecy requirements

Information relating to directions and revocations of directions is subject to the secrecy requirements in Part 6 of the *Australian Prudential Regulation Authority Act 1998*, unless the information has been published in the *Gazette* under section 106 of this Act.

108 Non-compliance with a direction

(1) A general insurer or an authorised NOHC commits an offence if:
  (a) it does, or fails to do, an act; and
  (b) doing, or failing to do, the act results in a contravention of a direction given to it under section 104; and
  (c) there is no order in force under section 7 determining that this subsection does not apply to the general insurer or authorised NOHC.

Penalty: 50 penalty units.

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

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

(2) Subsection (1) is an offence of strict liability.

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

(3) If a general insurer or authorised NOHC does or fails to do an act in circumstances that give rise to the insurer or NOHC committing an offence against subsection (1), the insurer or NOHC (as the case requires) 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 insurer or NOHC committing the offence continue (including the day of conviction for any such offence or any later day).

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

(4) An officer of a general insurer or an authorised NOHC commits an offence if:

(a) the officer fails to take reasonable steps to ensure that the insurer or NOHC complies with a direction given to it under section 104; and

(b) the officer's duties include ensuring that the insurer or NOHC complies with the direction or with a class of directions that includes the direction; and

(c) there is no order in force under section 7 determining that subsection (1) does not apply to the general insurer or authorised NOHC.

Penalty: 50 penalty units.

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

(5) Subsection (4) is an offence of strict liability.

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

(6) If an officer of a general insurer or authorised NOHC fails to take reasonable steps to ensure that the insurer or NOHC complies with a direction given to it under section 104 in circumstances that give rise to the officer committing an offence against subsection (4), the officer 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 officer committing the offence continue

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

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

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

13 Subsection 116A(4)

Omit "section 49M", substitute "section 104".

14 Subsection 128A(1)

Omit ", 28, 37 or 49P", substitute "or 28".

15 Subsection 129A(1)

Omit "49M or subsection 62(9)", substitute "108".

16 Saving directions

(1) This item applies to a direction that is in force under section 36, 49M, 49N, 51 or 62 of the *Insurance Act 1973* immediately before this item commences.

(2) For the purposes of the *Insurance Act 1973*, the direction continues in force after this item commences as if the direction were given under section 104 of that Act (as inserted by this Act).

Life Insurance Act 1995

17 Section 134

Repeal the section.

18 Section 150

Repeal the section.

19 Subsection 230B(1)

Repeal the subsection, substitute:

(1) APRA may give a life company a direction of a kind specified in subsection (2) if APRA has reason to believe that:

(a) the company has contravened a provision of this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(b) the company is likely to contravene this Act or the *Financial Sector (Collection of Data) Act 2001*, and such a contravention is likely to give rise to a prudential risk; or

(c) the company has contravened a condition or direction under this Act or the *Financial Sector (Collection of Data) Act 2001*; or

(d) the direction is necessary in the interests of policy owners or prospective policy owners of the company; or

(e) the company is, or is about to become, unable to meet its liabilities; or

(f) there is, or there might be, a material risk to the security of the company's assets; or

(g) there has been, or there might be, a sudden material deterioration in the company's financial condition; or

(h) the company is conducting its affairs in an improper or financially unsound way; or

(i) the failure to issue a direction would materially prejudice the interests of policy owners or prospective policy owners of the company; or

(j) the company is conducting its affairs in a way that may cause or promote instability in the Australian financial system.

(1A) The direction must:

(a) be given by notice in writing to the company; and

(b) specify the ground referred to in subsection (1) as a result of which the direction is given.

20 Paragraph 230B(2)(a)

Repeal the paragraph, substitute:

(a) a direction to comply with the whole or a part of this Act or the *Financial Sector (Collection of Data) Act 2001*;

(aa) a direction to comply with a condition or direction referred to in paragraph (1)(c);

21 Subparagraphs 230B(2)(d)(i), (ii) and (iii)

Omit "director, secretary, executive officer or employee", substitute "director or senior manager".

22 After paragraph 230B(2)(p)

Insert:

(pa) a direction relating to the amount of capital to be held by the company;

23 Subsection 230B(10)

Insert:

senior manager of a life company means a person who has or exercises any of the senior management responsibilities (within the meaning of the prudential standards) for the life company.

