

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

## **Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017**

**No.     , 2017**

*(Treasury)*

**A Bill for an Act to amend the law in relation to the  
financial sector, and for related purposes**

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1  
2 **A Bill for an Act to amend the law in relation to the**  
3 **financial sector, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Financial Sector Legislation Amendment (Crisis*  
7 *Resolution Powers and Other Measures) Act 2017.*

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.  
13

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</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 this Act receives the Royal Assent.	
2. Schedules 1 to 7	The day this Act receives the Royal Assent.	

14 Note: This table relates only to the provisions of this Act as originally  
15 enacted. It will not be amended to deal with any later amendments of  
16 this Act.

- 17 (2) Any information in column 3 of the table is not part of this Act.  
18 Information may be inserted in this column, or information in it  
19 may be edited, in any published version of this Act.

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# EXPOSURE DRAFT

Amendment of the Banking Act 1959 **Schedule 1**  
Main amendments **Part 1**

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1 **Schedule 1—Amendment of the Banking Act**  
2 **1959**

3 **Part 1—Main amendments**

4 *Banking Act 1959*

5 **1 Subsection 5(1) (definition of *ADI statutory manager*)**

6 Repeal the definition.

7 **2 Subsection 5(1) (definition of *administrator of an ADI's***  
8 ***business*)**

9 Repeal the definition, substitute:

10 *administrator*, of a body corporate's business, means an  
11 administrator appointed under subsection 13A(1) to take control of  
12 the body corporate's business.

13 *Australian business assets and liabilities*, of a foreign ADI, has  
14 the meaning given by subsection 11E(3).

15 **3 Subsection 5(1)**

16 Insert:

17 *Banking Act statutory manager* has the meaning given by  
18 subsection 13A(2).

19 *direction under this Act* means a direction under any of the  
20 following provisions:

- 21 (a) section 11CA;  
22 (b) section 11CC;  
23 (c) section 13E;  
24 (d) section 17;  
25 (e) section 23;  
26 (f) section 29;  
27 (g) section 31F.

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Schedule 1 Amendment of the Banking Act 1959

Part 1 Main amendments

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1 **4 Subsection 5(1) (paragraph (a) of the definition of *external***  
2 ***administrator*)**

3 Omit “or provisional liquidator”.

4 **5 Subsection 5(1) (paragraph (b) of the definition of *external***  
5 ***administrator*)**

6 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
7 manager”.

8 **6 Subsection 5(1)**

9 Insert:

10 *financial market* has the meaning given by section 761A of the  
11 *Corporations Act 2001*.

12 *holding company*, of a body corporate, means another body  
13 corporate of which the first body corporate is a subsidiary.

14 *liquidator* includes a provisional liquidator.

15 *listing rules* has the meaning given by section 761A of the  
16 *Corporations Act 2001*.

17 **7 Subsection 5(1)**

18 Insert:

19 *NOHC/NOHC subsidiary* has the meaning given by  
20 subsection 13D(5).

21 **8 Subsection 5(1) (definition of *prudential matters*)**

22 Repeal the definition, substitute:

23 *prudential matters* means matters relating to:

24 (a) the conduct of any part of the affairs of, or the structuring or  
25 organising of, an ADI, an authorised NOHC, a relevant group  
26 of bodies corporate, or a particular member or members of  
27 such a group, in such a way as:

28 (i) to keep the ADI, NOHC, group or member or members  
29 of the group in a sound financial position; or

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Amendment of the Banking Act 1959 **Schedule 1**  
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- 1 (ii) to facilitate resolution of the ADI, NOHC, group or  
2 member or members of the group; or  
3 (iii) to protect the interests of depositors of any ADI; or  
4 (iv) not to cause or promote instability in the Australian  
5 financial system; or  
6 (v) not to cause or promote instability in the New Zealand  
7 financial system; or  
8 (b) the conduct of any part of the affairs of an ADI, an authorised  
9 NOHC, a relevant group of bodies corporate, or a particular  
10 member or members of such a group, with integrity,  
11 prudence and professional skill.

## 9 Subsection 5(1) (definition of *recapitalisation direction*)

12 Omit “subsection 13E(1)”, substitute “subsection 13E(1) or (1B)”.

## 10 Subsection 5(1)

14 Insert:

15  
16 *related body corporate*, in relation to a body corporate, means a  
17 body corporate that is related to the first-mentioned body, as  
18 determined in accordance with subsection 5(2A).

19 *resolution* means the process by which APRA and other relevant  
20 persons manage or respond to the failure or potential failure of an  
21 entity, including through the exercise of powers and functions  
22 under this Act or another law.

23 *transferred liabilities determination* means a determination under  
24 section 16AIA(1).

## 25 11 After subsection 5(2)

26 Insert:

- 27 (2A) For the purposes of this Act, the question whether a body corporate  
28 is related to another body corporate is to be determined in the same  
29 way as that question is determined for the purposes of the  
30 *Corporations Act 2001*.

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## 12 Subsections 9(4) to (9)

Repeal the subsections, substitute:

- (7) If APRA grants an authority under subsection (3), APRA must cause notice of that authority to be published in the *Gazette*. APRA may also cause notice of that authority to be published in any other way it considers appropriate.
- (8) A failure to comply with subsection (7) does not affect the validity of the authority.
- (9) Part VI applies to a decision to refuse an application under this section.

## 13 After section 9

Insert

### 9AA Conditions on an authority

- (1) APRA may, at any time, by giving written notice to a body corporate:
    - (a) impose conditions, or additional conditions, on the body corporate's section 9 authority; or
    - (b) vary or revoke conditions imposed on the body corporate's section 9 authority.The conditions must relate to prudential matters.
  - (2) A condition may be expressed to have effect despite anything in the prudential standards or the regulations.
  - (3) Without limiting the conditions that APRA may impose on an authority, APRA may make the authority conditional on another body corporate, of which the body corporate is a subsidiary, being an authorised NOHC.
  - (4) If APRA imposes, varies or revokes the conditions on a body corporate's section 9 authority, APRA must:
    - (a) give written notice to the body corporate; and
    - (b) ensure that notice that the action has been taken is published in the *Gazette*.
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- 1 (5) The taking of an action is not invalid merely because of a failure to  
2 comply with subsection (4).
- 3 (6) Part VI applies to the following decisions made under this section:  
4 (a) a decision to impose conditions, or additional conditions, on  
5 a body corporate's section 9 authority;  
6 (b) a decision to vary conditions imposed on an body corporate's  
7 section 9 authority.

## 8 **9AB Breach of authority conditions**

- 9 (1) A body corporate commits an offence if:  
10 (a) the body corporate does an act or fails to do an act; and  
11 (b) doing the act or failing to do the act results in a contravention  
12 of a condition of the body corporate's section 9 authority;  
13 and  
14 (c) there is no determination in force under section 11 that this  
15 subsection does not apply to the body corporate.

16 Penalty: 300 penalty units.

- 17 (2) If an individual:  
18 (a) commits an offence against subsection (1) because of Part 2.4  
19 of the *Criminal Code*; or  
20 (b) commits an offence under Part 2.4 of the *Criminal Code* in  
21 relation to an offence against subsection (1);  
22 he or she is punishable, on conviction, by a fine not exceeding 60  
23 penalty units.

- 24 (3) An offence against this section is an offence of strict liability.

25 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

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

## 28 **14 Section 9A (heading)**

29 Repeal the heading, substitute:

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Schedule 1 Amendment of the Banking Act 1959

Part 1 Main amendments

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1 **9A Revocation of authority etc.**

2 **15 Subsection 9A(2)**

3 Repeal the subsection, substitute:

4 (2) APRA may revoke a body corporate's section 9 authority if APRA  
5 is satisfied that:

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

10 (a) the body corporate has failed to comply with any of the  
11 following:

12 (i) a requirement of this Act;

13 (ii) a requirement of the *Financial Sector (Collection of  
14 Data) Act 2001*;

15 (iii) a requirement of the regulations or any other instrument  
16 made under this Act;

17 (iiia) a requirement of a provision of another law of the  
18 Commonwealth, if the provision is specified in the  
19 regulations;

20 (iv) a direction under this Act;

21 (v) a condition of its section 9 authority; or

22 (b) it would be contrary to the national interest for the authority  
23 to remain in force; or

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

26 (c) it would be contrary to the interests of depositors of the body  
27 corporate for the authority to remain in force; or

28 (d) the body corporate has failed to pay:

29 (i) an amount of levy or late penalty to which the *Financial  
30 Institutions Supervisory Levies Collection Act 1998*  
31 applies; or

32 (ii) an amount of charge fixed under section 51 of the  
33 *Australian Prudential Regulation Authority Act 1998*; or

34 (e) the body corporate is insolvent and is unlikely to return to  
35 solvency within a reasonable period of time; or

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- 1 (f) the body corporate has ceased to carry on banking business in  
2 Australia; or  
3 (h) the body corporate is a foreign corporation within the  
4 meaning of paragraph 51(xx) of the Constitution, and:  
5 (i) the body corporate is unlikely to be able to meet its  
6 liabilities in Australia and is unlikely to be able to do so  
7 within a reasonable period of time; or  
8 (ii) an authority (however described) for the body corporate  
9 to carry on banking business in a foreign country has  
10 been revoked or otherwise withdrawn in that foreign  
11 country;

12 The procedures to be undergone before a revocation under this  
13 subsection are set out in subsection (3). Those procedures apply  
14 unless APRA determines under subsection (4) that they are not to  
15 apply.

## 16 **16 At the end of Division 1AA of Part II**

17 Add:

### 18 **11AE APRA may give notice to ensure that ADI has an authorised** 19 **NOHC**

- 20 (1) This section applies if:  
21 (a) a body corporate is a holding company of an ADI; and  
22 (b) the ADI is not a subsidiary of an authorised NOHC.  
23 (2) APRA may by notice in writing to the body corporate, require it to  
24 ensure, in accordance with the conditions (if any) specified in the  
25 notice, that either of the following occurs:  
26 (a) the body corporate becomes an authorised NOHC of the  
27 ADI;  
28 (b) a subsidiary of the body corporate becomes an authorised  
29 NOHC of the ADI.

30 Note: See Part 4A of the *Financial Sector (Business Transfer and Group*  
31 *Restructure) Act 1999* for other provisions that deal with a restructure  
32 arrangement to make an operating body a subsidiary of a NOHC.

- 33 (3) The notice may deal with the time by which, or period during  
34 which, it is to be complied with.

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Schedule 1 Amendment of the Banking Act 1959

Part 1 Main amendments

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- 1 (4) The body corporate has power to comply with the notice despite  
2 anything in its constitution or any contract or arrangement to which  
3 it is a party.
- 4 (5) APRA may, by notice in writing to the body corporate, vary the  
5 notice mentioned in subsection (2) if, at the time of the variation, it  
6 considers that the variation is necessary and appropriate.
- 7 (6) The notice mentioned in subsection (2) has effect until APRA  
8 revokes it by notice in writing to the body corporate. APRA may  
9 revoke the notice mentioned in subsection (2) if, at the time of  
10 revocation, it considers that the notice is no longer necessary or  
11 appropriate.
- 12 (7) Part VI applies to a decision to give a notice under subsection (2).
- 13 (8) Section 11CG applies in relation to a notice to a body corporate  
14 under subsection (2) in the same way in which it applies to a  
15 direction to an ADI under Subdivision B of Division 1BA.
- 16 (9) However, section 11CG does not apply to a contravention by a  
17 body corporate of a requirement in a notice under subsection (2) if:
- 18 (a) the contravention happens merely because APRA refuses to  
19 grant the body corporate (or its subsidiary) an authority under  
20 subsection 11AA(2); and
- 21 (b) APRA's reasons for that refusal do not include the reason  
22 that one or more conditions specified in the notice are not  
23 satisfied.

## 24 **17 Before section 11AF**

25 Insert:

### 26 **Subdivision A—Prudential supervision and monitoring of ADIs** 27 **and authorised NOHCs generally**

## 28 **18 Paragraphs 11AF(1)(c) and (d)**

29 Repeal the paragraphs, substitute:

- 30 (c) the subsidiaries of ADIs or authorised NOHCs; or
-

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- 1 (d) a specified class of ADIs, authorised NOHCs or subsidiaries  
2 of ADIs or authorised NOHCs; or  
3 (e) one or more specified ADIs, authorised NOHCs or  
4 subsidiaries of ADIs or authorised NOHCs.

## 5 **19 Subsection 11AF(1A)**

6 Repeal the subsection, substitute:

- 7 (1A) A standard may impose different requirements to be complied  
8 with:  
9 (a) by different classes of ADIs, authorised NOHCs or  
10 subsidiaries of ADIs or authorised NOHCs; or  
11 (b) in different situations; or  
12 (c) in respect of different activities.

## 13 **20 After paragraph 11AF(1AA)(b)**

14 Insert:

- 15 (ba) each subsidiary of an ADI or of an authorised NOHC; or  
16 (bb) each subsidiary of an ADI or of an authorised NOHC,  
17 included in a specified class of subsidiaries; or

## 18 **21 Paragraph 11AF(1AA)(d)**

19 Omit “authorised NOHCs;”, substitute “authorised NOHCs; or”.

## 20 **22 After paragraph 11AF(1AA)(d)**

21 Insert:

- 22 (e) a specified subsidiary of an ADI or of an authorised NOHC;  
23 or  
24 (f) each of 2 or more specified subsidiaries of ADIs or of  
25 authorised NOHCs;

## 26 **23 Subsection 11AF(2)**

27 Omit “one or more specified ADIs or authorised NOHCs”, substitute  
28 “one or more specified ADIs or authorised NOHCs, or one or more  
29 specified subsidiaries of ADIs or authorised NOHCs”.

