





# **Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009**

**No. 75, 2009**

**An Act to amend the law relating to banking,  
insurance and superannuation, and for related  
purposes**

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



---

## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
<b>Schedule 1—Non-operating holding companies of life insurers</b>		<b>3</b>
Part 1—Main amendments		3
<i>Life Insurance Act 1995</i>		3
Part 2—Consequential amendments		31
<i>Australian Prudential Regulation Authority Act 1998</i>		31
<i>Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998</i>		31
<i>Corporations Act 2001</i>		32
<i>Financial Institutions Supervisory Levies Collection Act 1998</i>		33
<i>Financial Sector (Business Transfer and Group Restructure) Act 1999</i>		33
<i>Financial Sector (Collection of Data) Act 2001</i>		33
<i>Financial Sector (Shareholdings) Act 1998</i>		33
<i>First Home Saver Accounts Act 2008</i>		34
<i>Income Tax Assessment Act 1936</i>		34
<i>Income Tax Assessment Act 1997</i>		34
<i>Insurance Acquisitions and Takeovers Act 1991</i>		34
<i>Insurance Act 1973</i>		35
<i>Life Insurance Supervisory Levy Imposition Act 1998</i>		35
<i>Pooled Development Funds Act 1992</i>		35
<i>Retirement Savings Accounts Act 1997</i>		35
<i>Social Security Act 1991</i>		35
<i>Superannuation Industry (Supervision) Act 1993</i>		36
<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>		36
<i>Veterans' Entitlements Act 1986</i>		36
<b>Schedule 2—Injunctions</b>		<b>37</b>
Part 1—Banking Act 1959		37
Part 2—Insurance Act 1973		38

---

Part 3—Life Insurance Act 1995	41
Part 4—Superannuation Industry (Supervision) Act 1993	44
Part 5—First Home Saver Accounts Act 2008	45
Part 6—Application	46



# **Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009**

**No. 75, 2009**

---

---

**An Act to amend the law relating to banking,  
insurance and superannuation, and for related  
purposes**

*[Assented to 27 August 2009]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Financial Sector Legislation  
Amendment (Enhancing Supervision and Enforcement) Act 2009*.

---

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	27 August 2009
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	28 August 2009

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—Non-operating holding companies of life insurers**

### **Part 1—Main amendments**

#### *Life Insurance Act 1995*

##### **1 Section 4**

Before “Without”, insert “(1)”.

##### **2 Section 4**

Omit “section”, substitute “subsection”.

##### **3 At the end of section 4**

Add:

- (2) Without prejudice to its effect apart from this subsection, this Act also has the effect it would have if each reference to a subsidiary of a life company were, by express provision, confined to such a subsidiary that:
  - (a) is a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (b) carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.
- (3) Without prejudice to its effect apart from this subsection, this Act also has the effect it would have if each reference to a subsidiary of a registered NOHC were, by express provision, confined to such a subsidiary that:
  - (a) is a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (b) carries on banking with respect to which the Parliament has the power to make laws under paragraph 51(xiii) of the Constitution.

##### **4 Paragraphs 12A(4)(e) and 12B(5)(e)**

Omit “this Act” (wherever occurring), substitute “section 21”.

---

**5 Paragraphs 16(a) and (b)**

Omit “company”, substitute “body corporate”.

Note: The heading to section 16 is altered by omitting “companies” and substituting “bodies corporate”.

**6 Paragraph 16ZD(1)(d)**

Omit “this Act”, substitute “section 21”.

**7 Part 3 (heading)**

Repeal the heading, substitute:

**Part 3—Registration of life companies and their  
NOHCs**

**Division 1—Registration of life companies**

**8 Subsection 17(1)**

Omit “this Act”, substitute “section 21”.

**9 Paragraph 17(2)(a)**

Omit “this Act”, substitute “section 21”.

**10 Subsection 17(4)**

Omit “this Act”, substitute “section 21”.

**11 Subsection 20(1)**

Omit “this Act”, substitute “section 21”.

**12 Paragraph 21(3)(f)**

Omit “Act”, substitute “section”.

**13 At the end of subsection 21(3)**

Add:

; (h) that the company is a subsidiary of a NOHC that is not a registered NOHC.

**14 Application**

---

The amendments of section 21 of the *Life Insurance Act 1995* made by this Part apply in relation to applications made before, on or after the commencement of the amendments for registration.

**15 After subsection 22(1)**

Insert:

- (1A) Without limiting the conditions that APRA may impose on the registration, APRA may make the registration conditional on a body corporate, of which the company is a subsidiary, being a registered NOHC.

**16 Application**

Subsection 22(1A) of the *Life Insurance Act 1995* (as amended by this Part) applies in relation to a registration made before, on or after the commencement of that subsection.

**17 Paragraph 26(1)(a)**

Omit “this Act”, substitute “section 21”.

**18 Subsection 26(2)**

Omit “the registration of the company under this Act”, substitute “(under this section) the registration under section 21 of the company”.

**19 Paragraph 27(1)(a)**

Omit “this Act”, substitute “section 21”.

**20 Subsection 27(1)**

Omit “the registration of the company under this Act”, substitute “(under this section) the registration under section 21 of the company”.

**21 At the end of Part 3**

Add:

**Division 2—Registration of NOHCs of life companies**

**28A Registration as a NOHC**

- (1) A body corporate may apply in writing to APRA for registration under this section (the *NOHC registration*). The NOHC

registration operates in relation to the body corporate and any life companies that are subsidiaries of the body corporate from time to time.

Note: The body corporate may want the registration because APRA may refuse to register a subsidiary of the body corporate under Division 1 unless the body corporate is registered under this section (see subsection 21(3)).