24 Subsection 236(1) (paragraphs (zj), (zk), (zl) and (zm) of the definition of *reviewable decision*)

Repeal the paragraphs.

25 Saving directions

(1) This item applies to a direction that is in force under section 134 or 150 of the *Life Insurance Act 1995* immediately before this item commences.

(2) For the purposes of the *Life Insurance Act 1995*, the direction continues in force after this item commences as if the direction were given under section 230B of that Act (as amended by this Act).

Superannuation Industry (Supervision) Act 1993

26 Subsection 264(1)

Repeal the subsection, substitute:

Regulator may act to preserve values of interests

(1) The Regulator may do any one or more of the things set out in subsections (2) to (4) if it appears to the Regulator that conduct that has been, is being, or is proposed to be, engaged in by a trustee or an investment manager of a superannuation entity is likely to:

(a) if the Regulator intends to do a thing set out in subsection (2)—adversely affect the values of the interests of beneficiaries; or

(b) otherwise—significantly adversely affect the values of the interests of the beneficiaries.

27 Application

The amendment made by item 26 of this Schedule applies to any direction given after this item commences.

Schedule 3—Removal of Ministerial consent

Part 1—Amendments commencing on Royal Assent

Insurance Act 1973

1 Subsection 15(2)

Repeal the subsection.

2 Subsection 15(4)

Omit “, with the Treasurer’s written agreement,”.

3 Subsection 21(2)

Repeal the subsection.

4 Subsection 21(4)

Omit “, with the Treasurer’s written agreement,”.

5 Subsection 32(3E)

Repeal the subsection.

6 Paragraph 52(1)(b)

Repeal the paragraph, substitute:

(b) it appears to APRA that information in its possession calls for the investigation of the whole or any part of the business of a general insurer or authorised NOHC;

7 Subsection 52(1AB)

Repeal the subsection, substitute:

(1AB) Despite subsection (1), APRA may specify a period of less than 14 days in a notice under that subsection if:

(a) APRA considers that specifying the shorter period is necessary; and

(b) the period specified is reasonable in the circumstances.

8 Section 65

Omit:

> • Lloyd's, or a company nominated by Lloyd's, is required to lodge with the Treasurer a security deposit valued at $2 million. The deposit is available to meet the costs of judicial trusteeship of designated security trust funds.

substitute:

> • Lloyd's, or a company nominated by Lloyd's, is required to lodge with APRA a security deposit valued at $2 million. The deposit is available to meet the costs of judicial trusteeship of designated security trust funds.

9 Subsection 74(1)

Omit "with the Treasurer's agreement,".

10 Subsection 74(4)

Omit "unless the Treasurer has, during that period, agreed that the direction should remain in force or be varied".

11 Before subsection 76(1)

Insert:

(1A) APRA may give a written notice under subsection (1) if APRA has reason to believe that the provision for liabilities in the accounts of a designated security trust fund is insufficient.

12 Subsection 76(1)

Omit "with the Treasurer's agreement, by written notice given to the trustee of a", substitute "by written notice given to the trustee of the".

13 Subsection 78(2)

Omit "with the Treasurer's agreement,".

14 Subsection 78(5)

Omit "unless the Treasurer has, during that period, agreed that the direction should remain in force or be varied".

15 Subsection 92Q(1)

Omit “the Treasurer”, substitute “APRA”.

16 Subsection 92Q(2)

Omit “the Treasurer”, substitute “APRA”.

17 Subsection 92Q(4)

Repeal the subsection, substitute:

(4) The deposit of securities with APRA in accordance with this section is effective to transfer the legal and beneficial interest in the securities to the Commonwealth. APRA has custody of the securities for and on behalf of the Commonwealth.

Note: See subsections 11(4) and (5) of the *Australian Prudential Regulation Authority Act 1998*.

18 Subsections 92Q(5) and (6)

Omit “the Treasurer” (wherever occurring), substitute “APRA”.

19 Subsection 92R(1)

Omit “the Treasurer”, substitute “APRA”.

20 Subsection 92R(2)

Omit “The Treasurer”, substitute “APRA”.

21 Subsection 92S(1)

Omit “the Treasurer” (wherever occurring), substitute “APRA”.