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Schedule 1 Amendment of the Banking Act 1959

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1 **24 Subsections 11AF(4A) and (5A)**

2 Repeal the subsections, substitute:

3 (4A) If APRA determines or varies a standard referred to in  
4 paragraph (1)(e) it must, as soon as practicable:

5 (a) give a copy of the standard, or of the variation, to the ADI,  
6 authorised NOHC or subsidiary, or to each ADI, authorised  
7 NOHC or subsidiary, to which the standard applies; and

8 (b) give a copy of the standard, or of the variation, to the  
9 Treasurer.

10 (5A) If APRA revokes a standard referred to in paragraph (1)(e) it must,  
11 as soon as practicable:

12 (a) give notice of the revocation to the ADI, authorised NOHC  
13 or subsidiary, or to each ADI, authorised NOHC or  
14 subsidiary, to which the standard applied; and

15 (b) give a copy of the revocation to the Treasurer.

16 **25 Section 11A**

17 Omit “ADIs and authorised NOHCs”, substitute, “ADIs, authorised  
18 NOHCs, subsidiaries of ADIs and subsidiaries of authorised NOHCs”.

19 **26 After section 11A**

20 Insert:

21 **11AAA Obligation to comply with the prudential standards**

22 An ADI, authorised NOHC or a subsidiary of an ADI or authorised  
23 NOHC to which a prudential standard applies must comply with  
24 the standard.

25 **27 At the end of Division 1A of Part II**

26 Add:



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Main amendments **Part 1**

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1 **Subdivision B—Conversion and write-off provisions**

2 **11CAA Definitions**

3 In this Subdivision:

4 conversion and write-off provisions means the provisions of the  
5 prudential standards that relate to the conversion or writing off of:

- 6 (a) Additional Tier 1 and Tier 2 capital; or  
7 (b) any other instrument.

8 **conversion entity**: an entity (the *first entity*) is a **conversion entity**  
9 for an instrument if:

- 10 (a) the instrument is issued by another entity; and  
11 (b) the instrument converts, in accordance with the terms of the  
12 instrument, into one or more ordinary shares or mutual equity  
13 interests of the first entity for the purposes of the conversion  
14 and write-off provisions.

15 **converts**: an instrument **converts** into one or more ordinary shares  
16 or mutual equity interests of an entity including by redeeming or  
17 cancelling the instrument and replacing the instrument with  
18 ordinary shares or mutual equity interests (as the case requires).

19 **mutual equity interests** has the same meaning as in the prudential  
20 standards.

21 **related subsidiary** of an ADI means a subsidiary of a holding  
22 company of the ADI.

23 **specified law** means any of the following:

- 24 (a) the *Financial Sector (Shareholdings) Act 1998*;  
25 (b) the *Foreign Acquisitions and Takeovers Act 1975*;  
26 (c) Chapter 6 of the *Corporations Act 2001* (takeovers);  
27 (d) any other Australian law, or law of a foreign country or part  
28 of a foreign country, prescribed by the regulations for the  
29 purposes of this paragraph.

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Schedule 1 Amendment of the Banking Act 1959

Part 1 Main amendments

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1 **11CAB Conversion and write-off provisions**

2 *Application*

3 (1) This section applies in relation to an instrument that contains terms  
4 that are for the purposes of the conversion and write-off provisions  
5 and that is issued by:

- 6 (a) an ADI; or  
7 (b) a holding company of an ADI; or  
8 (c) a subsidiary or related subsidiary of an ADI; or  
9 (d) an entity of a kind prescribed by the regulations for the  
10 purposes of this paragraph.

11 *Conversion of instrument despite other laws etc.*

12 (2) The instrument may be converted in accordance with the terms of  
13 the instrument despite:

- 14 (a) any Australian law or any law of a foreign country or a part  
15 of a foreign country, other than a specified law; and  
16 (b) the constitution of the entity issuing the instrument, or any  
17 conversion entity for the instrument; and  
18 (c) any contract or arrangement to which the entity issuing the  
19 instrument, or any conversion entity for the instrument, is a  
20 party; and  
21 (d) any listing rules of a financial market in whose official list  
22 the entity issuing the instrument, or any conversion entity for  
23 the instrument, is included.

24 *Write-off of instrument despite other laws etc.*

25 (3) The instrument may be written off in accordance with the terms of  
26 the instrument despite:

- 27 (a) any Australian law or any law of a foreign country or a part  
28 of a foreign country; and  
29 (b) the constitution of the entity issuing the instrument; and  
30 (c) any contract or arrangement to which the entity issuing the  
31 instrument is a party; and

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- 1 (d) any listing rules of a financial market in whose official list  
2 the entity issuing the instrument is included.

3 **11CAC Conversion or write-off etc. not grounds for denial of**  
4 **obligations**

- 5 (1) This section applies if an entity (the *first entity*) is party to a  
6 contract, whether the proper law of the contract is:  
7 (a) Australian law (including the law of a State or Territory); or  
8 (b) law of a foreign country (including the law of part of a  
9 foreign country).
- 10 (2) None of the matters mentioned in subsection (3) allows the  
11 contract, or a party to the contract, to do any of the following:  
12 (a) deny any obligation under the contract;  
13 (b) accelerate any debt under the contract;  
14 (c) close out any transaction relating to the contract;  
15 (d) enforce any security under the contract.  
16 This subsection has effect subject to subsection (4).
- 17 (3) The matters are as follows:  
18 (a) a relevant instrument being converted for the purposes of the  
19 conversion and write-off provisions;  
20 (b) a relevant instrument being written off for the purposes of the  
21 conversion and write-off provisions;  
22 (c) the occurrence of an event (which may be the making of a  
23 determination (however described) by APRA) that results in  
24 a relevant instrument being required to be converted or  
25 written off for the purposes of the conversion and write-off  
26 provisions.
- 27 (4) Subsection (2) does not prevent the first entity:  
28 (a) denying an obligation to another entity; or  
29 (b) accelerating a debt to an another entity; or  
30 (c) closing out a transaction with another entity; or  
31 (d) enforcing a security against another entity;  
32 unless the first entity is a body corporate and the other entity is a  
33 related body corporate of the first entity.

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- 1 (5) In this section:
- 2 *relevant instrument* means an instrument to which section 11CAB
- 3 applies:
- 4 (a) that is issued by the first entity, or for which the first entity is
- 5 a conversion entity; or
- 6 (b) if the first entity is a body corporate:
- 7 (i) that is issued by a related body corporate of the first
- 8 entity; or
- 9 (ii) for which a related body corporate of the first entity is a
- 10 conversion entity.

## 11 28 Subsection 11CA(1)

12 Omit “Without limiting subsection (1AA), APRA may”, substitute

13 “APRA may”.

## 14 29 Paragraph 11CA(1)(c)

15 Omit “and such a contravention is likely to give rise to a prudential

16 risk”, substitute “and the direction is reasonably necessary for one or

17 more prudential matters relating to the body corporate”.

## 18 30 Subsection 11CA(1AA)

19 Repeal the subsection, substitute:

- 20 (1AA) APRA may give a body corporate that is an ADI or is an
- 21 authorised NOHC a direction of a kind specified in subsection (2)
- 22 if APRA has reason to believe that:
- 23 (a) a subsidiary of the body corporate has contravened a
- 24 provision of:
- 25 (i) this Act; or
- 26 (ii) the *Financial Sector (Collection of Data) Act 2001*; or
- 27 (b) a subsidiary of the body corporate has contravened a
- 28 prudential requirement regulation or a prudential standard; or
- 29 (c) a subsidiary of the body corporate is likely to contravene this
- 30 Act, a prudential requirement regulation, a prudential
- 31 standard or the *Financial Sector (Collection of Data) Act*
- 32 *2001*; or

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- 1 (d) the direction is in respect of a subsidiary of the body  
2 corporate and is necessary in the interests of:  
3 (i) if the body corporate is an ADI—depositors of the ADI;  
4 or  
5 (ii) if the body corporate is an authorised NOHC—  
6 depositors of any ADI that is a subsidiary of the NOHC;  
7 or  
8 (e) a subsidiary of the body corporate is, or is about to become,  
9 unable to meet the subsidiary's liabilities; or  
10 (f) there is, or there might be, a material risk to the security of  
11 the assets of a subsidiary of the body corporate; or  
12 (g) there has been, or there might be, a material deterioration in  
13 the financial condition of a subsidiary of the body corporate;  
14 or  
15 (h) a subsidiary of the body corporate is conducting the  
16 subsidiary's affairs in an improper or financially unsound  
17 way; or  
18 (j) a subsidiary of the body corporate is conducting the  
19 subsidiary's affairs in a way that may cause or promote  
20 instability in the Australian financial system; or  
21 (k) a subsidiary of the body corporate is conducting the  
22 subsidiary's affairs in a way that may cause it to be unable to  
23 continue to supply services to:  
24 (i) if the body corporate is an ADI—the ADI; or  
25 (ii) if the body corporate is an authorised NOHC—any ADI  
26 that is a subsidiary of the NOHC; or  
27 (l) the direction is in respect of a subsidiary of the body  
28 corporate and the failure to issue a direction would materially  
29 prejudice the interests of:  
30 (i) if the body corporate is an ADI—depositors of the ADI;  
31 or  
32 (ii) if the body corporate is an authorised NOHC—  
33 depositors of any ADI that is a subsidiary of the NOHC.  
34 (1AB) However, APRA can only make a direction as a result of a ground  
35 referred to in (1AA)(a), (b), (c), (e), (f), (g), (h) or (k) if APRA  
36 considers that the direction is reasonably necessary for one or more  
37 prudential matters relating to the body corporate.
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- 1 (1AC) APRA may give a body corporate that is a subsidiary of an ADI or  
2 of an authorised NOHC a direction of a kind specified in  
3 subsection (2) if:
- 4 (a) APRA has given the ADI or authorised NOHC a direction  
5 under subsection (1AA) because one or more of the grounds  
6 referred to in that subsection have been satisfied in respect of  
7 the subsidiary; or
- 8 (b) APRA may give the ADI or authorised NOHC a direction  
9 under subsection (1AA) because one or more of the grounds  
10 referred to in that subsection have been satisfied in respect of  
11 the subsidiary.
- 12 (1AD) APRA cannot give a direction under subsection (1AC) to a body  
13 corporate of a kind specified in regulations (if any) made for the  
14 purposes of this subsection.
- 15 (1AE) Subsections (1), (1AA) and (1AC) do not limit each other.

## 31 Paragraph 11CA(1A)(b)

- 16 Repeal the paragraph, substitute:  
17 (b) specify:  
18 (i) in the case of a direction under subsection (1AC)— the  
19 ground referred to in subsection (1AA) as a result of  
20 which the direction is given; or  
21 (ii) otherwise—the ground referred to in subsection (1) or  
22 (1AA) as a result of which the direction is given  
23

## 32 Subsection 11CA(1B)

- 24 Repeal the subsection, substitute:  
25 (1B) In deciding whether to give a direction under subsection (1), (1AA)  
26 or (1AC) to a body corporate, APRA may disregard any external  
27 support for the body corporate.  
28

## 33 Paragraph 11CA(2)(p)

- 29 Repeal the paragraph, substitute:  
30 (p) to make changes to the body corporate's systems, business  
31 practices or operations;  
32
-

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- 1 (q) to reconstruct, amalgamate or otherwise alter all or part of  
2 any of the following:  
3 (i) the business, structure or organisation of the body  
4 corporate;  
5 (ii) the business, structure or organisation of the group  
6 constituted by the body corporate and its subsidiaries;  
7 (r) to do, or to refrain from doing, anything else in relation to the  
8 affairs of the body corporate.

9 **34 After subsection 11CA(2A)**

10 Insert:

11 (2AAA) The kinds of direction that may be given as mentioned in  
12 subsection (2) are not limited by any other provision in this Part  
13 (apart from subsection (2AA)).

14 (2AAB) The kinds of direction that may be given as mentioned in a  
15 particular paragraph of subsection (2) are not limited by any other  
16 paragraph of that subsection.

17 **35 Subsection 11CA(2B)**

18 Omit “paragraph (2)(p)”, substitute “paragraph (2)(r)”.

19 **36 Paragraph 11CA(2B)(a)**

20 Omit “in a way that”, substitute “in a way so as to ensure that”.

21 **37 Paragraph 11CA(2B)(b)**

22 Omit “in a way that”, substitute “in a way that has the result that”.

23 **38 Subsections 11CD(1), (1A) and (2)**

24 Repeal the subsections, substitute:

- 25 (1) This section applies if a body corporate is party to a contract,  
26 whether the proper law of the contract is:  
27 (a) Australian law (including the law of a State or Territory); or  
28 (b) law of a foreign country (including the law of part of a  
29 foreign country).

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- 1 (1A) None of the matters mentioned in subsection (1B) allows the  
2 contract, or a party to the contract, to do any of the following:  
3 (a) deny any obligations under the contract;  
4 (b) accelerate any debt under the contract;  
5 (c) close out any transaction relating to the contract;  
6 (d) enforce any security under the contract.  
7 This subsection has effect subject to subsections (1C), (2) and (3)  
8 of this section and section 31B.
- 9 (1B) The matters are as follows:  
10 (a) the body corporate being given a direction by APRA under  
11 Subdivision A or B or section 29;  
12 (b) a related body corporate of the body corporate being given a  
13 direction by APRA under Subdivision A or B or section 29.
- 14 (1C) Subsection (1A) does not prevent the body corporate doing any of  
15 the following:  
16 (a) denying an obligation to an entity that is not a related body  
17 corporate of the body corporate;  
18 (b) accelerating a debt to an entity that is not a related body  
19 corporate of the body corporate;  
20 (c) closing out a transaction with an entity that is not a related  
21 body corporate of the body corporate;  
22 (d) enforcing a security against an entity that is not a related  
23 body corporate of the body corporate.
- 24 (2) If the body corporate is prevented from fulfilling its obligations  
25 under the contract because of a direction under Subdivision A,  
26 other than a direction under paragraph 11CA(2)(m), or because of  
27 a direction under section 29, the other party or parties to the  
28 contract are, subject to any orders made under subsection (3),  
29 relieved from obligations owed to the body corporate under the  
30 contract.