- (2) APRA may require the body corporate to provide a statutory declaration in relation to information or documents provided in relation to the application.
- (3) APRA may register an applicant if it considers it is appropriate to do so. The registration must be in writing.
- (4) If APRA registers an applicant, APRA must give written notice to the applicant.
- (5) The taking of an action is not invalid merely because of a failure to comply with subsection (4).

### **28B Conditions on a NOHC registration**

- (1) APRA may, at any time, by giving written notice to a registered NOHC:
  - (a) impose conditions, or additional conditions, on the NOHC registration; and
  - (b) vary or revoke conditions imposed on the NOHC registration.
- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) If APRA imposes, varies or revokes the conditions on a NOHC registration, APRA must give written notice to the registered NOHC.
- (4) The taking of an action is not invalid merely because of a failure to comply with subsection (3).

### **28C When APRA may revoke a NOHC registration**

- (1) APRA may revoke a NOHC registration if APRA is satisfied that:
  - (a) the registered NOHC has failed to comply with:

- (i) a requirement of this Act or of an instrument made for the purposes of this Act; or
  - (ii) a requirement of the *Financial Sector (Collection of Data) Act 2001*; or
  - (iii) a direction to the registered NOHC under this Act; or
  - (iv) a condition of the registration; or
- (b) it would be contrary to the public interest for the registration to remain in force; or
- (c) the registered NOHC has failed to pay:
- (i) an amount of levy or late penalty to which the *Financial Institutions Supervisory Levies Collection Act 1998* applies; or
  - (ii) an amount of charge fixed under section 51 of the *Australian Prudential Regulation Authority Act 1998*; or
- (d) it would be contrary to the interests of the policy owners of any life company that is a subsidiary of the registered NOHC for the registration to remain in force; or
- (e) the registered NOHC has ceased to be a NOHC of any life company.
- (2) Before revoking a NOHC registration, APRA must give written notice to the registered NOHC advising it that:
- (a) APRA is considering revoking the registration for the reasons specified; and
  - (b) the registered NOHC may make submissions about the revocation to APRA, in accordance with the notice, by a specified date (which must be at least 90 days after the notice is given).
- APRA must consider any submissions made by the registered NOHC by that date.
- (3) APRA may decide that subsection (2) does not apply if APRA is satisfied that complying with that subsection could result in a delay in revocation that would be:
- (a) contrary to the public interest; or
  - (b) contrary to the interests of the policy owners of any life company that is a subsidiary of the registered NOHC concerned.
- (4) If APRA revokes a body corporate's NOHC registration, APRA must give written notice to the body corporate.
-

- (5) Revocation under this section of the registration of a body corporate takes effect at the end of 7 days after APRA gives the body written notice of the revocation.

### **28D When APRA must revoke a NOHC registration**

- (1) APRA must revoke a body corporate's NOHC registration if:
- (a) the body corporate asks (in writing) APRA to do so; and
  - (b) APRA is satisfied that revoking the registration would not be contrary to either:
    - (i) the public interest; or
    - (ii) the interests of the policy owners of any life company that is a subsidiary of the body corporate.
- (2) If APRA revokes a body corporate's NOHC registration, APRA must give written notice to the body.
- (3) Revocation under this section of the registration of a body corporate takes effect when APRA gives the body written notice of the revocation.

### **22 Part 6 (heading)**

Repeal the heading, substitute:

## **Part 6—Financial management of life companies etc.**

### **23 Subsection 88(1)**

Omit “a life company”, substitute “a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC”.

Note: The heading to section 88 is replaced by the heading “**Obligations of auditors of certain bodies to report to bodies and APRA**”.

### **24 Subsection 88(1)**

Omit “of the company” (wherever occurring), substitute “of the body”.

### **25 Subsection 88(1)**

Omit “taken by the company”, substitute “taken by the body”.

---

**26 Paragraph 88(1)(b)**

Omit “company”, substitute “body, if it is a life company, or by a life company that is related to the body”.

**27 Subsection 88(2)**

Omit “a life company”, substitute “a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC”.

**28 Paragraph 88(2)(a)**

Omit “the company” (wherever occurring), substitute “the body”.

**29 Paragraph 88(2)(b)**

Omit “company”, substitute “body, if it is a life company, or by a life company that is related to the body”.

**30 Subsection 88(2A)**

Omit “a life company”, substitute “a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC”.

**31 Paragraph 88(2A)(a)**

Omit “life company” (wherever occurring), substitute “body”.

**32 Paragraph 88(2B)(a)**

Omit “a life company”, substitute “a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC”.

**33 Subparagraph 88(2B)(b)(i)**

Omit “life company” (wherever occurring), substitute “body”.

**34 Subparagraph 88(2B)(b)(ii)**

Omit “company”, substitute “body, if it is a life company, or by a life company that is related to the body”.

**35 Paragraphs 88(2B)(c) and (d)**

Omit “life company” (wherever occurring), substitute “body”.

**36 Paragraph 88(3)(a)**

Omit “a life company”, substitute “a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC”.

**37 Paragraph 88(3)(a)**

Omit “of the company” (wherever occurring), substitute “of the body”.

**38 Paragraph 88(3)(a)**

Omit “taken by the company”, substitute “taken by the body”.

**39 Subparagraph 88(3)(a)(ii)**

Omit “company”, substitute “body, if it is a life company, or by a life company that is related to the body”.

**40 Paragraph 88(4)(b)**

Omit “life company”, substitute “body”.

**41 Subsection 88(4)**

Omit “company” (last occurring), substitute “body”.

**42 Subsection 88A(1)**

Omit “a life company”, substitute “a body corporate that is or was a life company, a registered NOHC or a subsidiary of a life company or registered NOHC”.

**43 Subsection 88A(1)**

Omit “the life company”, substitute “the body”.

**44 Subsection 89(1)**

Omit “a life company”, substitute “a body corporate that is or was a life company, a registered NOHC or a subsidiary of a life company or registered NOHC”.