22 Subsection 93(3)

Omit “the Treasurer” (wherever occurring), substitute “APRA”.

23 Subsection 93(4)

Omit “Where the Treasurer makes a determination under subsection (3), he or she shall”, substitute “If APRA makes a determination under subsection (3), it must”.

24 Subsection 93(5)

Omit “the Treasurer”, substitute “APRA”.

25 Paragraphs 93(6)(a) and (b)

Omit “the Treasurer”, substitute “APRA”.

26 Paragraph 93(10)(a)

Omit “the Treasurer shall”, substitute “APRA must”.

27 Application

(1) This item applies to any security that is lodged with the Treasurer under section 92Q of the *Insurance Act 1973* immediately before this item commences.

(2) Immediately after this item commences, the legal and beneficial interest in the security remains with the Commonwealth, and APRA is taken to have custody of the securities for and on behalf of the Commonwealth.

Life Insurance Act 1995

28 Subsection 21(1)

Repeal the subsection, substitute:

(1) APRA must, in writing, register a company that applies for registration under section 20, unless APRA is satisfied that a ground for refusal specified in subsection (3) exists.

29 Subsection 40(3)

Repeal the subsection.

30 Subsections 49(1) and (4)

Omit “, with the Treasurer’s agreement,”.

31 Subsections 62(4A) and 63(2A)

Repeal the subsections.

Superannuation Industry (Supervision) Act 1993

32 Subsection 29G(1)

Omit “Subject to subsection (3),”.

33 Subsection 29G(1) (note)

Omit “needs the consent of the Minister (see subsection (3)) or”.

34 Subsection 29G(3)

Repeal the subsection.

35 Subsection 133(5)

Repeal the subsection.

36 Subsection 146(1)

Omit “(1) APRA may”, substitute “APRA may”.

37 Subsection 146(2)

Repeal the subsection.

38 Subsection 264(6)

Repeal the subsection.

Part 2—Amendments contingent on the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007

Division 1—Amendments if Schedule 2 to the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 commences first

Insurance Act 1973

39 Subsection 3(1) (note to the definition of *insurance business*)

Omit "Particular contracts of insurance, or kinds of contracts of insurance,", substitute "Some contracts of insurance".

40 Section 3A

Repeal the section, substitute:

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) in circumstances specified in the regulations for the purposes of this subsection.

(2) Without limiting subsection (1), the regulations may specify a contract of insurance, a kind of contract of insurance, or circumstances, by reference to:

(a) particular general insurance products (within the meaning of Chapter 7 of the *Corporations Act 2001*), or particular kinds of such products; or

(b) particular persons, or particular kinds of persons, who are insured under a contract of insurance, or a kind of contract of insurance.

41 Subsection 63(1) (definition of *decision maker*)

Repeal the definition, substitute:

decision maker, in relation to a reviewable decision, means APRA.

42 Subsection 63(1) (paragraph (a) of the definition of *person affected by a reviewable decision*)

Repeal the paragraph.

43 Subsection 63(1) (definition of *reviewable decision*)

Repeal the definition, substitute:

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

Division 2—Amendments if Schedule 2 to the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 has not yet commenced

Insurance Act 1973

44 Subsection 63(1)

Insert:

decision maker, in relation to a reviewable decision, means APRA.

45 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 under subsection 93(3)—Lloyd's or any Lloyd's underwriter; or

(b) in any other case—the person in relation to whom the decision was made.

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

Repeal the definition.

47 Subsection 63(1)

Insert:

> ***reviewable decision*** means a decision of APRA that is a decision to which, under this Act, this Part applies.

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

Repeal the definition.

49 Subsection 63(2)

Omit “of the Treasurer or APRA”.

50 Subsection 63(2)

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

51 Subsection 63(4)

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

52 Subsection 63(4)

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

53 Subsection 63(5)

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

54 Subsection 63(5)

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

55 Subsection 63(6)

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

56 Subsection 63(6)

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

57 Subsection 63(6)

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

58 Subsection 63(7)

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

59 Subsections 63(9), (12) and (13)

Omit “of the Treasurer or APRA”.

60 Subsection 64(1)

Omit “of the Treasurer or APRA”.