## 39 Section 11CF

31 Repeal the section.  
32



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1 **40 At the end of Division 1BA of Part II**

2 Add:

3 **Subdivision D—Secrecy and disclosure provisions relating to all**  
4 **directions**

5 **11CH APRA may determine that a direction is covered by secrecy**  
6 **provision**

- 7 (1) This section applies if APRA has given an entity (the *directed*  
8 *entity*) a direction under this Act.
- 9 (2) APRA may determine, in writing, that the direction is covered  
10 under this subsection if APRA considers that the direction is  
11 necessary to protect the depositors of any ADI or to promote  
12 financial system stability in Australia.
- 13 Note: For repeal of a determination, see subsection 33(3) of the *Acts*  
14 *Interpretation Act 1901*.
- 15 (3) APRA must give the directed entity a copy of the determination as  
16 soon as practicable after making it.
- 17 (4) An instrument under subsection (2) is not a legislative instrument.
- 18 (5) If APRA makes a determination under subsection (2), APRA must  
19 consider whether it is appropriate in the circumstances to also  
20 make a determination under either or both of subsections 11CK(2)  
21 and 11CK(5).

22 **11CI Secrecy relating to directions**

- 23 (1) A person commits an offence if:  
24 (a) APRA has given an entity (the *directed entity*) a direction  
25 under this Act; and  
26 (b) the direction is covered by a determination under  
27 subsection 11CH(2); and  
28 (c) the person is, or has been, covered by subsection (2) of this  
29 section in relation to the direction; and  
30 (d) the person discloses information; and

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- 1 (e) the information reveals the fact that the direction was made.
- 2 Penalty: Imprisonment for 2 years.
- 3 (2) A person is covered by this subsection in relation to the direction if
- 4 the person is:
- 5 (a) the directed entity; or
- 6 (b) an officer, employee or contractor of the directed entity at a
- 7 time on or after APRA gave the directed entity the direction.
- 8 (c) any other person who, because of his or her employment, or
- 9 in the course of that employment, has acquired information
- 10 that reveals the fact that the direction was made.

11 *Exception*

- 12 (3) Subsection (1) does not apply if:
- 13 (a) the disclosure is authorised by section 11CJ, 11CK, 11CL,
- 14 11CM or 11CN; or
- 15 (b) the disclosure is required by an order or direction of a court
- 16 or tribunal.

17 Note: A defendant bears an evidential burden in relation to a matter in

18 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

19 **11CJ Disclosure of publicly available information**

20 A person covered by subsection 11CI(2) in relation to a direction

21 may disclose information that reveals the fact that the direction was

22 made, to the extent that the information has already been lawfully

23 made available to the public.

24 **11CK Disclosure allowed by APRA**

- 25 (1) A person covered by subsection 11CI(2) in relation to a direction
- 26 may disclose information that reveals the fact that the direction was
- 27 made if:
- 28 (a) a determination under subsection (2) or (5) allows the
- 29 disclosure by the person; and
- 30 (b) if APRA has included conditions in the determination—those
- 31 conditions are satisfied.

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## *Determinations relating to specified person*

- (2) APRA may, in writing, make a determination allowing:
  - (a) a specified person covered by subsection 11CI(2) in relation to a specified direction; or
  - (b) a specified person covered by subsection 11CI(2) in relation to a direction that is in a specified class of directions; to disclose specified information in relation to the direction.
- (3) An instrument under subsection (2) is not a legislative instrument.
- (4) APRA must give a copy of the determination as soon as practicable after making it to:
  - (a) the directed entity; and
  - (b) the person specified, or each person specified, in the determination.

## *Determinations relating to specified class of persons*

- (5) APRA may, by legislative instrument, make a determination allowing:
  - (a) a specified class of persons covered by subsection 11CI(2) in relation to a specified direction; or
  - (b) a specified class of persons covered by subsection 11CI(2) in relation to a direction that is in a specified class of directions; to disclose specified information in relation to the direction.

## *Conditions in determinations*

- (6) APRA may include conditions in a determination under subsection (2) or (5) that relate to any of the following:
  - (a) the kind of entities to which the disclosure may be made;
  - (b) the way in which the disclosure is to be made;
  - (c) any other matter that APRA considers appropriate.

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1 **11CL Disclosure to legal representative for purpose of seeking legal**  
2 **advice**

3 A person covered by subsection 11CI(2) in relation to a direction  
4 may disclose information that reveals the fact that the direction was  
5 made if:

- 6 (a) the disclosure is to the person's legal representative; and  
7 (b) the purpose of the person making the disclosure is for the  
8 legal representative to provide legal advice, or another legal  
9 service, in relation to the direction.

10 **11CM Disclosure allowed by APRA Act secrecy provision**

11 (1) A person covered by subsection 11CI(2) in relation to a direction  
12 may disclose information that reveals the fact that the direction was  
13 made if:

- 14 (a) the person is:  
15 (i) an APRA member (within the meaning of  
16 subsection 56(1) of the *Australian Prudential*  
17 *Regulation Authority Act 1998*); or  
18 (ii) an APRA staff member (within the meaning of that  
19 subsection); or  
20 (iii) a Commonwealth officer (within the meaning of the  
21 *Crimes Act 1914*) who is covered by paragraph (c) of  
22 the definition of "officer" in subsection 56(1) of the  
23 *Australian Prudential Regulation Authority Act 1998*;  
24 and  
25 (b) the information is protected information (within the meaning  
26 of that subsection), or is contained in a protected document  
27 (within the meaning of that subsection); and  
28 (c) the disclosure is in accordance with subsection 56(3), (4), (5),  
29 (5AA), (6), (6A), (7), (7A), (7B) or (7C) of that Act.

30 *Relationship to APRA Act secrecy provision*

31 (2) Disclosure of information in relation to a direction is not an  
32 offence under section 56 of the *Australian Prudential Regulation*  
33 *Authority Act 1998* if the disclosure is authorised by section 11CJ,  
34 11CK, 11CL, 11CN or 11CP.

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1 **11CN Disclosure in circumstances set out in the regulations**

2 A person covered by subsection 11CI(2) in relation to a direction  
3 may disclose information that reveals the fact that the direction was  
4 made, if the disclosure is made in circumstances (if any) set out in  
5 the regulations.

6 **11CP Disclosure for purpose**

7 A person covered by subsection 11CI(2) (the *relevant person*) in  
8 relation to a direction may disclose information that reveals the fact  
9 that the direction was made if:

- 10 (a) another person covered by subsection 11CI(2) in relation to  
11 the direction disclosed that information to the relevant person  
12 for a particular purpose in accordance with section 11CK,  
13 11CL, 11CM or 11CN, or in accordance with a previous  
14 operation of this section; and  
15 (b) the disclosure by the relevant person is for the same purpose.

16 **11CQ Exceptions operate independently**

17 Sections 11CJ, 11CK, 11CL, 11CM, 11CN and 11CP do not limit  
18 each other.

19 **41 Section 11E (Heading)**

20 Repeal the heading, substitute:

21 **11E Limited application of Division 2 etc. to foreign ADIs**

22 **42 Subsection 11E(1)**

23 Repeal the subsection, substitute:

24 (1A) The provisions listed in subsection (1B) do not apply in relation to:

- 25 (a) business of a foreign ADI (other than Australian business  
26 assets and liabilities); or  
27 (b) the management of a foreign ADI, to the extent that the  
28 management relates to such business of the foreign ADI.

29 (1B) The provisions are as follows:

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- 1 (a) sections 12, 13BA and 13C, and Subdivision B of Division 2  
2 (statutory management);  
3 (b) subsections 13A(1) to (2), to the extent that those subsections  
4 relate to statutory management;  
5 (c) sections 62B, 62C, 62D and 62E.
- 6 (1C) The following provisions do not apply in relation to a foreign ADI:  
7 (a) Division 2 (apart from the provisions in that Division listed  
8 in subsection (1B));  
9 (b) Division 2AA.

## 43 At the end of section 11E

10 Add:  
11

12 (3) In this section:

13 *Australian business assets and liabilities*, of a foreign ADI, means  
14 the following:

- 15 (a) the assets and liabilities of the foreign ADI in Australia;  
16 (b) any other assets and liabilities that the foreign ADI has as a  
17 result of its operations in Australia.

18 *asset* has the same meaning as in the *Financial Sector (Business*  
19 *Transfer and Group Restructure) Act 1999*.

20 *liability* has the same meaning as in the *Financial Sector (Business*  
21 *Transfer and Group Restructure) Act 1999*.

## 44 After section 11E

22 Insert:  
23

### 11EA APRA's power to apply for foreign ADI to be wound up in 24 relation to Australian business assets and liabilities 25

- 26 (1) APRA may apply to the Federal Court of Australia for an order  
27 that a foreign ADI be wound up if APRA considers that any of the  
28 following requirements are satisfied:

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- 1 (a) the foreign ADI is unable to meet its liabilities in Australia,  
2 or in one or more foreign countries, as and when they  
3 become due and payable;
- 4 (b) an application for the appointment of an external  
5 administrator of the foreign ADI, or for a similar procedure  
6 in respect of the foreign ADI, has been made in a foreign  
7 country;
- 8 (c) an external administrator has been appointed to the foreign  
9 ADI, or a similar appointment has been made in respect of  
10 the foreign ADI, in a foreign country.
- 11 (2) To avoid doubt, subsection (1) applies even if an ADI statutory  
12 manager is in control of the Australian business assets and  
13 liabilities of the foreign ADI.
- 14 (3) The winding up of the foreign ADI is to be conducted in  
15 accordance with the *Corporations Act 2001*.
- 16 Note: See Part 5.7 of the *Corporations Act 2001*.
- 17 (4) If APRA makes an application under subsection (1), APRA must  
18 inform the Minister of the application as soon as possible.

## 45 Section 11F

19 Before “If”, insert “(1)”.

## 46 At the end of section 11F

20 Add:

- 21 (2) Subsection (1) does not constrain :
- 22 (a) the exercise of powers or the performance of functions under  
23 this Act of a Banking Act statutory manager of a foreign  
24 ADI; or  
25 (b) an entity acting at the direction or request of a Banking Act  
26 statutory manager of a foreign ADI exercising powers or  
27 performing functions under this Act.  
28  
29

## 47 Section 13A (heading)

30 Repeal the heading, substitute:  
31

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1 **13A Consequences of inability or failure of ADI etc. to meet certain**  
2 **requirements**

3 **48 At the end of subsection 13A(1)**

4 Add:

5 ; or (d) an external administrator has been appointed to a holding  
6 company of the ADI (or a similar appointment has been  
7 made in a foreign country in respect of such a holding  
8 company), and APRA considers that the appointment poses a  
9 significant threat to:

- 10 (i) the operation or soundness of the ADI; or  
11 (ii) the interests of depositors of the ADI; or  
12 (iii) the stability of the financial system in Australia; or

13 (e) if the ADI is a foreign ADI:

- 14 (i) an application for the appointment of an external  
15 administrator of the foreign ADI, or for a similar  
16 procedure in respect of the foreign ADI, has been made  
17 in a foreign country;  
18 (ii) an external administrator has been appointed to the  
19 foreign ADI, or a similar appointment has been made in  
20 respect of the foreign ADI, in a foreign country.

21 **49 After subsection 13A(1A)**

22 Insert:

23 *Appointment of administrator, or control by APRA*

24 (1B) APRA may take any of the actions mentioned in subsection (1C) in  
25 relation to a body corporate (the *target body corporate*) if:

26 (a) the target body corporate is any of the following:

- 27 (i) an authorised NOHC of an ADI (the *relevant ADI*);  
28 (ii) a subsidiary of an authorised NOHC of an ADI (also the  
29 *relevant ADI*);  
30 (iii) a subsidiary of an ADI (also the *relevant ADI*); and

31 (b) the condition in subsection (1D), (1E) or (1F) is satisfied; and



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1 (c) the target body corporate is not a body corporate of a kind  
2 specified in regulations (if any) made for the purposes of this  
3 paragraph.

4 (1C) The actions are as follows:

- 5 (a) taking control of the business of the target body corporate;  
6 (b) appointing an administrator to take control of the business of  
7 the target body corporate.

8 Note: For information about another circumstance in which APRA may take  
9 control of the business of the target body corporate, see section 65.

10 (1D) The condition in this subsection is satisfied if:

- 11 (a) either:  
12 (i) a Banking Act statutory manager has taken control of  
13 the relevant ADI; or  
14 (ii) the conditions in any or all of paragraphs (1)(a), (b), (c),  
15 (d) or (e) are satisfied in relation to the relevant ADI,  
16 and APRA intends that a Banking Act statutory  
17 manager will take control of the relevant ADI; and  
18 (b) APRA considers that the target body corporate provides  
19 services that are, or conducts business that is, essential to the  
20 capacity of the relevant ADI to maintain its operations.