**45 Paragraph 89(2)(b)**

Omit “life company”, substitute “body”.

**46 Subsection 125A(1)**

---

Omit “life company”, substitute “body corporate that is a life company or a registered NOHC”.

**47 Paragraph 125A(1)(a)**

Omit “company”, substitute “body”.

**48 Paragraph 125A(1)(b)**

Omit “company”, substitute “body, if it is a life company”.

**49 Subparagraph 125A(2)(a)(i)**

Omit “company”, substitute “body”.

**50 Subsections 125A(3), (7) and (9)**

Omit “life company” (wherever occurring), substitute “body corporate”.

**51 Part 7 (heading)**

Repeal the heading, substitute:

**Part 7—Monitoring and investigation of life companies and registered NOHCs**

**52 Subsection 126(1) (definition of *officer*)**

Omit “a company”, substitute “a body corporate”.

**53 Subsection 126(1) (paragraph (a) of the definition of *officer*)**

Omit “company” (first occurring), substitute “body”.

**54 Subsection 126(1) (subparagraph (a)(i) of the definition of *officer*)**

Omit “company”, substitute “body”.

**55 Subsection 126(1) (subparagraph (a)(ii) of the definition of *officer*)**

Omit “company”, substitute “body, if it is a life company”.

**56 Subsection 126(1) (subparagraphs (a)(iii) and (iv) of the definition of *officer*)**

Omit “company”, substitute “body”.

**57 Subsection 126(1) (paragraph (b) of the definition of officer)**

Omit “company”, substitute “body”.

**58 Subsection 126(1) (definition of *relevant business*)**

Omit “company” (wherever occurring), substitute “body corporate”.

**59 Subsection 126(1) (definition of *relevant person*)**

Omit “a company”, substitute “a body corporate”.

**60 Subsection 126(1) (paragraph (a) of the definition of *relevant person*)**

Omit “company”, substitute “body”.

**61 Subsection 126(1) (paragraph (b) of the definition of *relevant person*)**

Omit “company”, substitute “body, if it is a life company”.

**62 Subsection 126(1) (paragraph (c) of the definition of *relevant person*)**

Omit “company”, substitute “body”.

**63 Section 128**

Omit “company (*first company*) is associated with another company if the 2 companies”, substitute “body corporate (the *first body*) is associated with another body corporate if the 2 bodies”.

Note: The heading to section 128 is altered by omitting “company” and substituting “body corporate”.

**64 Paragraph 128(a)**

Repeal the paragraph, substitute:

- (a) the first body carries on life insurance business or is a registered NOHC; or

**65 Paragraph 128(b)**

Omit “companies”, substitute “bodies”.

---

**66 Paragraph 128(b)**

Omit “company”, substitute “body”.

**67 Section 129**

Omit “companies”, substitute “bodies corporate”.

Note: The heading to section 129 is altered by omitting “**companies**” and substituting “**bodies corporate**”.

**68 Division 2 of Part 7 (heading)**

Repeal the heading, substitute:

**Division 2—Monitoring life companies and registered  
NOHCs**

**69 Section 130**

Omit “life company”, substitute “body corporate that is a life company or registered NOHC”.

**70 Paragraph 130(c)**

Omit “company”, substitute “body”.

**71 Subsection 131(1)**

Omit “life company a written notice requiring the company”, substitute “body corporate that is a life company or a registered NOHC a written notice requiring the body”.

**72 Paragraph 131(1)(a)**

Omit “company’s”, substitute “body’s”.

**73 Paragraphs 131(1)(b) and (c)**

Omit “company”, substitute “body”.

**74 Subsection 131(2)**

Omit “company”, substitute “body”.

**75 Subsection 131(3)**

Omit “life company”, substitute “body corporate that is a life company or a registered NOHC”.

**76 Subsection 131(4)**

Omit “company”, substitute “body”.

**77 Subsection 132(1)**

Omit “life company a written notice requiring the company”, substitute “body corporate that is a life company or a registered NOHC a written notice requiring the body”.

**78 Subsection 132(1)**

Omit “company” (last occurring), substitute “body”.

**79 Subsection 132(3)**

Omit “life company”, substitute “body corporate that is a life company or a registered NOHC”.

**80 Subsection 132(4)**

Omit “company”, substitute “body”.

**81 Application**

The amendments of sections 131 and 132 of the *Life Insurance Act 1995* made by this Part apply in relation to the giving of a notice on or after the commencement of the amendments.

**82 Subsections 132A(4) and (5)**

Repeal the subsections, substitute:

*Matters requiring notice as soon as practicable*

- (4) If a body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC becomes aware:
- (a) both:
    - (i) that the body has breached or will breach a provision of this Act (other than a provision to which subsection (1) applies); and
    - (ii) that the breach is or will be significant (see subsection (5)); or
  - (b) of a matter that materially and adversely affects the body’s financial position;

the body must give APRA a written report about the breach or matter as soon as practicable, and in any case no later than 10 business days, after becoming aware of the breach or matter.

- (5) For the purposes of subparagraph (4)(a)(ii), a breach of a provision is or will be *significant* if the breach is or will be significant having regard to one or more of the following:
- (a) the number or frequency of similar breaches;
  - (b) the impact the breach has or will have on the body corporate's ability to conduct its business;
  - (c) the extent to which the breach indicates that the body corporate's arrangements to ensure compliance with this Act might be inadequate;
  - (d) the actual or potential financial loss arising or that will arise from the breach:
    - (i) to the owners of policies issued by the body corporate, if it is a life company, or by a life company that is related to the body corporate; or
    - (ii) to the body corporate;
  - (e) any matters prescribed by the regulations for the purposes of this paragraph.