61 Paragraph 64(1)(a)

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

62 Paragraph 64(1)(b)

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

63 Subsection 64(2)

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

64 At the end of section 64

Add:

(4) In this section:

decision maker has the meaning given by section 63.

Division 3—Amendments once Schedule 2 to the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 commences

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

65 Item 8 of Schedule 2

Repeal the item, substitute:

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) in circumstances specified in the regulations for the purposes of this subsection.

(2) Without limiting subsection (1), the regulations may specify a contract of insurance, a kind of contract of insurance, or circumstances, by reference to:

(a) particular general insurance products (within the meaning of Chapter 7 of the *Corporations Act 2001*), or particular kinds of such products; or

(b) particular persons, or particular kinds of persons, who are insured under a contract of insurance, or a kind of contract of insurance.

66 Items 13 to 33 of Schedule 2

Repeal the items.

Insurance Act 1973

67 Subsection 3(1) (note to the definition of *insurance business*)

Omit "Particular contracts of insurance, or kinds of contracts of insurance,", substitute "Some contracts of insurance".

Schedule 4—Review of decisions

Banking Act 1959

1 At the end of section 9

Add:

(9) Part VI applies to the following decisions under this section:
(a) a decision to refuse an application under this section;
(b) a decision to impose conditions, or additional conditions, on an authority;
(c) a decision to vary conditions imposed on an authority.

2 At the end of section 9A

Add:

(8) Part VI applies to the following decisions under this section:
(a) a decision to refuse to revoke a body corporate's section 9 authority;
(b) a decision to revoke a body corporate's section 9 authority, unless APRA has determined, under subsection (4), that the procedures in subsection (3) do not apply.

3 At the end of section 11

Add:

(5) Part VI applies to the following decisions under this section:
(a) a refusal to determine that one or more provisions of this Act do not apply to a particular person;
(b) a variation or revocation of an order under this section that applies to a particular person.

4 At the end of section 11AA

Add:

(8) Part VI applies to the following decisions under this section:
(a) a decision to refuse an application under this section;
(b) a decision to impose conditions, or additional conditions, on an authority;

(c) a decision to vary conditions imposed on an authority.

5 At the end of section 11AB

Add:

(8) Part VI applies to the following decisions under this section:

(a) a decision to refuse to revoke a NOHC authority granted to a body corporate;

(b) a decision to revoke a NOHC authority granted to a body corporate, unless APRA has determined, under subsection (4), that the procedures in subsection (3) do not apply.

6 Before subsection 11AF(8)

Insert:

(7C) Part VI applies to the following decisions under this section:

(a) a decision to determine a standard referred to in paragraph (1)(d);

(b) a decision to vary such a standard.

7 After subsection 11CA(5)

Insert:

(5A) Part VI applies to a decision to give a direction under subsection (1) as a result of the ground referred to in paragraph (1)(a), (b), (c), (d) or (e).

8 Section 11CB

Before “APRA may”, insert “(1)”.

9 At the end of section 11CB

Add:

(2) Part VI applies to a refusal under this section to certify an industry support contract.

10 After subsection 11CC(3)

Insert:

(3A) APRA may vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

11 At the end of section 11CC

Add:

(7) Part VI applies to the following decisions made under this section:
- (a) a decision to give a direction;
- (b) a decision to vary a direction;
- (c) a revocation of the certification of an industry support contract.

12 Subsection 51C(4)

Repeal the subsection.

13 After subsection 66(2B)

Insert:

(2C) Part VI applies to the following decisions made under this section:
- (a) a decision to refuse consent to a particular person;
- (b) a decision to impose conditions, or additional conditions, on a consent that applies to a particular person;
- (c) a decision to vary conditions imposed on a consent that applies to a particular person;
- (d) a decision to revoke a consent that applies to a particular person.

14 At the end of section 67

Add:

(5) Part VI applies to the following decisions made under this section:
- (a) a decision to refuse consent;
- (b) a decision to impose conditions, or additional conditions, on a consent;
- (c) a decision to vary conditions imposed on a consent;
- (d) a decision to revoke a consent.

Financial Sector (Collection of Data) Act 2001

15 After Part 3

Insert:

Part 3A—Review of decisions

25A Notice of reviewable decision

(1) If APRA makes a reviewable decision (the ***original decision***), then APRA must give a notice in writing of the original decision to the person in relation to whom the decision is made.