21 (1E) The condition in this subsection is satisfied if:

- 22 (a) either:  
23 (i) a Banking Act statutory manager has taken control of  
24 the relevant ADI; or  
25 (ii) the conditions in any or all of paragraphs (1)(a), (b), (c),  
26 (d) or (e) are satisfied in relation to the relevant ADI,  
27 and APRA intends that a Banking Act statutory  
28 manager will take control of the relevant ADI; and  
29 (b) APRA considers that it is necessary for a Banking Act  
30 statutory manager to take control of the target body  
31 corporate, in order to facilitate the resolution of any of the  
32 following:  
33 (i) the relevant ADI;  
34 (ii) an authorised NOHC of the relevant ADI;
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- 1 (iii) a relevant group of bodies corporate of which the  
2 relevant ADI is a member;  
3 (iv) a particular member or particular members of such a  
4 group.
- 5 (1F) The condition in this subsection is satisfied if:  
6 (a) there is an external administrator of the target body  
7 corporate, or APRA considers that, in the absence of external  
8 support:  
9 (i) the target body corporate may become unable to meet its  
10 obligations; or  
11 (ii) the target body corporate may suspend payment; and  
12 (b) APRA considers that it is necessary to take an action  
13 mentioned in subsection (1C) in respect of the target body  
14 corporate in order to enable the relevant ADI to maintain its  
15 operations, or in order to facilitate the resolution of any of the  
16 following:  
17 (i) the relevant ADI;  
18 (ii) an authorised NOHC of the relevant ADI;  
19 (iii) a relevant group of bodies corporate of which the  
20 relevant ADI is a member;  
21 (iv) a particular member or particular members of such a  
22 group.

## 50 Subsection 13A(2)

23 Repeal the subsection, substitute:

24 (2) If:

- 25 (a) APRA is in control of a body corporate's business under this  
26 Subdivision—APRA is the ***Banking Act statutory manager***  
27 of the body corporate; or  
28 (b) an administrator appointed by APRA is in control of a body  
29 corporate's business under this Subdivision—the  
30 administrator is the ***Banking Act statutory manager*** of the  
31 body corporate.  
32

33 Note: This section and other provisions relating to statutory management do  
34 not apply to the aspects described in subsection 11E(1A) of the  
35 business and management of a foreign ADI.

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1 **51 After subsection 13A(2)**

2 Insert:

3 (2A) If APRA appoints two or more Banking Act statutory managers of  
4 a body corporate, or appoints one or more additional Banking Act  
5 statutory managers of a body corporate:

6 (a) the functions and powers under this Act of a Banking Act  
7 statutory manager of the body corporate may be performed or  
8 exercised by:

9 (i) all of the Banking Act statutory managers of the body  
10 corporate acting jointly; or

11 (ii) each of the Banking Act statutory managers of the body  
12 corporate acting individually (except to the extent (if  
13 any) specified in a notice given by APRA under  
14 paragraph (b)); and

15 (b) at the time of appointment, APRA may give all of the  
16 Banking Act statutory managers of the body corporate a  
17 notice in writing for the purposes of subparagraph (a)(ii),  
18 specifying limits or conditions on their ability to perform  
19 functions and exercise powers individually; and

20 (c) treat a reference in this Act to a Banking Act statutory  
21 manager as being a reference to whichever one or more of  
22 those Banking Act statutory managers the case requires.

23 **52 Paragraph 13A(3)(a)**

24 Omit “section 16AI”, substitute “section 16AI or 16AIC”.

25 **53 Subsection 13A(3) (Note)**

26 Repeal the note.

27 **54 After subsection 13A(3)**

28 Insert:

29 (3AA) Subsection (3) does not constrain:

30 (a) the exercise of powers or the performance of functions under  
31 this Act of a Banking Act statutory manager of an ADI; or

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- 1 (b) an entity acting at the direction or request of a Banking Act  
2 statutory manager of an ADI exercising powers or  
3 performing functions under this Act.

## 4 **55 Subsection 13C(1)(b)**

5 Repeal the subsection, substitute:

6 *Conditions necessary for termination of control*

- 7 (1) If APRA assumes control of a body corporate's business or  
8 appoints an administrator of a body corporate's business, APRA  
9 must ensure that either it or an administrator of the body  
10 corporate's business has control of the body corporate's business  
11 until:

12 (a) APRA considers that it is no longer necessary for it or an  
13 administrator to remain in control of the body corporate's  
14 business; or

15 (b) APRA has applied for the body corporate to be wound up.

16 A termination of control that is permitted under this section is  
17 called an *ultimate termination of control*.

18 Note: This provision does not prevent a change, or changes, between control  
19 of a body corporate's business by APRA and an administrator or  
20 between administrators.

## 21 **56 Section 13D**

22 Repeal the subsection, substitute:

### 23 **13D Who this Subdivision applies to**

- 24 (1) This Subdivision applies to an ADI that:

25 (a) is a company that:

26 (i) is registered under the *Corporations Act 2001*; and

27 (ii) has a share capital; and

28 (b) does not have a Banking Act statutory manager.

- 29 (2) Subsections (3) and (4) apply if:

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- 1 (a) APRA has given a recapitalisation direction to an ADI under  
2 subsection 13E(1) (the *primary recapitalisation direction*);  
3 and  
4 (b) the ADI is a subsidiary of a NOHC/NOHC subsidiary; and  
5 (c) the NOHC/NOHC subsidiary is a company that:  
6 (i) is registered under the *Corporations Act 2001*; and  
7 (ii) has a share capital; and  
8 (d) the NOHC/NOHC subsidiary does not have a Banking Act  
9 statutory manager.
- 10 (3) This Subdivision applies to the NOHC/NOHC subsidiary in the  
11 same way that it does to an ADI.
- 12 (4) However, disregard the following provisions in applying this  
13 Subdivision to the NOHC/NOHC subsidiary:  
14 (a) subsection 13E(1);  
15 (b) subsection 13F(1).
- 16 (5) In this section:
- 17 *NOHC/NOHC subsidiary* means a body corporate that is any of  
18 the following:  
19 (a) an authorised NOHC;  
20 (b) a subsidiary of an authorised NOHC.

## 57 After subsection 13E(1)

- 21  
22 Insert:
- 23 (1A) Subsection (1B) applies if subsections 13D(3) and (4) apply to a  
24 NOHC/NOHC subsidiary because of a primary recapitalisation  
25 direction given to an ADI (as mentioned in subsection 13D(2)).
- 26 (1B) For the purposes of facilitating compliance with the primary  
27 recapitalisation direction, APRA may give the NOHC/NOHC  
28 subsidiary a direction (also a *recapitalisation direction*) that  
29 requires the NOHC/NOHC subsidiary to do anything that is  
30 specified in the direction.

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## 58 At the end of section 13E

1

Add:

2

3

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

4

5

(6) APRA may, by notice in writing to the ADI, vary the recapitalisation direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

6

7

8

(7) The direction has effect until APRA revokes it by notice in writing to the ADI. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

9

10

11

## 59 After subsection 13F(1)

12

Insert:

13

14

(1A) If the recapitalisation direction is a direction to a NOHC/NOHC subsidiary under subsection 13E(1B), the direction may direct the NOHC/NOHC subsidiary to do any of the following:

15

16

17

(a) issue:

18

(i) shares, or rights to acquire shares, in the NOHC/NOHC subsidiary; or

19

20

(ii) other capital instruments in the NOHC/NOHC subsidiary of a kind specified in the direction;

21

22

(b) acquire:

23

(i) shares, or rights to acquire shares, in the ADI mentioned in subsection 13E(1A); or

24

25

(ii) other capital instruments in the ADI mentioned in subsection 13E(1A) of a kind specified in the direction;

26

27

(c) acquire:

28

(i) shares, or rights to acquire shares, in a specified body corporate covered by subsection (1B); or

29

30

(ii) other capital instruments in a specified body corporate covered by subsection (1B), of a kind specified in the direction.

31

32

33

(1B) This subsection covers a body corporate if:

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- 1 (a) the body corporate is a subsidiary of the NOHC/NOHC  
2 subsidiary; and  
3 (b) the ADI is a subsidiary of the body corporate.
- 4 (1C) Without limiting the generality of subsections (1), (1A) and (2), but  
5 subject to subsection (3), a direction referred to in those  
6 subsections may:  
7 (a) deal with some only of the matters referred to in those  
8 subsections; or  
9 (b) deal with a particular class or particular classes of those  
10 matters; or  
11 (c) make different provision with respect to different matters or  
12 different classes of matters.

## 13 **60 Subsection 13F(2)**

14 Omit “paragraph (1)(a)”, substitute “paragraph (1)(a) or  
15 subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i)”.

## 16 **61 Subsection 13F(3)**

17 Omit “paragraph (1)(b)”, substitute “paragraph (1)(b) or  
18 subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii)”.

## 19 **62 Subsection 13G(3) (heading)**

20 Repeal the heading, substitute:

21 *Issue or acquisition of shares etc. despite other laws etc.*

## 22 **63 Subsection 13G(3)**

23 After “issue”, insert “or acquire”.

## 24 **64 Paragraph 13G(3)(a)**

25 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
26 of section 70B of this Act)”.

## 27 **65 Paragraph 13G(3)(d)**

28 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
29 financial market (as defined in that section)”, substitute “of a financial  
30 market”.

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1 **66 After subsection 13H(1)**

2 Insert:

3 (1A) If the recapitalisation direction is a direction to a NOHC/NOHC  
4 subsidiary under subsection 13E(1B), treat the reference in  
5 paragraph (1)(a) to “the depositors with the ADI” as being a  
6 reference to “the depositors with the ADI mentioned in  
7 subsection 13E(1A)”.

8 **67 At the end of section 13H**

9 Add:

10 (4) If the recapitalisation direction is a direction to a NOHC/NOHC  
11 subsidiary under subsection 13E(1B), treat the references in  
12 paragraph (3)(c) to “the ADI” as being a reference to “the  
13 NOHC/NOHC subsidiary mentioned in subsection 13E(1B)”.

14 **68 Section 13N**

15 Repeal the section, substitute:

16 **13N Recapitalisation direction not grounds for denial of obligations**

- 17 (1) This section applies if a body corporate is party to a contract,  
18 whether the proper law of the contract is:  
19 (a) Australian law (including the law of a State or Territory); or  
20 (b) law of a foreign country (including the law of part of a  
21 foreign country).
- 22 (2) None of the matters mentioned in subsection (3) allows the  
23 contract, or a party to the contract, to do any of the following:  
24 (a) deny any obligation under the contract;  
25 (b) accelerate any debt under the contract;  
26 (c) close out any transaction relating to the contract;  
27 (d) enforce any security under the contract.  
28 This subsection has effect subject to subsection (4).
- 29 (3) The matters are as follows:
-



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- 1 (a) the body corporate being subject to a recapitalisation  
2 direction;  
3 (b) a related body corporate of the body corporate being subject  
4 to a recapitalisation direction.
- 5 (4) Subsection (2) does not prevent the body corporate doing any of  
6 the following:  
7 (a) denying an obligation to an entity that is not a related body  
8 corporate of the body corporate;  
9 (b) accelerating a debt to an entity that is not a related body  
10 corporate of the body corporate;  
11 (c) closing out a transaction with an entity that is not a related  
12 body corporate of the body corporate;  
13 (d) enforcing a security against an entity that is not a related  
14 body corporate of the body corporate.

## 15 **69 Subsection 13P(9)**

16 Repeal the subsection.

## 17 **70 Subsection 14A(5B)**

18 Omit “subsection (5A)”, substitute “subsection (5) or (5A)”.

## 19 **71 Paragraph 14A(5B)(a)**

20 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
21 of section 70B of this Act)”.

## 22 **72 Paragraph 14A(5B)(d)**

23 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
24 financial market (as defined in that section)”, substitute “of a financial  
25 market”.

## 26 **73 After section 14A**

27 Insert:

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1 **14AAA Safeguards on exercise of Banking Act statutory manager's**  
2 **powers and functions**

3 (1) Despite anything else in this Subdivision, a Banking Act statutory  
4 manager of a body corporate (the *body corporate under*  
5 *management*) may not perform a function or exercise a power  
6 under section 14A if:

- 7 (a) either or both of subsections (2) and (3) apply; and  
8 (b) the performance of the function or the exercise of the power  
9 is not for the purposes of:  
10 (i) an act of the Banking Act statutory manager under  
11 subsection 14AA(1); or  
12 (ii) Part 3 or 4 of the *Financial Sector (Business Transfer*  
13 *and Group Restructure) Act 1999*.

14 (2) This subsection applies if:

- 15 (a) the body corporate under management is not an ADI; and  
16 (b) the performance or the exercise would result in:  
17 (i) the provision of services by the body corporate under  
18 management to a related body corporate of the body  
19 corporate under management; or  
20 (ii) the provision of services by a related body corporate of  
21 the body corporate under management to the body  
22 corporate under management; or  
23 (iii) subject to subsection (4), the transfer of assets between  
24 the body corporate under management and another body  
25 corporate (otherwise than in the ordinary course of  
26 business); and  
27 (c) the performance or the exercise is not required or permitted  
28 by a binding arrangement that was in existence immediately  
29 before the Banking Act statutory manager started to be in  
30 control of the business of the body corporate under  
31 management; and  
32 (d) the provision or transfer is not for fair value.

33 (3) This subsection applies if:

- 34 (a) the body corporate under management is an authorised  
35 NOHC of an ADI; and

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- 1 (b) the performance or the exercise requires using funds of the  
2 body corporate or a subsidiary of the body corporate to  
3 increase the level of capital of the ADI to a specified level;  
4 and  
5 (c) the shareholders of the body corporate have not agreed, by  
6 ordinary resolution, to that use of the funds.
- 7 (4) Treat the requirement in subparagraph (2)(b)(iii) as not being met  
8 if:  
9 (a) the body corporate under management is an authorised  
10 NOHC of an ADI; and  
11 (b) the transfer of assets mentioned in that subparagraph is a  
12 transfer of funds to increase the level of capital of the ADI to  
13 a specified level; and  
14 (c) the shareholders of the body corporate have agreed, by  
15 ordinary resolution, to that use of the funds.

## 74 Paragraph 14AA(4)(a)

16 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
17 of section 70B of this Act)”.