**83 Subsection 132A(6)**

Omit "A life company", substitute "A body corporate that is a life company, registered NOHC or subsidiary of a life company or registered NOHC".

**84 Subsection 132A(6)**

Omit "the life company", substitute "the body".

**85 Subsection 132A(7)**

Omit "a life company", substitute "a body corporate".

**86 Paragraph 132A(7)(a)**

Omit "or appointed actuary of the life company", substitute "of the body, or its appointed actuary if it is a life company,".

**87 Subsection 132A(9)**

Omit "life company", substitute "body corporate giving the notice or report".

---

## **88 Application**

The amendments of section 132A of the *Life Insurance Act 1995* made by this Part apply in relation to matters of which a body corporate becomes aware on or after the commencement of the amendments (whether the matter arose before, on or after that commencement).

## **89 Subsection 133(1)**

Omit “life company”, substitute “body corporate that is a life company or a registered NOHC”.

## **90 Paragraph 133(2)(a)**

Omit “life company”, substitute “body”.

## **91 Subsection 135(1)**

Omit “life company a written notice inviting the company”, substitute “body corporate that is a life company or a registered NOHC a written notice inviting the body”.

## **92 Paragraph 135(1)(a)**

Repeal the paragraph, substitute:

- (a) a written statement of reasons why the Regulator should not investigate:
  - (i) the life insurance business, or a specified part of the life insurance business, of the body, if it is a life company; or
  - (ii) the business of the body, if it is a registered NOHC; and

## **93 Paragraph 135(1)(b)**

Omit “company”, substitute “body”.

## **94 Section 136**

Omit “life company” (first occurring), substitute “body corporate that is a life company or a registered NOHC”.

## **95 Paragraphs 136(a) and (b)**

Omit “life company”, substitute “body”.

## **96 Subparagraph 136(b)(ii)**

Omit “company”, substitute “body”.

---

**97 Subparagraph 136(b)(iii)**

Omit “section 22, on the registration of the company”, substitute “Part 3, on the registration of the body”.

**98 Paragraph 136(c)**

Omit “life company”, substitute “body”.

**99 Paragraph 136(c)**

Omit “the company”, substitute “the body”.

**100 Paragraph 136(ca)**

Omit “life company”, substitute “body”.

**101 Paragraphs 136(d), (e), (f) and (g)**

Before “that”, insert “if the body is a life company—”.

**102 At the end of section 136**

Add:

; (h) if the body is a registered NOHC—that information in the possession of the Regulator calls for the investigation of the business of the NOHC.

**103 Subsection 137(1)**

Omit “life company”, substitute “body corporate that is a life company, or business of a body corporate that is a registered NOHC,”.

**104 Paragraphs 137(1)(a) and (b)**

Omit “company”, substitute “body”.

**105 Subsection 137(2)**

Omit “life company”, substitute “body corporate that is a life company, or business of a body corporate that is a registered NOHC,”.

**106 Paragraph 137(2)(a)**

Omit “company”, substitute “body”.

**107 Subparagraphs 137(2)(c)(i) and (ii)**

Omit “company”, substitute “body”.

**108 Paragraph 137(2)(d)**

Repeal the paragraph, substitute:

(d) the Regulator is satisfied that:

- (i) if the body is a life company—it is in the best interests of owners of policies issued by the company that the business be investigated under this Division; or
- (ii) if the body is a registered NOHC—it is in the public interest that the business be investigated under this Division.

**109 Paragraph 138(a)**

Omit “life company (the *first company*)”, substitute “body corporate (the *first body*) that is a life company or a registered NOHC”.

Note: The heading to section 138 is altered by omitting “company” and substituting “body corporate”.

**110 Paragraph 138(b)**

Omit “company (the *associated company*)”, substitute “body corporate (the *associated body*)”.

**111 Paragraph 138(b)**

Omit “first company”, substitute “first body”.

**112 Paragraph 138(c)**

Omit “company”, substitute “body”.

**113 Sections 139, 140, 141, 142, 143, 147 and 149**

Omit “company” (wherever occurring), substitute “body corporate”.

Note: The heading to section 149 is altered by omitting “company” and substituting “body corporate”.

**114 Section 152**

Insert:

*body concerned* means:

- (a) in relation to records—the body corporate by which, or for which, the records are kept; and
- (b) in relation to the execution of a warrant—the body corporate to whose records the warrant relates.

**115 Section 152 (definition of *company concerned*)**

Repeal the definition.

**116 Sections 153, 154, 155 and 156**

Omit “company” (wherever occurring), substitute “body”.

**117 Application**

The amendments of Divisions 3 and 4 of Part 7 of the *Life Insurance Act 1995* made by this Part apply in relation to notices given under section 135 of that Act after the commencement of those amendments.

Note: Division 4 of Part 7 of the *Life Insurance Act 1995* deals with things done under warrants issued under Division 3 of that Part. A warrant can be issued under Division 3 of that Part only in connection with an investigation under that Division, which can be carried out only after a notice has been given under section 135 of that Act.

**118 Subsection 156A(1)**

Omit “a life company”, substitute “a body corporate that is a life company or a registered NOHC”.

**119 Paragraphs 156A(1)(a), (b), (c) and (d)**

Omit “life company”, substitute “body”.

**120 Subparagraphs 156A(2)(a)(ii) and (iii)**

Repeal the subparagraphs, substitute:

- (ii) the body’s auditor or a member of an audit team conducting an audit of the body;
- (iii) the appointed actuary of the body, if the body is a life company;

**121 Subparagraphs 156A(2)(a)(iv) and (v) and (c)(i) and (ii)**

Omit “life company”, substitute “body”.

**122 Subparagraph 156E(1)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the body’s auditor or a member of an audit team conducting an audit of the body; or
- (ia) the body’s appointed actuary, if the body is a life company; or

Note: The heading to section 156E is altered by omitting “**company, company officers and**” and substituting “**body and its officers,**”.