(2) The notice must include a statement to the effect that:
  (a) the person may, if dissatisfied with the original decision, seek a reconsideration of that decision by APRA in accordance with sections 25B and 25C; and
  (b) a person whose interests are affected by the original decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by APRA on that reconsideration confirming or varying the original decision, make application to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.

25B Request for review of decisions

(1) A person in relation to whom a reviewable decision is made, may, if dissatisfied with the decision, request APRA to reconsider the decision.

(2) The request must:
  (a) be made by notice in writing; and
  (b) be given to APRA within:
    (i) the period of 21 days after the day on which the decision first comes to the notice of the person; or
    (ii) within such further period as APRA allows; and
  (c) set out the reasons for making the request.

25C Review of decision

(1) On receiving the request, APRA:
  (a) must reconsider the decision; and
  (b) may, in such manner as APRA thinks fit:

(i) confirm the decision; or
(ii) revoke the decision; or
(iii) vary the decision.

(2) If APRA does not confirm, revoke or vary a decision within the period of 21 days after receiving the request to reconsider the decision, APRA is, at the end of that period, taken to have confirmed the decision under subsection (1).

(3) If APRA confirms, revokes or varies a decision (including because of the application of subsection (2)) by the end of the period referred to in subsection (2), APRA must serve a notice on the person who made the request. The notice must:
(a) inform 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; and
(e) include a statement that:
(i) the person may, if dissatisfied with the decision, seek a reconsideration of the decision; and
(ii) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision, apply to the Administrative Appeals Tribunal for a review of the decision so confirmed or varied.

(4) Any failure to comply with the requirements of subsection (3) in relation to a decision does not affect the validity of the decision.

25D Applications to Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of APRA that have been confirmed or varied under section 25C.

(2) If a decision is, under subsection 25C(2), taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making an application for review of the decision were the period:

(a) beginning on the day on which the decision is taken to be confirmed; and

(b) ending 28 days later.

(3) If a person makes a request under section 25B in respect of a reviewable decision, 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) For the purposes of:

(a) a review of a decision of APRA that has been confirmed or varied under section 25C; or

(b) a request under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of such a decision;

a non-presidential member of the Administrative Appeals Tribunal must not sit as a member of the Administrative Appeals Tribunal if he or she is a director or employee of:

(c) an entity of any kind carrying on (whether in Australia or elsewhere) insurance business (within the meaning of the *Insurance Act 1973*) or life insurance business (within the meaning of the *Life Insurance Act 1995*); or

(d) if an entity referred to in paragraph (c) is a body corporate—a body corporate that is related to it.

(5) The question whether 2 bodies corporate are related to each other for the purposes of paragraph (4)(d) is to be determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

(6) An order must not be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* in respect of a decision except by the Administrative Appeals Tribunal.

16 Section 31

Insert:

decision, in Part 3A, has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

17 Section 31

Insert:

reviewable decision means any of the following decisions:

(a) a decision not to exempt an organisation under paragraph 7(2)(j);

(b) a decision not to allow a longer period under subsection 9(3);

(c) a decision to include (including by transfer) a registered entity in a particular category under section 11;

(d) a decision under section 13 to determine a reporting standard for a particular financial sector entity;

(e) a decision to vary a reporting standard determined under section 13 for a particular financial sector entity.

Insurance Act 1973

18 At the end of section 7

Add:

(6) Part VI applies to the following decisions made under this section:

(a) a refusal to determine that one or more provisions of this Act do not apply to a particular person;

(b) a decision to impose conditions on, or specify a period in, a determination made under this section in relation to a particular person;

(c) a decision to vary or revoke a determination made under this section in relation to a particular person.

19 At the end of section 13

Add:

(6) Part VI applies to the following decisions made under this section:

(a) a decision to impose conditions, or additional conditions, on an insurer's authorisation under section 12;

(b) a decision to vary conditions imposed on an insurer's authorisation under section 12.

20 At the end of section 15

Add:

(7) Part VI applies to a decision to revoke a general insurer's authorisation under section 12.

21 At the end of section 17

Add:

(10) Part VI applies to the following decisions made under this section:

(a) a decision to give a direction under subsection (1);

(b) a refusal to approve a proposed assignment under subsection (4);

(c) a decision to impose conditions on an approval.