## 75 Paragraph 14AA(4)(d)

19 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
20 financial market (as defined in that section)”, substitute “of a financial  
21 market”.

## 76 Section 14AB

23 Omit “the ADI statutory manager” (wherever occurring), substitute “the  
24 Banking Act statutory manager”.

## 77 Subparagraphs 14AB(2)(c)(iii) and (iv)

26 Repeal the subparagraphs, substitute:

- 27 (iii) the body corporate;  
28 (iv) a person who is an associate of the body corporate under  
29 Division 2 of Part 1.2 of the *Corporations Act 2001*;  
30

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1 **78 Subsection 14AB(8)**

2 Repeal the subsection, substitute:

3 *Exemption from subsection (1)*

4 (8) APRA may determine in writing that subsection (1) does not apply  
5 in relation to an act relating to shares or rights if APRA is satisfied  
6 that delaying the act to enable compliance with that subsection in  
7 relation to the act would detrimentally affect:

8 (a) depositors with:

9 (i) if the company is an ADI—the ADI; or

10 (ii) if the company is not an ADI—the relevant ADI  
11 mentioned in subsection 13A(1B); and

12 (b) financial system stability in Australia.

13 **79 Section 14AC**

14 Repeal the section, substitute:

15 **14AC Act under section 14AA not ground for denial of obligations**

16 (1) This section applies if a body corporate (the *contracting body*  
17 *corporate*) is party to a contract, whether the proper law of the  
18 contract is:

19 (a) Australian law (including the law of a State or Territory); or

20 (b) law of a foreign country (including the law of part of a  
21 foreign country).

22 (2) None of the matters mentioned in subsection (3) allows the  
23 contract, or a party to the contract, to do any of the following:

24 (a) deny any obligation under the contract;

25 (b) accelerate any debt under the contract;

26 (c) close out any transaction relating to the contract;

27 (d) enforce any security under the contract.

28 This subsection has effect subject to subsection (4).

29 (3) The matters are as follows:

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- 1 (a) a Banking Act statutory manager of the contracting body  
2 corporate doing an act under subsection 14AA(1) relating to  
3 the contracting body corporate;
- 4 (b) a Banking Act statutory manager of a body corporate that is a  
5 related body corporate of the contracting body corporate  
6 doing an act under subsection 14AA(1) relating to the  
7 contracting body corporate.
- 8 (4) Subsection (2) does not prevent the contracting body corporate  
9 doing any of the following:
- 10 (a) denying an obligation to an entity that is not a related body  
11 corporate of the contracting body corporate;
- 12 (b) accelerating a debt to an entity that is not a related body  
13 corporate of the contracting body corporate;
- 14 (c) closing out a transaction with an entity that is not a related  
15 body corporate of the contracting body corporate;
- 16 (d) enforcing a security against an entity that is not a related  
17 body corporate of the contracting body corporate.

## 18 **80 Subsection 14B(1)**

19 Repeal the subsection, substitute:

### 20 *Types of recommendation*

- 21 (1) An administrator of a body corporate's business may make any of  
22 the following recommendations to APRA, by instrument in writing  
23 given to APRA:
- 24 (a) that APRA make a particular direction under Division 1BA,  
25 subsection 14D(3) or section 29 in respect of the body  
26 corporate;
- 27 (b) that APRA apply for the body corporate to be wound up;
- 28 (c) if the body corporate is an ADI—that APRA revoke the  
29 ADI's section 9 authority;
- 30 (d) if the body corporate is an authorised NOHC—that APRA  
31 revoke the authorised NOHC's authority under  
32 subsection 11AA(2).

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1 **81 Subsection 14C(1), (2), (3) and (4)**

2 Repeal the subsections, substitute:

3 *Immunity*

4 (1) A Banking Act statutory manager, or a person acting on behalf of a  
5 Banking Act statutory manager, is not subject to any liability  
6 (whether civil or criminal) in respect of anything done, or omitted  
7 to be done, in the exercise or performance, or the purported  
8 exercise or performance, of powers, functions or duties conferred  
9 or imposed on the Banking Act statutory manager by or under this  
10 Act.

11 (2) Subsection (1) does not apply to an act or omission in bad faith.

12 (3) To avoid doubt, a Banking Act statutory manager is not liable  
13 under section 588G of the *Corporations Act 2001* in respect of  
14 anything done, or omitted to be done, in the exercise or  
15 performance, or the purported exercise or performance, of powers,  
16 functions or duties conferred or imposed on the Banking Act  
17 statutory manager by or under this Act. This subsection does not  
18 limit the scope of subsection (1).

19 (4) Subsection (1) does not limit, and is not limited by any of the  
20 following provisions:

21 (a) section 52A, 52B, 70A or 70AA;

22 (b) section 58 of the *Australian Prudential Regulation Authority*  
23 *Act 1998*.

24 **82 After section 14C**

25 Insert:

26 **14CA Transaction by Banking Act statutory manager not voidable**  
27 **under 588FE of the *Corporations Act 2001***

28 A transaction of a body corporate is not voidable under  
29 section 588FE of the *Corporations Act 2001* merely because:

30 (a) the transaction was entered into at a time when a Banking  
31 Act statutory manager was in control of the body corporate's  
32 business; and

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- 1 (b) the transaction is:  
2 (i) an uncommercial transaction (within the meaning of  
3 that Act) of the body corporate; or  
4 (ii) an unfair preference (within the meaning of that Act)  
5 given by the body corporate to a creditor of the  
6 company; or  
7 (iii) an insolvent transaction (within the meaning of that Act)  
8 of the body corporate.

## 9 **83 Subsections 14E(1) and (2)**

10 Repeal the subsections, substitute:

- 11 (1) APRA may terminate the appointment of an administrator of a  
12 body corporate's business and either appoint another person as  
13 administrator of the body corporate's business or itself take control  
14 of the body corporate's business if:  
15 (a) the administrator contravenes a requirement of this Division;  
16 or  
17 (b) APRA considers such action necessary to:  
18 (i) facilitate the resolution of the body corporate, a relevant  
19 group of bodies corporate of which the body corporate  
20 is a member, or another member of such a group; or  
21 (ii) if the body corporate is an ADI —protect the interests of  
22 depositors of the ADI; or  
23 (iii) promote financial system stability in Australia.
- 24 (2) The terms and conditions of an administrator's appointment may  
25 provide for termination in circumstances in addition to those  
26 mentioned in subsection (1).
- 27 (2A) If:  
28 (a) APRA is the statutory manager of a body corporate; and  
29 (b) the requirement in paragraph (1)(b) is satisfied;  
30 it may cease to be the statutory manager of the body corporate and  
31 appoint a person as administrator of the body corporate's business.

## 32 **84 Section 14F**

33 Repeal the section.

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1 **85 After subsection 15(3)**

2 Insert:

3 (3A) Subsections (1), (2) and (3) do not apply in relation to a body  
4 corporate that is a foreign ADI.

5 (3B) Subsection (3C) applies if:

6 (a) subsections (1), (2) and (3) do not apply in relation to a body  
7 corporate because of subsection (3A); and

8 (b) a Banking Act statutory manager takes control of the body  
9 corporate's business; and

10 (c) a director of the body corporate acts, or purports to act in  
11 relation to the body corporate's business while the Banking  
12 Act statutory manager has control of the body corporate's  
13 business.

14 (3C) Those acts are invalid and of no effect to the extent that they relate  
15 to:

16 (a) the Australian business assets and liabilities of the body  
17 corporate; or

18 (b) the management of the body corporate, to the extent that the  
19 management relates to the Australian business assets and  
20 liabilities of the body corporate.

21 **86 Section 15B**

22 Repeal the section, substitute:

23 **15B Moratorium—effect of Banking Act statutory management on**  
24 **court and tribunal proceedings**

25 (1) A person cannot begin or continue a proceeding in a court or  
26 tribunal covered by subsection (7) in respect of a body corporate if  
27 a Banking Act statutory manager is in control of the body  
28 corporate's business.

29 (2) Subsection (1) does not apply if:

30 (a) the court or tribunal grants leave for the proceedings to be  
31 begun or continued on the ground that the person would be  
32 caused hardship if leave were not granted; and

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- 1 (b) the beginning or continuing of the proceedings is in  
2 accordance with such terms (if any) as the court or tribunal  
3 imposes.
- 4 (3) A person intending to apply for leave of the court under  
5 paragraph (2)(a) must give APRA at least 10 days notice of the  
6 intention to apply (or a shorter period, if the court or tribunal  
7 considers that exceptional circumstances make this necessary).
- 8 (4) APRA may apply to the court to be joined as a party to the  
9 proceedings for leave. If APRA is joined as a party, the court or  
10 tribunal must have regard to APRA's views in deciding:  
11 (a) whether to grant leave under paragraph (2)(a); and  
12 (b) if the court or tribunal decides to grant the leave—whether to  
13 impose terms as mentioned in paragraph (2)(b); and  
14 (c) if the court or tribunal decides to impose such terms— the  
15 nature of those terms.
- 16 (5) Subsection (1) also does not apply if:  
17 (a) APRA consents in writing to the proceedings beginning or  
18 continuing; or  
19 (b) the Banking Act statutory manager, after considering  
20 APRA's views, consents to the proceedings beginning or  
21 continuing.
- 22 (6) APRA (or the Banking Act statutory manager) cannot revoke a  
23 consent given for the purposes of subsection (5).
- 24 (6A) Neither APRA nor the Banking Act statutory manager is liable to  
25 an action or other proceedings for damages in respect of a refusal  
26 to give consent under subsection (5).
- 27 (7) A proceeding in a court or tribunal is covered by this subsection in  
28 respect of a body corporate if it is any of the following:  
29 (a) a proceeding against the body corporate (including a  
30 cross-claim or third party claim against the body corporate);  
31 (b) a proceeding in relation to property of the body corporate;  
32 (c) a proceeding to enforce any security (including a mortgage or  
33 charge) over any property that the body corporate owns, uses,



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- 1 (4) Subsection (1) also does not apply if:  
2 (a) APRA consents to the process beginning or continuing; or  
3 (b) the Banking Act statutory manager consents to the process  
4 beginning or continuing.
- 5 (5) APRA (or the Banking Act statutory manager) cannot revoke a  
6 consent given for the purposes of subsection (4).
- 7 (6) Neither APRA nor the Banking Act statutory manager is liable to  
8 an action or other proceedings for damages in respect of a refusal  
9 to give consent under subsection (4).
- 10 (7) This section has effect subject to section 31B.

## 11 **15BB Moratorium—effect of Banking Act statutory management on** 12 **disposal of property**

- 13 (1) A person must not dispose of property if:  
14 (a) the property is owned by another person; and  
15 (b) the other person is a body corporate; and  
16 (c) a Banking Act statutory manager is in control of the body  
17 corporate's business.
- 18 Note: The Federal Court may grant an injunction under section 65A in  
19 respect of a contravention of this subsection.
- 20 (2) Subsection (1) does not apply if:  
21 (a) APRA consents to the disposal; or  
22 (b) the Banking Act statutory manager consents to the disposal.
- 23 (3) Neither APRA nor the Banking Act statutory manager is liable to  
24 an action or other proceedings for damages in respect of a refusal  
25 to give consent under subsection (2).
- 26 (4) This section has effect subject to section 31B.

## 27 **15BC Moratorium—restrictions on exercise of third party property** 28 **rights**

- 29 (1) Section 440B of the *Corporations Act 2001* applies during a period  
30 in which a Banking Act statutory manager is in control of a body
-

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- 1 corporate's business in the same way it applies during the  
2 administration of a company.
- 3 (2) For the purposes of this section, treat the reference in  
4 paragraph 440B(2)(a) of the *Corporations Act 2001* to the  
5 administrator's written consent as being a reference to:  
6 (a) the Banking Act statutory manager's written consent; or  
7 (b) APRA's written consent.
- 8 (2A) Neither APRA nor a Banking Act statutory manager is liable to an  
9 action or other proceedings for damages in respect of a refusal to  
10 give consent as mentioned in subsection (2).
- 11 (3) This section applies despite sections 15B, 15BA and 15BB.
- 12 (4) This section has effect subject to section 31B.

### 13 **15BD Moratorium—effect of Banking Act statutory management on** 14 **supply of essential services**

- 15 (1) If:  
16 (aa) a Banking Act statutory manager is in control of a body  
17 corporate's business; and  
18 (a) the Banking Act statutory manager requests, or authorises  
19 someone else to request, a person or authority (the *supplier*)  
20 to supply an essential service to the body corporate in  
21 Australia; and  
22 (b) the body corporate owes an amount to the supplier in respect  
23 of the supply of the essential service before the day on which  
24 the Banking Act statutory manager took control of the body  
25 corporate's business;  
26 the supplier must not:  
27 (c) refuse to comply with the request for the reason only that the  
28 amount is owing; or  
29 (d) make it a condition of the supply of the essential service  
30 pursuant to the request that the amount is to be paid.

31 Note: The Federal Court may grant an injunction under section 65A in  
32 respect of a contravention of this subsection.

- 33 (2) In this section:
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1 (b) a Banking Act statutory manager being in control, or being  
2 appointed to take control, of the business of a related body  
3 corporate of the body corporate.

4 (4) Subsection (2) does not prevent the body corporate doing any of  
5 the following:

6 (a) denying an obligation to an entity that is not a related body  
7 corporate of the body corporate;

8 (b) accelerating a debt to an entity that is not a related body  
9 corporate of the body corporate;

10 (c) closing out a transaction with an entity that is not a related  
11 body corporate of the body corporate;

12 (d) enforcing a security against an entity that is not a related  
13 body corporate of the body corporate.