**123 Subparagraphs 156E(1)(b)(ii) and (iii)**

Omit “life company”, substitute “body”.

**124 Subparagraph 156E(1)(c)(i)**

Repeal the subparagraph, substitute:

- (i) the body’s auditor or a member of an audit team conducting an audit of the body; or
- (ia) the body’s appointed actuary, if the body is a life company; or

**125 Subparagraphs 156E(1)(c)(ii), (iii), (iv) and (v)**

Omit “life company”, substitute “body”.

**126 Application**

The amendments of section 156A and 156E of the *Life Insurance Act 1995* made by this Part apply to disclosures made on or after the commencement of the amendments.

**127 Subsection 190(2)**

Omit “this Act”, substitute “section 21”.

**128 Subparagraphs 203B(a)(i) and (b)(i)**

Omit “this Act”, substitute “section 21”.

**129 Paragraphs 230A(1)(a), (b) and (c)**

After “companies”, insert “, registered NOHCs or subsidiaries of life companies or registered NOHCs”.

Note: The heading to section 230A is altered by adding at the end “, **registered NOHCs and subsidiaries**”.

**130 Subsection 230A(1)**

Omit “concerned”, substitute “that are to comply with the standards or that are related to bodies corporate that are to comply with the standards”.

**131 After subsection 230A(3)**

---

Insert:

(3A) Without limiting the prudential matters in relation to which APRA may determine a standard, a standard may require:

- (a) each life company or registered NOHC; or
- (b) each life company or registered NOHC included in a specified class of life companies or registered NOHCs; or
- (c) a specified life company or registered NOHC; or
- (d) each of 2 or more specified life companies or registered NOHCs;

to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to prudential matters.

### **132 At the end of subsection 230A(4)**

Add “, registered NOHCs or subsidiaries of a life company or registered NOHC”.

### **133 Subsections 230A(7) and (9)**

Repeal the subsections, substitute:

- (7) If APRA determines or varies a standard referred to in paragraph (1)(c) it must, as soon as practicable, give a copy of the standard or variation to:
  - (a) if the standard applies to one or more life companies that are not subsidiaries of a registered NOHC—each of those life companies; and
  - (b) if the standard applies to one or more registered NOHCs—each of those registered NOHCs; and
  - (c) if the standard applies to one or more subsidiaries of a life company or registered NOHC—each of those subsidiaries or, if they are specified as subsidiaries of the life company or registered NOHC, the life company or registered NOHC (as appropriate).
- (9) If APRA revokes a standard referred to in paragraph (1)(c) it must, as soon as practicable, give notice of the revocation to:
  - (a) if the standard applied to one or more life companies that are not subsidiaries of a registered NOHC—each of those life companies; and

- (b) if the standard applied to one or more registered NOHCs—each of those registered NOHCs; and
- (c) if the standard applied to one or more subsidiaries of a life company or registered NOHC—each of those subsidiaries or, if they are specified as subsidiaries of the life company or registered NOHC, the life company or registered NOHC (as appropriate).

**134 Subsection 230A(13)**

Repeal the subsection.

**135 Application**

- (1) The amendments of section 230A of the *Life Insurance Act 1995* made by this Part apply in relation to standards determined on or after the commencement of the amendments.
- (2) To avoid doubt, the amendments do not affect the validity of a standard determined under that section before the commencement of the amendments.

**136 Subsection 230B(1)**

Repeal the subsection, substitute:

- (1) APRA may give a body corporate that is a life company or a registered 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 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 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 life company—policy owners or prospective policy owners of the life company; or
    - (ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company 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 life company—policy owners or prospective policy owners of the life company; or
  - (ii) if the body corporate is a registered NOHC—policy owners or prospective policy owners of any life company 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.

**137 Paragraph 230B(1A)(a)**

Omit “company”, substitute “body corporate”.

**138 Subsection 230B(2)**

Repeal the subsection, substitute:

- (2) The kinds of direction that the body corporate may be given are directions to do, or to cause a body corporate that is its subsidiary to do, any one or more of the following:
  - (a) to comply with the whole or a part of this Act 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) to terminate the appointment of the appointed actuary of the body corporate and to appoint another actuary to hold office for such term as APRA directs, if the body corporate is a life company;
- (i) not to give financial accommodation to any person;
- (j) not to issue or renew any policy, undertake any liability under any policy or collect any premium;
- (k) not to borrow any amount;
- (l) not to accept any payment on account of share capital, except payments in respect of calls that fell due before the direction was given;
- (m) not to repay any amount paid on shares;
- (n) not to pay a dividend on any shares;
- (o) not to discharge any policy or other liability;
- (p) not to transfer any asset of a statutory fund;
- (q) not to pay or transfer any amount to any person, or create an obligation (contingent or otherwise) to do so;
- (r) not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
- (s) to hold, or otherwise deal in a specified way, with a specified amount of capital;
- (t) to provide, or further provide, in its accounts for the purposes of this Act, 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;
- (u) 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;
- (v) 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 (q) 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.

---

**139 Subsections 230B(5) and (6)**

Omit “life company”, substitute “body corporate”.

**140 After subsection 230B(6)**

Insert:

- (6A) 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.

**141 Subsection 230B(7)**

Omit “life company”, substitute “body corporate”.

**142 Paragraph 230B(8)(c)**

Omit “company”, substitute “body corporate”.

**143 Subsection 230B(10) (definition of *senior manager*)**

Repeal the definition.

**144 Subsection 230C(2)**

Omit “230B(2)(m)”, substitute “230B(2)(o)”.

**145 Application**

- (1) The amendments of sections 230B and 230C of the *Life Insurance Act 1995* made by this Part apply in relation to the giving of directions on or after the commencement of those amendments.
- (2) To avoid doubt, those amendments do not affect the validity of a direction given under section 230B of that Act before the commencement of those amendments.