22 At the end of section 19

Add:

(5) Part VI applies to the following decisions made under this section:

(a) a decision to impose conditions, or additional conditions, on a NOHC authorisation;

(b) a decision to vary conditions imposed on a NOHC authorisation.

23 At the end of section 21

Add:

(7) Part VI applies to a decision to revoke a NOHC authorisation.

24 At the end of section 32

Add:

(7) Part VI applies to a decision to determine, vary or revoke a standard referred to in paragraph (1)(e).

25 At the end of section 49H

Add:

(5) Part VI applies to a decision by APRA under subsection (3) or (4) to confirm or vary a delegate's decision.

26 Subsection 63(14)

Repeal the subsection.

27 At the end of section 116A

Add:

(7) Part VI applies to a decision by APRA under subsection (5) or (6) to determine an amount or to vary such a determination.

Life Insurance Act 1995

28 Subsection 236(1) (definition of *reviewable decision*)

Omit “, subject to subsection (1A),”.

29 Subsection 236(1) (paragraphs (ca) and (cb) of the definition of *reviewable decision*)

Repeal the paragraphs, substitute:

(ca) a determination under subsection 16C(2);

(cb) a variation or revocation, under subsection 16C(3), of a determination under subsection 16C(2);

(cc) a decision under section 16E;

(cd) a refusal to give an approval under subsection 16L(3) or 16Q(3);

(ce) a decision under subsection 16R(2) to give a notice;

(cf) a determination of an amendment, or a refusal to approve an amendment, under subsection 16R(4);

(cg) a refusal to give an approval under subsection 16U(3);

(ch) a decision under subsection 16V(2) to give a notice;

(ci) a refusal to approve consequential amendments under subsection 16V(4);

(cj) a determination of consequential amendments under subsection 16V(5);

(ck) a refusal to register a company under section 21;

30 Subsection 236(1) (after paragraph (g) of the definition of *reviewable decision*)

Insert:

(ga) a refusal to cancel the registration of a company under section 27;

31 Subsection 236(1) (after paragraph (h) of the definition of *reviewable decision*)

(ha) a refusal to give an approval under subsection 40(1);

(hb) a decision to impose conditions on an approval granted under subsection 40(1);

(hc) a refusal to give an approval under paragraph 43(3)(c);

(hd) a refusal to give an approval under paragraph 48(8)(b);

32 Subsection 236(1) (paragraphs (i) and (j) of the definition of *reviewable decision*)

Repeal the paragraphs.

33 Subsection 236(1) (after paragraph (l) of the definition of *reviewable decision*)

Insert:

(la) a refusal to give an approval under paragraph 62(1)(c);

34 Subsection 236(1) (after paragraph (zn) of the definition of *reviewable decision*)

Insert:

(zna) a refusal under section 208 to suspend or vary a life company's obligation to make payments;

35 Subsection 236(1) (at the end of the definition of *reviewable decision*)

Add:

; (zq) a decision to give a direction under section 230B as a result of the ground referred to in paragraph 230B(1)(a), (b), (c) or (d).

36 Subsection 236(1A)

Repeal the subsection.

37 Subsection 237(5)

Repeal the subsection.

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38 Subsection 10(1) (after paragraph (dl) of the definition of *reviewable decision*)

Insert:

(dla) a decision of APRA to give a direction under subsection 29HB(3); or

39 Subsection 10(1) (after paragraph (dn) of the definition of *reviewable decision*)

Insert:

(do) a decision of APRA to give a direction under subsection 29PB(3); or

40 Subsection 10(1) (after paragraph (fa) of the definition of *reviewable decision*)

Insert:

(fb) a refusal of the Regulator to give an approval under subparagraph 62(1)(b)(v); or

41 Subsection 10(1) (before paragraph (u) of the definition of *reviewable decision*)

Insert:

(taa) a decision of the Regulator to suspend or remove a trustee of a superannuation entity under section 133; or

42 Subsection 344(11)

Repeal the subsection.

43 Application

The amendments made by this Schedule apply to decisions made on or after the day on which this Schedule commences.

[*Minister's second reading speech made in—*
Senate on 13 February 2008
House of Representatives on 20 March 2008]

(9/08)