## 14 **88 Section 15D**

15 Repeal the section, substitute:

## 16 **15D Application of other provisions**

17 (1) None of the matters mentioned in subsection (2) affect:

18 (a) the continued operation of other provisions of this Act or the  
19 operation of the *Financial Sector (Collection of Data) Act*  
20 *2001* in relation to a body corporate; or

21 (b) the obligation of a body corporate to comply with those other  
22 provisions and that Act.

23 (2) The matters are as follows:

24 (a) the appointment of a Banking Act statutory manager of the  
25 body corporate's business under this Division;

26 (b) the fact that a Banking Act statutory manager is in control of  
27 the body corporate's business.

28 (3) The *Public Governance, Performance and Accountability Act 2013*  
29 does not apply to a body corporate that has a Banking Act statutory  
30 manager.

## 31 **89 At the end of Division 2 of Part II**

32 Add:

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1 **Subdivision C—APRA’s powers to apply for ADI to be wound**  
2 **up**

3 **16AAA APRA’s powers to apply for ADI to be wound up**

4 *Power to apply for ADI to be wound up*

- 5 (1) APRA may apply to the Federal Court of Australia for an order  
6 that an ADI be wound up if APRA considers that the ADI is  
7 insolvent and could not be restored to solvency within a reasonable  
8 period.

9 Note: This section does not apply in relation to a foreign ADI (see  
10 subsection 11E(1)).

- 11 (2) To avoid doubt, subsection (1) applies even if an ADI statutory  
12 manager is in control of the ADI’s business.

- 13 (2A) The application is to be made under section 459P of the  
14 *Corporations Act 2001*.

- 15 (3) The winding up of the ADI is to be conducted in accordance with  
16 the *Corporations Act 2001*.

- 17 (4) If APRA makes an application under subsection (1), APRA must  
18 inform the Minister of the application as soon as possible.

19 Note: Once informed, the Minister may choose to apply Subdivision C of  
20 Division 2AA in relation to the ADI so some depositors can receive  
21 payments earlier than they would in the winding up of the ADI.

22 **90 Paragraph 16AB(a)**

23 Repeal the paragraph, substitute:

- 24 (a) allows the Minister to make a declaration about an ADI if:  
25 (i) APRA has applied under section 16AAA for the ADI to  
26 be wound up; or  
27 (ii) a Banking Act statutory manager is in control of the  
28 ADI’s business; and

29 **91 At the end of section 16AB**

30 Add:

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1 ; and (d) allows APRA to facilitate a transfer of business from the  
2 declared ADI to a receiving body under the *Financial Sector*  
3 *(Transfer and Restructure) Act 1999* by entitling the  
4 receiving body to amounts in respect of the protected  
5 accounts.

## 6 **92 Subsection 16AD(1)**

7 Repeal the subsection, substitute:

8 (1) The Minister may declare that Subdivision C applies in relation to  
9 a specified ADI if any of the following requirements are satisfied:

- 10 (a) APRA has applied under section 16AAA for the ADI to be  
11 wound up; or  
12 (b) a Banking Act statutory manager is in control of the ADI's  
13 business.

14 Note: The Minister cannot make a declaration under this subsection in  
15 relation to a foreign ADI (see section 11E).

## 16 **93 Subsection 16AD(2)**

17 Omit "14F", substitute "16AAA".

## 18 **94 Subsection 16AHA(3)**

19 Repeal the subsection.

## 20 **95 At the end of Subdivision C of Division 2AA of Part II**

21 Add:

### 22 **16AIA APRA may make transferred liabilities determination where** 23 **transfer of business**

24 (1) APRA may make a determination (a *transferred liabilities*  
25 *determination*) if:

- 26 (a) an ADI is a declared ADI as a result of the Minister having  
27 made a declaration under section 16AD; and  
28 (b) APRA has made, or proposes to make, a determination under  
29 section 25 (compulsory transfer determination) of the  
30 *Financial Sector (Transfer and Restructure) Act 1999* that  
31 there is to be a total transfer or partial transfer of business
-



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- 1 from the declared ADI to a receiving body (within the  
2 meaning of that Act); and
- 3 (ba) the transfer of business will transfer:
- 4 (i) the liabilities of the declared ADI in respect of every  
5 protected account kept by an account-holder with the  
6 ADI; or
- 7 (ii) the liabilities of the declared ADI in respect of every  
8 protected account kept by an account-holder with the  
9 ADI, to the extent of the amount to which each of those  
10 account-holders is entitled under this Subdivision in  
11 relation to those protected accounts; and
- 12 (c) APRA is satisfied that it will be able to identify each of those  
13 protected accounts; and
- 14 (d) APRA has worked out an amount (the **FCS amount**) that is  
15 APRA's reasonable estimate of the total amount to which  
16 account-holders of those protected accounts will be entitled  
17 (disregarding the determination) under section 16AF as a  
18 result of the Minister's declaration mentioned in  
19 paragraph (a); and
- 20 (e) APRA has worked out a payment amount in accordance with  
21 section 16AIB; and
- 22 (f) APRA considers that it is reasonable in the circumstances to  
23 make the determination.
- 24 (1A) However, APRA cannot make the determination if APRA has  
25 already issued a certificate of transfer under section 33 of the  
26 *Financial Sector (Transfer and Restructure) Act 1999* stating that  
27 the transfer is to take effect.
- 28 (2) The determination must be in writing.
- 29 (3) The determination must specify the following:
- 30 (a) the declared ADI;
- 31 (b) the receiving body;
- 32 (c) a description, in general or detailed terms, of all the protected  
33 accounts kept with the declared ADI;
- 34 (d) the FCS amount;
- 35 (e) the payment amount;
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- 1 (f) any other information that APRA considers appropriate.
- 2 (4) A determination under subsection (1) may be varied, but not  
3 revoked, in accordance with subsection 33(3) of the *Acts*  
4 *Interpretation Act 1901*.
- 5 (5) A determination made under subsection (1) is not a legislative  
6 instrument.

## 7 **16AIB Payment amount under transferred liabilities determination**

- 8 (1) For the purposes of paragraph 16AIA(1)(e), APRA may work out  
9 an amount (the *payment amount*) that:
- 10 (a) is equal to or less than the FCS amount; and  
11 (b) APRA considers to be appropriate.
- 12 (2) In working out the payment amount, APRA must have regard to  
13 the following:
- 14 (a) the total value of the assets that will be transferred to the  
15 receiving body in accordance with the transfer of business;  
16 (b) the total value of the liabilities that will be transferred from  
17 the declared ADI to the receiving body in accordance with  
18 the transfer of business;  
19 (c) any other matter that APRA considers appropriate.

## 20 **16AIC Consequences of transferred liabilities determination once** 21 **certificate of transfer issued**

### 22 *Application of section*

- 23 (1) This section applies if:
- 24 (a) APRA has made a transferred liabilities determination; and  
25 (b) APRA has issued a certificate of transfer under section 33 of  
26 the *Financial Sector (Transfer and Restructure) Act 1999*  
27 stating that the transfer is to take effect.

### 28 *Receiving body entitled to payment amount*

- 29 (2) The receiving body is entitled to be paid by APRA an amount  
30 equal to the payment amount specified in the determination.
-

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1 *Reduction of rights and entitlements of account-holder*

2 (3) An account-holder's entitlement under this Subdivision to be paid  
3 an amount in respect of a protected account kept with the declared  
4 ADI is reduced to nil.

5 *Declared ADI liable to APRA for payment amount*

6 (4) The declared ADI is liable to pay to APRA an amount equal to the  
7 sum of the payment amount specified in the determination.

8 (5) That liability is due and payable to APRA when the certificate of  
9 transfer comes into force.

10 **96 Subsection 16AJ(9)**

11 Repeal the subsection.

12 **97 Paragraph 16AK(1)(c)**

13 Omit "(including a provisional liquidator)".

14 **98 After paragraph 16AK(1)(c)**

15 Insert:

16 ; or (d) any other person;

17 **99 Subsection 16AK(1)**

18 Omit "or liquidator", substitute ", liquidator or other person".

19 **100 Paragraph 16AK(4)(ea)**

20 Omit "or report".

21 **101 Subsection 16AL(5)**

22 Omit "(including a provisional liquidator)".

23 **102 Subsection 16AL(7)**

24 Omit "(including a provisional liquidator)".

25 **103 At the end of section 16AL**

26 Add:

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1 *Requirement made of other person—civil penalty*

2 (8) A person mentioned in paragraph 16AK(1)(d) must comply with a  
3 requirement made of the person under subsection 16AK(1).

4 Civil penalty: 200 penalty units.

5 **104 Subsection 29(9)**

6 Repeal the subsection.

7 **105 Subsection 31B(2)**

8 Repeal the subsection, substitute:

9 *Banking Act statutory manager in control*

10 (2) The following provisions do not prevent the exercise of a  
11 contractual right in relation to an asset that secures liabilities to  
12 holders of covered bonds, or their representatives, if payments  
13 under the covered bonds to the holders or representatives are not  
14 made:

15 (a) section 15BA (moratorium—effect of Banking Act statutory  
16 management on enforcement process regarding property);

17 (b) section 15BB (moratorium—effect of Banking Act statutory  
18 management on disposal of property);

19 (c) section 15BC (moratorium—restrictions on exercise of third  
20 party property rights);

21 (d) section 15C (Banking Act statutory manager being in control  
22 not grounds for denial of obligations).

23 **106 Subsection 31F(9)**

24 Repeal the subsection.

25 **107 Section 62B (heading)**

26 Repeal the heading, substitute:

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1 **62B Involving APRA in proposed appointment of external**  
2 **administrators of ADIs and NOHCs**

3 **108 Subsection 62B(1)**

4 Repeal the subsection, substitute:

5 (1) At least 2 weeks before a person other than APRA:

6 (a) makes an application to a court under Chapter 5 of the  
7 *Corporations Act 2001* for the appointment of an external  
8 administrator of an ADI or of an authorised NOHC of an  
9 ADI; or

10 (b) makes another kind of application (whether or not to a court)  
11 for the appointment of an external administrator of an ADI or  
12 of an authorised NOHC of an ADI; or

13 (c) appoints an external administrator of an ADI or of an  
14 authorised NOHC of an ADI (otherwise than as the result of  
15 an application made by another person);

16 the person must give APRA written notice that the person proposes  
17 to make the application or appointment.

18 (1A) If there is an approved form for the notice, the person must give the  
19 notice in the approved form.

20 (1B) Subsection (1) does not apply if APRA gives the person written  
21 notice, before the person makes the application or appointment,  
22 that APRA consents to the person making the application or  
23 appointment.

24 **109 Subsection 62B(4)**

25 Repeal the subsection, substitute:

26 *Offence*

27 (4) A person (other than APRA) commits an offence if:

28 (a) the person:

29 (i) makes an application to a court under Chapter 5 of the  
30 *Corporations Act 2001* for the appointment of an  
31 external administrator of an ADI or of an authorised  
32 NOHC of an ADI; or

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- 1 (ii) makes another kind of application (whether or not to a  
2 court) for the appointment of an external administrator  
3 of an ADI or of an authorised NOHC of an ADI; or  
4 (iii) appoints an external administrator of an ADI or of an  
5 authorised NOHC of an ADI (otherwise than as the  
6 result of an application made by another person); and  
7 (b) APRA did not give the person written notice, before the  
8 person made the application or appointment, of APRA's  
9 consent to the person making the application or appointment,  
10 in accordance with subsection (1B); and  
11 (c) at least 2 weeks before making the application or  
12 appointment:  
13 (i) if there is an approved form for the purposes of this  
14 paragraph—the person did not give APRA notice in the  
15 approved form indicating that the person proposed to  
16 make the application or appointment; or  
17 (ii) otherwise—the person did not give APRA written  
18 notice indicating that the person proposed to make the  
19 application or appointment.

20 Penalty: 60 penalty units.

## 21 **110 Subsection 62C(1)**

22 Omit “the winding-up of an ADI”, substitute “the winding-up of an  
23 entity covered by subsection (4), or the proposed winding-up of an  
24 entity covered by subsection (4)”.

## 25 **111 At the end of section 62C**

26 Add:

- 27 (4) This subsection covers the following entities:  
28 (a) an ADI;  
29 (b) an authorised NOHC;  
30 (c) a subsidiary of an ADI or authorised NOHC.

## 31 **112 After section 62C**

32 Insert:

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## 1 **62D Application by APRA for directions**

2 (1) APRA may apply to the Federal Court for directions regarding any  
3 matter arising under:

4 (a) the winding-up of an entity covered by subsection 62C(4)  
5 (whether the winding-up occurs as a result of an application  
6 made under the *Corporations Act 2001* or by APRA under  
7 section 11EA or 16AAA); or

8 (b) the proposed winding-up of an entity covered by  
9 subsection 62C(4) (whether the winding-up will occur as a  
10 result of an application made, or proposed to be made, under  
11 the *Corporations Act 2001* or by APRA under section 11EA  
12 or 16AAA).

13 (2) APRA must give the liquidator written notice that APRA proposes  
14 to make the application.

15 (3) The notice must include details of the proposed application.

16 (4) The liquidator is entitled to be heard on the application.

## 17 **62E APRA may request information from liquidator**

18 (1) APRA may request a liquidator of an entity covered by  
19 subsection 62C(4) in writing to give APRA, within a reasonable  
20 time specified in the request, specified information in writing  
21 about:

22 (a) the winding-up of the entity (whether the winding-up occurs  
23 as a result of an application made under the *Corporations Act*  
24 *2001* or by APRA under section 11EA or 16AAA) and the  
25 other affairs of the entity; or

26 (b) the proposed winding-up of the entity (whether the  
27 winding-up will occur as a result of an application made, or  
28 proposed to be made, under the *Corporations Act 2001* or by  
29 APRA under section 11EA or 16AAA) and the other affairs  
30 of the entity.