**146 Subsection 230D(1)**

After “company”, insert “or registered NOHC”.

**147 Paragraph 230D(3)(a)**

After “company”, insert “or registered NOHC”.

**148 At the end of paragraph 230D(3)(b)**

Add “or registered NOHCs”.

**149 Subsection 230D(4)**

After “company”, insert “or registered NOHC”.

**150 Subsection 230F(1)**

After “company”, insert “or registered NOHC”.

**151 Subsection 230F(2)**

After “life company”, insert “or registered NOHC”.

**152 Subsection 230F(2)**

After “the company” (wherever occurring), insert “or NOHC”.

**153 Subsection 230F(3)**

After “life company”, insert “or registered NOHC”.

**154 Paragraphs 230F(3)(a) and (b)**

After “company”, insert “or NOHC”.

**155 Subsection 230F(4)**

After “life company”, insert “or registered NOHC”.

**156 Subsection 230F(4)**

After “the company”, insert “or NOHC”.

**157 Subsection 236(1) (after paragraph (ga) of the definition  
of *reviewable decision*)**

Insert:

(gb) a refusal of an application for registration of a body corporate under section 28A;

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

(gd) a decision to vary conditions imposed on a NOHC registration;

(ge) a decision to revoke under section 28C a NOHC registration;

**158 At the end of subsection 237(3)**

Add “or of a NOHC of such a company or body”.

**159 At the end of subsection 240(1)**

Add “and Non-Operating Holding Companies”.

Note: The heading to section 240 is altered by adding at the end “**and Non-Operating Holding Companies**”.

**160 Subsection 240(3)**

After “company”, insert “, or body corporate,”.

**161 Subsection 242(2)**

Omit “this Act”, substitute “section 21”.

**162 Subparagraphs 245(2)(b)(i) and (ii)**

After “company”, insert “, or body corporate,”.

**163 Subparagraph 245(2)(b)(iii)**

Omit “this Act”, substitute “section 21”.

**164 Subparagraph 245(2)(b)(iv)**

After “company”, insert “, or body corporate,”.

**165 Subparagraphs 245(3)(b)(i) and (ii)**

After “company”, insert “, or body corporate,”.

**166 Subparagraph 245(3)(b)(iii)**

Omit “this Act”, substitute “section 21”.

**167 Subparagraph 245(3)(b)(iv)**

After “company”, insert “, or body corporate,”.

**168 Subsection 245(5)**

After “A company”, insert “or body corporate”.

**169 Paragraph 245(5)(a)**

After “company”, insert “or body corporate”.

**170 Subparagraphs 245(5)(c)(i), (ii) and (iv)**

After “company”, insert “or body corporate”.

**171 Paragraph 245(5)(e)**

After “company”, insert “or body corporate”.

**172 Subsection 245(5A)**

After “A company”, insert “or body corporate”.

**173 Paragraph 245(5A)(a)**

After “company”, insert “or body corporate”.

**174 Subparagraphs 245(5A)(c)(i), (ii) and (iv)**

After “company”, insert “or body corporate”.

**175 Paragraph 245(5A)(e)**

After “company”, insert “or body corporate”.

**176 Paragraph 245A(2)(a)**

After “company”, insert “, or body corporate,”.

**177 Paragraph 245A(2)(b)**

After “companies”, insert “, or bodies corporate,”.

**178 Paragraph 245A(2)(c)**

After “company”, insert “, or body corporate,”.

**179 Paragraph 245A(5)(a)**

After “company” (wherever occurring), insert “, or body corporate,”.

**180 Application**

The amendments of section 245A of the *Life Insurance Act 1995* made by this Part apply in relation to applications made on or after the commencement of the amendments.

**181 Subsection 254(1)**

Omit “this Act”, substitute “section 21”.

**182 Schedule**

Insert:

*NOHC*: see *Non-Operating Holding Company*.

**183 Schedule**

Insert:

*NOHC registration* has the meaning given by section 28A.

**184 Schedule**

Insert:

*Non-Operating Holding Company*, in relation to a body corporate, means a body corporate:

- (a) of which the first body corporate is a subsidiary; and
- (b) that does not carry on a business (other than a business consisting of the ownership or control of other bodies corporate); and
- (c) that is incorporated in Australia.

**185 Schedule (definition of *Register*)**

After “Companies”, insert “and Non-Operating Holding Companies”.

**186 Schedule**

Insert:

*registered NOHC* means a body corporate that:

- (a) is registered under Division 2 (Registration of NOHCs of life companies) of Part 3; and
- (b) is a NOHC of one or more life companies.

**187 Schedule**

Insert:

**Schedule 1** Non-operating holding companies of life insurers

**Part 1** Main amendments

---

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

## **Part 2—Consequential amendments**

### ***Australian Prudential Regulation Authority Act 1998***

#### **188 Paragraph 3(2)(e)**

After “under”, insert “section 21 of”.

#### **189 At the end of paragraph 3(2)(e)**

Add “or a registered NOHC within the meaning of that Act”.

### ***Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998***

#### **190 Section 5 (definition of *authorised NOHC*)**

Repeal the definition, substitute:

*authorised NOHC* means:

- (a) an authorised NOHC within the meaning of the *Banking Act 1959* or the *Insurance Act 1973*; or
- (b) a registered NOHC within the meaning of the *Life Insurance Act 1995*.

Note: NOHC is short for non-operating holding company.

#### **191 Paragraph 7(1)(b)**

Omit “year.”, substitute “year; or”.

#### **192 After paragraph 7(1)(b)**

Insert:

- (c) if the authorised NOHC is a registered NOHC within the meaning of the *Life Insurance Act 1995*—the amount determined, by legislative instrument, by the Treasurer for the purpose of this paragraph in relation to the financial year.

#### **193 Subsection 7(1)**

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

## **194 Application**

- (1) This item applies if the amendments of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* made by this Schedule commence during a financial year (but not on 1 July of that financial year).
- (2) That Act, as amended by this Schedule, has effect, in relation to that financial year and authorised NOHCs that are registered NOHCs, with the modifications (if any) prescribed by the regulations.
- Note: Subitems (1) and (2) are equivalent to subsection 2(2) of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*.
- (3) The Governor-General may make regulations for the purposes of subitem (2).
- Note: Subitem (3) is equivalent to section 9 of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*.
- (4) In this item:  
*authorised NOHC* has the same meaning as in the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* as amended by this Schedule.  
*modifications* includes additions, omissions and substitutions.  
*registered NOHC* has the same meaning as in the *Life Insurance Act 1995*.

## ***Corporations Act 2001***

### **195 Paragraph 283AC(1)(c)**

After “under”, insert “section 21 of”.

### **196 Subparagraphs 324CH(5)(a)(ii) and 448C(2)(a)(ii)**

After “under”, insert “section 21 of”.

### **197 Paragraph 482(1A)(b)**

After “under”, insert “section 21 of”.

### **198 Subparagraph 532(3)(a)(ii)**

After “under”, insert “section 21 of”.

**199 Paragraphs 708(19)(b) and 985A(2)(b)**

After “registered under”, insert “section 21 of”.

***Financial Institutions Supervisory Levies Collection Act 1998***

**200 Section 7 (definition of *authorised NOHC*)**

Repeal the definition, substitute:

*authorised NOHC* means:

- (a) an authorised NOHC within the meaning of either:
  - (i) the *Banking Act 1959*; or
  - (ii) the *Insurance Act 1973*; or
- (b) a registered NOHC within the meaning of the *Life Insurance Act 1995*.

Note: NOHC is short for non-operating holding company.

**201 Section 7 (definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Financial Sector (Business Transfer and Group Restructure) Act 1999***

**202 Subsection 4(1) (definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Financial Sector (Collection of Data) Act 2001***

**203 Paragraph 7(2)(e)**

After “under”, insert “section 21 of”.

***Financial Sector (Shareholdings) Act 1998***

**204 Section 3 (paragraph (b) of the definition of *authorised insurance company*)**

After “under”, insert “section 21 of”.

***First Home Saver Accounts Act 2008***

**205 Section 18 (definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Income Tax Assessment Act 1936***

**206 Subsection 121AB(3)**

After “under”, insert “section 21 of”.

**207 Paragraph 128AE(2)(d)**

After “under”, insert “section 21 of”.

***Income Tax Assessment Act 1997***

**208 Subsection 995-1(1) (definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Insurance Acquisitions and Takeovers Act 1991***

**209 Subsection 4(1) (paragraph (b) of the definition of *accounting period*)**

After “under”, insert “section 21 of”.

**210 Subsection 4(1) (paragraph (b) of the definition of *Australian-registered insurance company*)**

After “under”, insert “section 21 of”.

**211 Subsection 4(1) (subparagraph (a)(ii) of the definition of *book value*)**

After “under”, insert “section 21 of”.

**212 Subsection 4(1) (paragraph (a) of the definition of *total book net liabilities*)**

After “under”, insert “section 21 of”.

**213 Subparagraph 36(c)(ii)**

---

After “under”, insert “section 21 of”.

**214 Paragraphs 77(1)(a) and 78(1)(a)**

After “registered under”, insert “section 21 of”.

***Insurance Act 1973***

**215 Paragraph 116A(4)(b)**

After “registered under”, insert “section 21 of”.

***Life Insurance Supervisory Levy Imposition Act 1998***

**216 Title**

After “**under**”, insert “**section 21 of**”.

**217 Section 5 (definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Pooled Development Funds Act 1992***

**218 Subsection 4(1) (paragraph (a) of the definition of *life office*)**

After “under”, insert “section 21 of”.

***Retirement Savings Accounts Act 1997***

**219 Section 16 (paragraph (a) of the definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Social Security Act 1991***

**220 Subsection 9(1) (paragraph (d) of the definition of *income stream*)**

After “under”, insert “section 21 of”.

***Superannuation Industry (Supervision) Act 1993***

**221 Subsection 10(1) (paragraph (a) of the definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Superannuation (Unclaimed Money and Lost Members) Act 1999***

**222 Section 8 (paragraph (a) of the definition of *life insurance company*)**

After “under”, insert “section 21 of”.

***Veterans’ Entitlements Act 1986***

**223 Subsection 5J(1) (paragraph (d) of the definition of *income stream*)**

After “under”, insert “section 21 of”.

## **Schedule 2—Injunctions**

### **Part 1—Banking Act 1959**

#### **1 Paragraph 65A(1)(a)**

Repeal the paragraph, substitute:

- (a) a contravention of:
  - (i) a provision of this Act, the regulations or the prudential standards; or
  - (ii) a condition imposed or specified under this Act; or
  - (iii) a direction by APRA under this Act; or

#### **2 Paragraphs 65A(1)(b), (c), (d), (e) and (f)**

Omit “or condition”, substitute “, condition or direction”.

#### **3 Paragraph 65A(4)(a)**

Omit “section 7, 8, 66, 66A or 67”, substitute “this Act, the regulations or the prudential standards”.

#### **4 Paragraph 65A(4)(b)**

Omit “on a consent given under subsection 63(1);”, substitute “imposed or specified under this Act to do; or”.

#### **5 After paragraph 65A(4)(b)**

Insert:

- (c) by a direction by APRA under this Act to do;

#### **6 Subsection 65A(9)**

Omit “subsection (1), (4) or (7)”, substitute “this section”.