31 (2) The liquidator must comply with the request.

32 Note: Action may be taken under the *Corporations Act 2001* against a  
33 liquidator who does not comply with such a request.

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1 **113 After section 69B**

2 **69BA Institution of offence proceedings no bar to winding up**

3 The institution of proceedings against a body corporate for an  
4 offence against this Act or the *Financial Sector (Collection of*  
5 *Data) Act 2001* does not prevent the institution of proceedings for  
6 the winding-up of the body corporate on a ground that relates to the  
7 matter that constitutes the offence.

8 **114 Section 70A (heading)**

9 Repeal the heading, substitute:

10 **70A Protection from liability—general**

11 **115 After section 70A**

12 Insert:

13 **70AA Protection from liability—directions and secrecy**

- 14 (1) An action, suit or proceeding (whether criminal or civil) does not  
15 lie against a person in relation to anything done, or omitted to be  
16 done, in good faith by the person if:
- 17 (a) the person does the thing, or omits to do the thing, for the  
18 purpose of any of the following:
    - 19 (i) complying with a direction under this Act given by  
20 APRA to a body corporate;
    - 21 (ii) complying with section 11CI (secrecy); and
  - 22 (b) it is reasonable for the person to do the thing, or to omit to do  
23 the thing, in order to achieve that purpose; and
  - 24 (c) the person is any of the following:
    - 25 (i) an officer or senior manager of the body corporate, of a  
26 subsidiary of the body corporate, of an authorised  
27 NOHC of the body corporate or of a subsidiary of an  
28 authorised NOHC of the body corporate;
    - 29 (ii) an employee or agent of the body corporate, of a  
30 subsidiary of the body corporate, of an authorised



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1 NOHC of the body corporate or of a subsidiary of an  
2 authorised NOHC of the body corporate.

3 (2) In subsection (1):

4 *employee* of a body corporate includes a person engaged to provide  
5 advice or services to the body corporate.

6 *officer* has the meaning given by section 9 of the *Corporations Act*  
7 *2001*.

## 8 **70AB Protection from liability—provisions do not limit each other**

9 The following provisions do not limit the operation of each other:

10 (a) section 14C

11 (b) section 52A;

12 (c) section 52B;

13 (d) section 70A;

14 (e) section 70AA;

15 (f) section 58 of the *Australian Prudential Regulation Authority*  
16 *Act 1998*.

## 17 **Part 2—Consequential amendments**

### 18 ***Banking Act 1959***

#### 19 **116 Section 13BA (heading)**

20 Repeal the heading, substitute:

#### 21 **13BA Start of control of body corporate’s business by Banking Act** 22 **statutory manager**

#### 23 **117 Subsection 13BA(1)**

24 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
25 manager”.

#### 26 **118 Subsection 13BA(1)**

27 Omit “an ADI’s business”, substitute “a body corporate’s business”.

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1 **119 Subsection 13BA(1)**

2 Omit “the ADI”, substitute “the body corporate”.

3 **120 Subsection 13BA(1)**

4 Omit “the ADI statutory manager”, substitute “the Banking Act  
5 statutory manager”.

6 **121 Subsection 13BA(2)**

7 Omit “An ADI statutory manager takes control of an ADI’s business”,  
8 substitute “A Banking Act statutory manager takes control of a body  
9 corporate’s business”.

10 **122 Section 13BA(2)**

11 Omit “the ADI statutory manager” (wherever occurring), substitute “the  
12 Banking Act statutory manager”.

13 **123 Section 13C (heading)**

14 Repeal the heading, substitute:

15 **13C Banking Act statutory managers—termination of control**

16 **124 Subsection 13C(2)**

17 Omit “an ADI statutory manager of an ADI’s business”, substitute “a  
18 Banking Act statutory manager of a body corporate’s business”.

19 **125 Paragraph 13C(2)(a)**

20 Omit “of the ADI”, substitute “of the body corporate”.

21 **126 Paragraph 13C(2)(a)**

22 Omit “the ADI’s” (wherever occurring), substitute “the body  
23 corporate’s”.

24 **127 Paragraph 13C(2)(a)**

25 Omit “ADI statutory manager”, substitute “Banking Act statutory  
26 manager”.

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1 **128 Paragraphs 13C(2)(b) and (c)**

2 Omit “the ADI”, substitute “the body corporate”.

3 **129 Subsection 13C(3)**

4 Omit “an ADI’s business by an ADI statutory manager”, substitute “a  
5 body corporate’s business by a Banking Act statutory manager”.

6 **130 Subsection 13C(4)**

7 Omit “the ADI statutory manager”, substitute “the Banking Act  
8 statutory manager”.

9 **131 Subsection 13C(5)**

10 Omit “the ADI statutory manager’s”, substitute “the Banking Act  
11 statutory manager’s”.

12 **132 Subsection 13C(5)**

13 Omit “the ADI’s” (wherever occurring), substitute “the body  
14 corporate’s”.

15 **133 Subsection 13C(5) (note)**

16 Omit “an ADI statutory manager is in control of an ADI’s business”,  
17 substitute “a Banking Act statutory manager is in control of a body  
18 corporate’s business”.

19 **134 Subdivision B of Division 2 of Part II (heading)**

20 Repeal the heading, substitute:

21 **Subdivision B—Provisions dealing with control of a body**  
22 **corporate’s business by a Banking Act statutory**  
23 **manager**

24 **135 Section 14A (heading)**

25 Repeal the heading, substitute:

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1 **14A Banking Act statutory manager’s powers and functions**

2 **136 Subsection 14A(1) (heading)**

3 Repeal the heading, substitute:

4 *Banking Act statutory manager’s powers and functions include*  
5 *powers and functions of board*

6 **137 Subsection 14A(1)**

7 Omit “An ADI statutory manager has the powers and functions of the  
8 members of the board of directors of the ADI”, substitute “A Banking  
9 Act statutory manager of a body corporate has the powers and functions  
10 of the members of the board of directors of the body corporate”.

11 **138 Subsection 14A(1) (note)**

12 Omit “An ADI statutory manager”, substitute “A Banking Act statutory  
13 manager”.

14 **139 Subsection 14A(1) (note)**

15 Omit “an ADI,”, substitute “a body corporate,”.

16 **140 Subsection 14A(1) (note)**

17 Omit “the ADI”, substitute “the body corporate”.

18 **141 Subsection 14A(2) (heading)**

19 Repeal the heading, substitute:

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1 *Banking Act statutory manager's power to obtain information*

2 **142 Subsection 14A(2)**

3 Omit “An ADI statutory manager may, for the purposes of this  
4 Division, require a person who has, at any time, been an officer of the  
5 ADI to give the ADI statutory manager any information relating to the  
6 business of the ADI that the ADI statutory manager requires.”,  
7 substitute “A Banking Act statutory manager of a body corporate may,  
8 for the purposes of this Division, require a person who has, at any time,  
9 been an officer of the body corporate to give the statutory manager any  
10 information relating to the business of the body corporate that the  
11 statutory manager requires.”.

12 **143 Subsection 14A(2A)**

13 Omit “officer of an ADI”, substitute “officer of a body corporate”.

14 **144 Paragraph 14A(2A)(a)**

15 Omit “an ADI statutory manager in relation to the ADI”, substitute “a  
16 Banking Act statutory manager of the body corporate”.

17 **145 Paragraph 14A(2A)(b)**

18 Omit “ADI statutory manager”, substitute “Banking Act statutory  
19 manager”.

20 **146 Subsection 14A(5) (heading)**

21 Repeal the heading, substitute:

22 *Banking Act statutory manager's power to sell whole or part of*  
23 *body corporate's business*

24 **147 Subsection 14A(5)**

25 Omit “An ADI statutory manager”, substitute “A Banking Act statutory  
26 manager”.

27 **148 Subsection 14A(5)**

28 Omit “the ADI's business”, substitute “the body corporate's business”.

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1 **149 Subsection 14A(5)**

2 Omit “the ADI statutory manager”, substitute “the Banking Act  
3 statutory manager”.

4 **150 Subsection 14A(5A) (heading)**

5 Repeal the heading, substitute:

6 *Banking Act statutory manager to alter body corporate’s*  
7 *constitution etc.*

8 **151 Subsection 14A(5A)**

9 Omit “An ADI statutory manager may, if the ADI concerned”,  
10 substitute “A Banking Act statutory manager may, if the body corporate  
11 concerned”.

12 **152 Subsection 14A(5A)**

13 Omit “the ADI’s constitution”, substitute “the body corporate’s  
14 constitution”.

15 **153 Paragraph 14A(5A)(a)**

16 Omit “the ADI statutory manager’s functions and duties, or the exercise  
17 of the ADI statutory manager’s other powers, under this Division in  
18 relation to the ADI”, substitute “the Banking Act statutory manager’s  
19 functions and duties, or the exercise of the Banking Act statutory  
20 manager’s other powers, under this Division in relation to the body  
21 corporate”.

22 **154 Subparagraph 14A(5A)(b)(i)**

23 Omit “the ADI”, substitute “the relevant ADI mentioned in  
24 subsection 13A(1B)”.

25 **155 Subsection 14A(5B)**

26 Omit “An ADI statutory manager”, substitute “A Banking Act statutory  
27 manager”.

28 **156 Paragraph 14A(5B)(b)**

29 Omit “the ADI’s”, substitute “the body corporate’s”.

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1 **157 Paragraph 14A(5B)(c)**

2 Omit “the ADI”, substitute “the body corporate”.

3 **158 Paragraph 14A(5B)(d)**

4 Omit “the ADI”, substitute “the body corporate”.

5 **159 Section 14AA (heading)**

6 Repeal the heading, substitute:

7 **14AA Banking Act statutory manager’s additional powers to**  
8 **facilitate recapitalisation**

9 **160 Subsection 14AA(1)**

10 Omit “An ADI statutory manager of an ADI”, substitute “A Banking  
11 Act statutory manager of a body corporate”.

12 **161 Subsection 14AA(1)**

13 Omit “the ADI statutory manager”, substitute “the Banking Act  
14 statutory manager”.

15 **162 Subsection 14AA(1) (note)**

16 Omit “the ADI statutory manager”, substitute “the Banking Act  
17 statutory manager”.

18 **163 Subsection 14AA(2)**

19 Omit “the ADI statutory manager”, substitute “the Banking Act  
20 statutory manager”.

21 **164 Subsection 14AA(4)**

22 Omit “An ADI statutory manager”, substitute “A Banking Act statutory  
23 manager”.

24 **165 Subsection 14AD(1)**

25 Omit “the business of an ADI that has an ADI statutory manager”,  
26 substitute “the business of a body corporate that has a Banking Act  
27 statutory manager”.

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1 **166 Paragraphs 14AD(1)(a) and (b)**

2 Omit “the ADI statutory manager” (wherever occurring), substitute “the  
3 Banking Act statutory manager”.

4 **167 Subsection 14B(2)**

5 Omit “an ADI’s business”, substitute “a body corporate’s business”.

6 **168 Section 14C (heading)**

7 Repeal the heading, substitute:

8 **14C Banking Act statutory manager’s liabilities and duties**

9 **169 Subsection 14C(5)**

10 Omit “ADI statutory managers”, substitute “Banking Act statutory  
11 managers”.

12 **170 Subsection 14D(1)**

13 Omit “an ADI’s business”, substitute “a body corporate’s business”.

14 **171 Subsection 14D(1)**

15 Omit “the ADI’s business”, substitute “the body corporate’s business”.

16 **172 Subsection 14D(2)**

17 Omit “an ADI’s business”, substitute “a body corporate’s business”.

18 **173 Subsection 14D(2)**

19 Omit “the ADI’s business”, substitute “the body corporate’s business”.

20 **174 Subsection 14D(3)**

21 Omit “an ADI’s business”, substitute “a body corporate’s business”.

22 **175 Subsection 14D(3)**

23 Omit “the ADI’s business” (wherever occurring), substitute “the body  
24 corporate’s business”.



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1 **176 Subsection 14D(4)**

2 Omit “an ADI’s business”, substitute “a body corporate’s business”.

3 **177 Subsection 14DAA(1)**

4 Omit “an ADI’s business”, substitute “a body corporate’s business”.

5 **178 Subsection 14DA(1)**

6 Omit “an ADI’s business”, substitute “a body corporate’s business”.

7 **179 Subsection 14DA(7)**

8 Omit “an ADI’s business”, substitute “a body corporate’s business”.

9 **180 Section 15 (heading)**

10 Repeal the heading, substitute:

11 **15 Effect on directors of Banking Act statutory manager taking**  
12 **control of a body corporate’s business**

13 **181 Subsection 15(1)**

14 Omit “an ADI cease”, substitute “a body corporate cease”.

15 **182 Subsection 15(1)**

16 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
17 manager”.

18 **183 Subsection 15(1)**

19 Omit “the ADI’s business”, substitute “the body corporate’s business”.

20 **184 Subsection 15(2)**

21 Omit “an ADI must not”, substitute “a body corporate must not”.

22 **185 Subsection 15(2)**

23 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
24 manager”.

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1 **186 Subsection 15(2)**

2 Omit “the ADI’s business”, substitute “the body corporate’s business”.

3 **187 Subsection 15(3)**

4 Omit “the ADI appointed”, substitute “the body corporate appointed”.

5 **188 Subsection 15(3)**

6 Omit “the ADI’s business” (wherever occurring), substitute “the body  
7 corporate’s business”.

8 **189 Subsection 15(3)**

9 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
10 manager”.

11 **190 Section 15A (heading)**

12 Repeal the heading, substitute:

13 **15A Effect on external administrator of Banking Act statutory  
14 manager taking control of a body corporate’s business**

15 **191 Subsection 15A(1)**

16 Omit “an ADI is”, substitute “a body corporate is”.

17 **192 Subsection 15A(1)**

18 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
19 manager”.