## Part 2—Insurance Act 1973

### 7 Section 129D

Repeal the section, substitute:

#### 129D Injunctions

##### *Restraining injunctions*

- (1) If a person (the *perpetrator*) has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
  - (a) a contravention of:
    - (i) this Act, the regulations or the prudential standards; or
    - (ii) a condition imposed or specified under this Act; or
    - (iii) a direction by APRA under this Act; or
  - (b) attempting to contravene the Act, regulations, standards, condition or direction; or
  - (c) aiding, abetting, counselling or procuring a person to contravene the Act, regulations, standards, condition or direction; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the Act, regulations, standards, condition or direction; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the Act, regulations, standards, condition or direction; or
  - (f) conspiring with others to contravene the Act, regulations, standards, condition or direction;

the Federal Court may grant an injunction in accordance with subsection (2).

##### *Nature of injunction*

- (2) If granted, the injunction:
  - (a) is to restrain the perpetrator from engaging in the conduct; and

(b) if in the opinion of the court it is desirable to do so, may also require the perpetrator to do any act or thing.

The court may only grant the injunction on the application of APRA, and may grant it on such terms as the court thinks appropriate.

*Performance injunctions*

- (3) If a person (the **unwilling person**) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by:
- (a) this Act, the regulations or the prudential standards; or
  - (b) a condition imposed or specified under this Act; or
  - (c) a direction by APRA under this Act;
- to do, the Federal Court may, on the application of APRA, grant an injunction, on such terms as the court thinks appropriate, requiring the unwilling person to do that act or thing.

*Consent injunctions*

- (4) If an application for an injunction under subsection (1) or (3) has been made, the Federal Court may, if the court thinks it appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the court is satisfied that that subsection applies.

*Interim injunctions*

- (5) If in the opinion of the Federal Court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

*Variation or discharge of injunctions*

- (6) The Federal Court may discharge or vary an injunction granted under this section.

*Restraining injunctions*

- (7) The power of the Federal Court to grant an injunction restraining a person from engaging in conduct may be exercised:

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

*Performance injunctions*

- (8) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

*Damages undertakings*

- (9) If APRA applies to the Federal Court for the grant of an injunction under this section, the court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

*Damages orders*

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

*This section extends Federal Court's powers*

- (11) The powers this section gives the Federal Court are additional to (and do not limit) its other powers.

## Part 3—Life Insurance Act 1995

### 8 Section 235

Repeal the section, substitute:

#### 235 Injunctions

##### *Restraining injunctions*

- (1) If a person (the *perpetrator*) has engaged, is engaging or is proposing to engage, in conduct that constituted, constitutes or would constitute:
- (a) a contravention of this Act, a condition imposed or specified under this Act (including a condition mentioned in subsection 208(3)) or a direction by APRA or ASIC under this Act; or
  - (b) attempting to contravene the Act, condition or direction; or
  - (c) aiding, abetting, counselling or procuring a person to contravene the Act, condition or direction; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the Act, condition or direction; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the Act, condition or direction; or
  - (f) conspiring with others to contravene the Act, condition or direction;

the Court may grant an injunction in accordance with subsection (2).

##### *Nature of injunction*

- (2) If granted, the injunction:
- (a) is to restrain the perpetrator from engaging in the conduct; and
  - (b) if in the opinion of the Court it is desirable to do so, may also require the perpetrator to do any act or thing.

The Court may only grant the injunction on the application of the Regulator, and may grant it on such terms as the Court thinks appropriate.

*Performance injunctions*

- (3) If a person (the *unwilling person*) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act, a condition imposed or specified under this Act or a direction by APRA or ASIC under this Act to do, the Court may, on the application of the Regulator, grant an injunction, on such terms as the Court thinks appropriate, requiring the unwilling person to do that act or thing.

*Consent injunctions*

- (4) If an application for an injunction under subsection (1) or (3) has been made, the Court may, if the Court thinks it appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

*Interim injunctions*

- (5) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

*Variation or discharge of injunctions*

- (6) The Court may discharge or vary an injunction granted under this section.

*Restraining injunctions*

- (7) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and

- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

*Performance injunctions*

- (8) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

*Damages undertakings*

- (9) If the Regulator applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

*Damages orders*

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

*This section extends Federal Court's powers*

- (11) The powers this section gives the Court are additional to (and do not limit) its other powers.

## **Part 4—Superannuation Industry (Supervision) Act 1993**

### **9 Paragraphs 315(1)(a), (b), (c), (d), (e) and (f)**

After “Act”, insert “, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator”.

### **10 Subsection 315(3)**

After “this Act”, insert “, a condition imposed on an RSE licence or a direction given under this Act by APRA or the Regulator”.

### **11 Subsection 315(6)**

Omit “subsection (1), (3) or (5)”, substitute “this section”.

### **12 After subsection 315(11)**

Insert:

*This section extends Federal Court’s powers*

(11A) The powers this section gives the Court are additional to (and do not limit) its other powers.

## **Part 5—First Home Saver Accounts Act 2008**

### **13 At the end of Division 2 of Part 7**

Add:

#### **120A Injunctions for breach of conditions on authorisations**

- (1) The *Superannuation Industry (Supervision) Act 1993* applies in accordance with subsection 114(2) with the modification set out in this section.
- (2) Treat the references in section 315 of the *Superannuation Industry (Supervision) Act 1993* to a condition imposed on an RSE licence as references to a condition imposed on an authorisation as an FHSA provider.

## **Part 6—Application**

### **14 Application**

The amendments made by this Schedule apply in relation to applications for injunctions made on or after the commencement of this Schedule, whether the conduct, refusal or failure that is the subject of the application occurred before, on or after that commencement.

---

*[Minister's second reading speech made in—  
House of Representatives on 19 March 2009  
Senate on 15 June 2009]*