20 **193 Subsection 15A(1)**

21 Omit “the ADI’s business”, substitute “the body corporate’s business”.

22 **194 Subsection 15A(1) (Note)**

23 Repeal the note.

24 **195 Subsection 15A(2)**

25 Omit “an ADI must”, substitute “a body corporate must”.

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# EXPOSURE DRAFT

Amendment of the Banking Act 1959 **Schedule 1**  
Consequential amendments **Part 2**

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1 **196 Subsection 15A(2)**

2 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
3 manager”.

4 **197 Subsection 15A(2)**

5 Omit “the ADI’s business”, substitute “the body corporate’s business”.

6 **198 Subsection 15A(3)**

7 Omit “an ADI under”, substitute “a body corporate under”.

8 **199 Subsection 15A(3)**

9 Omit “the ADI appointed”, substitute “the body corporate appointed”.

10 **200 Subsection 15A(3)**

11 Omit “the ADI’s business” (wherever occurring), substitute “the body  
12 corporate’s business”.

13 **201 Subsection 15A(3)**

14 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
15 manager”.

16 **202 Subsection 15A(4)**

17 Omit “an ADI that”, substitute “a body corporate that”.

18 **203 Subsection 15A(4)**

19 Omit “an ADI statutory manager” (wherever occurring), substitute “a  
20 Banking Act statutory manager”.

21 **204 Subsection 15A(4)**

22 Omit “the ADI’s business” (wherever occurring), substitute “the body  
23 corporate’s business”.

24 **205 Subsection 16(1)**

25 Omit “an ADI’s business” (wherever occurring), substitute “a body  
26 corporate’s business”.

# EXPOSURE DRAFT

Schedule 1 Amendment of the Banking Act 1959

Part 2 Consequential amendments

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1 **206 Subsection 16(1)**

2 Omit “the ADI’s funds”, substitute “the body corporate’s funds”.

3 **207 Subsection 16(2)**

4 Omit “an ADI”, substitute “a body corporate”.

5 **208 Subsection 16(2)**

6 Omit “the ADI”, substitute “the body corporate”.

7 **209 At the end of subsection 16(2)**

8 Add:

9 Note: Subsection 13A(3) applies if the body corporate is an ADI, and  
10 provides for priorities for the application of the ADI’s assets in  
11 Australia.

12 **210 Subsection 16A(1)**

13 Omit “ADI statutory managers”, substitute “Banking Act statutory  
14 managers”.

15 **211 Subsection 16A(1)**

16 Omit “specified ADIs”, substitute “specified bodies corporate”.

17 **212 Subsection 16A(2)**

18 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
19 manager”.

20 **213 Subsection 16A(2)**

21 Omit “an ADI’s business”, substitute “a body corporate’s business”.

22 **214 Subsection 16A(2)**

23 Omit “ADI statutory managers”, substitute “Banking Act statutory  
24 managers”.

25 **215 Subsection 16A(3)**

26 Omit “an ADI’s business” (wherever occurring), substitute “a body  
27 corporate’s business”.

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# EXPOSURE DRAFT

Amendment of the Banking Act 1959 **Schedule 1**  
Consequential amendments **Part 2**

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1 **216 Paragraph 16AA(a)**

2 Omit “an ADI under”, substitute “a body corporate under”.

3 **217 Paragraph 16AA(a)**

4 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
5 manager”.

6 **218 Paragraph 16AA(a)**

7 Omit “the ADI’s business”, substitute “the body corporate’s business”.

8 **219 Paragraph 16AA(b)**

9 Omit “an ADI as a direct result”, substitute “a body corporate as a direct  
10 result”.

11 **220 Subparagraph 16AA(b)(i)**

12 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
13 manager”.

14 **221 Subparagraph 16AA(b)(i)**

15 Omit “the ADI’s business”, substitute “the body corporate’s business”.

16 **222 Subparagraph 16AA(b)(ii)**

17 Omit “an ADI statutory manager”, substitute “a Banking Act statutory  
18 manager”.

19 **223 Subparagraph 16AA(b)(ii)**

20 Omit “the ADI’s business”, substitute “the body corporate’s business”.

21 **224 Section 31C (heading)**

22 Repeal the heading, substitute:

# EXPOSURE DRAFT

Schedule 1 Amendment of the Banking Act 1959

Part 2 Consequential amendments

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1 **31C Powers and obligations of Banking Act statutory manager or**  
2 **external administrator**

3 **225 Section 31C**

4 Omit “an ADI statutory manager”, substitute “Banking Act statutory  
5 manager”.

6 **226 Subsection 52A(2)**

7 Omit “related body corporate” (wherever occurring), substitute  
8 “whistleblower related body corporate”.

9 **227 Subsection 52A(3)**

10 Omit “*related body corporate*”, substitute “*whistleblower related body*  
11 *corporate*”.

12 **228 Paragraph 52E(1)(b)**

13 Omit “related body corporate” (wherever occurring), substitute  
14 “whistleblower related body corporate”.

15 **229 Paragraph 52E(1)(c)**

16 Omit “related body corporate” (wherever occurring), substitute  
17 “whistleblower related body corporate within the meaning of  
18 subsection 52A(3)”.

19 **230 Section 65 (heading)**

20 Repeal the heading, substitute:

21 **65 ADIs etc. may be directed to comply with Act**

22 **231 Subsection 65(1)**

23 Omit “Where an ADI or an authorised NOHC”, substitute “Where an  
24 ADI, an authorised NOHC or a subsidiary of an ADI or of an authorised  
25 NOHC”.

26 **232 Subsection 65(1)**

27 Omit “the ADI or NOHC” (wherever occurring), substitute “the ADI,  
28 NOHC or subsidiary”.

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# EXPOSURE DRAFT

Amendment of the Banking Act 1959 **Schedule 1**  
Application provisions **Part 3**

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1 **233 Subsection 65(2)**

2 Omit “the ADI or NOHC” (wherever occurring), substitute “the ADI,  
3 NOHC or subsidiary”.

4 **234 Subsection 65(3)**

5 Omit “the ADI or NOHC”, substitute “the ADI, NOHC or subsidiary”.

6 **235 Subsection 65(3)**

7 Omit “authorised NOHCs”, substitute “authorised NOHCs and such  
8 subsidiaries”.

9 **236 Subsection 65(4)**

10 Omit “the ADI or NOHC” (wherever occurring), substitute “the ADI,  
11 NOHC or subsidiary”.

12 **Part 3—Application provisions**

13 *[These provisions will be drafted following exposure.]*

# EXPOSURE DRAFT

Schedule 2 Amendment of the Insurance Act 1973

Part 1 Main amendments

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1 **Schedule 2—Amendment of the Insurance Act**  
2 **1973**

3 **Part 1—Main amendments**

4 ***Insurance Act 1973***

5 **1 After paragraph 2A(e)**

6 Insert:

- 7 (ea) providing for statutory management of general insurers and  
8 related entities, so as to protect the interests of policyholders  
9 and financial system stability in Australia; and

10 **2 Subsection 3(1)**

11 Insert:

12 ***administrator***, of a body corporate's business, means an  
13 administrator appointed under subsection @13A-IA(1) to take  
14 control of the body corporate's business.

15 ***Australian business assets and liabilities***, of a foreign general  
16 insurer, has the meaning given by subsection 62ZVB(2).

17 ***Australian financial sector statutory manager*** (or ***AFS statutory***  
18 ***manager***) means:

- 19 (a) a Banking Act statutory manager (within the meaning of  
20 the *Banking Act 1959*); or  
21 (b) an Insurance Act statutory manager; or  
22 (c) a Life Insurance Act statutory manager (within the  
23 meaning of the *Life Insurance Act 1995*).

24 ***direction under this Act*** means a direction under any of the  
25 following provisions:

- 26 (a) section 17;  
27 (b) section 27;  
28 (c) section 49R;  
29 (d) section 74;
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# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

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- 1 (e) section 76;  
2 (f) section 78;  
3 (g) section 103B.  
4 (h) section 104;

5 **3 Subsection 3(1) (paragraph (a) of the definition of *external***  
6 ***administrator*)**

7 Omit “or provisional liquidator”.

8 **4 Subsection 3(1) (paragraph (b) of the definition of *external***  
9 ***administrator*)**

10 Omit “a judicial manager”, substitute “a judicial manager or an  
11 Insurance Act statutory manager”.

12 **5 Subsection 3(1)**

13 Insert:

14 *financial market* has the meaning given by section 761A of the  
15 *Corporations Act 2001*.

16 *holding company*, of a body corporate, means another body  
17 corporate of which the first body corporate is a subsidiary.

18 *Insurance Act statutory manager* has meaning given by  
19 subsection @13A-IA(2).

20 *liquidator* includes a provisional liquidator.

21 *listing rules* has the meaning given by section 761A of the  
22 *Corporations Act 2001*.

23 **6 Subsection 3(1)**

24 Insert:

25 *NOHC/NOHC subsidiary* has the meaning given by  
26 subsection 103A(5).

27 **7 Subsection 3(1) (definition of *prudential matters*)**

28 Repeal the definition, substitute:

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# EXPOSURE DRAFT

Schedule 2 Amendment of the Insurance Act 1973

Part 1 Main amendments

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*prudential matters* means matters relating to:

- (a) the conduct of any part of the affairs of, or the structuring or organising of, a general insurer, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, in such a way as:
  - (i) to keep the general insurer, NOHC, group or member or members of the group in a sound financial position; or
  - (ii) to facilitate resolution of the general insurer, NOHC, group or member or members of the group; or
  - (iii) to protect the interests of policyholders of any general insurer; or
  - (iv) not to cause or promote instability in the Australian financial system; or
- (b) the conduct of any part of the affairs of a general insurer, an authorised NOHC, a relevant group of bodies corporate, or a particular member or members of such a group, with integrity, prudence and professional skill.

## 8 Subsection 3(1) (definition of *recapitalisation direction*)

Omit “subsection 103B(1)”, substitute “subsection 103B(1) or (1B)”.

## 9 Subsection 3(1)

Insert:

*related body corporate*, in relation to a body corporate, means:

- (a) in Part 5—a body corporate that is related to the first-mentioned body, as determined in accordance with section 50; and
- (b) otherwise—a body corporate that is related to the first-mentioned body, as determined in accordance with section 4B.

*relevant group of bodies corporate* has the meaning given by section 4A.

*resolution* means the process by which APRA and other relevant persons manage or respond to the failure or potential failure of an entity, including through the exercise of powers and functions under this Act or another law.

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# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

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1                    *transferred liabilities determination* means a determination under  
2                    section 6ZZMA(1).

## 3                    **10 Section 4**

4                    Repeal the section, substitute:

### 5                    **4 Meaning of subsidiary**

6                    For the purposes of this Act (except Part V), the question whether a  
7                    body corporate is a *subsidiary* of another body corporate is to be  
8                    determined in the same way as that question is determined for the  
9                    purposes of the *Corporations Act 2001*.

### 10                  **4A Meaning of relevant group of bodies corporate**

11                  For the purposes of this Act:

- 12                  (a) a general insurer and its subsidiaries together constitute a  
13                  *relevant group of bodies corporate*; and  
14                  (b) an authorised NOHC and its subsidiaries together also  
15                  constitute a *relevant group of bodies corporate*.

### 16                  **4B Determining whether bodies corporate are related to one another**

17                  For the purposes of this Act (except Part V), the question whether a  
18                  body corporate is related to another body corporate is to be  
19                  determined in the same way as that question is determined for the  
20                  purposes of the *Corporations Act 2001*.

## 21                  **11 Section 15 (heading)**

22                  Repeal the heading, substitute:

## 23                  **15 Revocation of authorisation etc.**

### 24                  **12 Subparagraph 15(1)(a)(iii)**

25                  Repeal of subparagraph, substitute:

- 26                  (ia) a requirement of a provision of another law of the  
27                  Commonwealth, if the provision is specified in the  
28                  regulations; or

# EXPOSURE DRAFT

Schedule 2 Amendment of the Insurance Act 1973

Part 1 Main amendments

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1 (iii) a direction under this Act to the insurer; or

## 2 **13 After paragraph 15(1)(f)**

3 Insert:

4 (fa) both of the following apply:

5 (i) the insurer is a foreign corporation within the meaning  
6 of paragraph 51(xx) of the Constitution;

7 (ii) an authorisation (however described) for the insurer to  
8 carry on insurance business in a foreign country has  
9 been revoked or otherwise withdrawn in that foreign  
10 country; or

## 11 **14 Paragraph 15(1)(g)**

12 Omit “authority”, substitute “authorisation”.

## 13 **15 Subparagraph 21(1)(a)(iii)**

14 Repeal of subparagraph, substitute:

15 (iii) a direction under this Act to the authorised NOHC; or

## 16 **16 At the end of Division 4 of Part III**

17 Add:

## 18 **23A APRA may give notice to ensure that general insurer has an** 19 **authorised NOHC**

20 (1) This section applies if:

21 (a) a body corporate is a holding company of a general insurer;  
22 and

23 (b) the general insurer is not a subsidiary of an authorised  
24 NOHC.

25 (2) APRA may by notice in writing to the body corporate, require it to  
26 ensure, in accordance with the conditions (if any) specified in the  
27 notice, that either of the following occurs:

28 (a) the body corporate becomes an authorised NOHC of the  
29 general insurer;

# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

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- 1 (b) a subsidiary of the body corporate becomes an authorised  
2 NOHC of the general insurer.
- 3 Note: See Part 4A of the *Financial Sector (Business Transfer and Group*  
4 *Restructure) Act 1999* for other provisions that deal with a restructure  
5 arrangement to make an operating body a subsidiary of a NOHC.
- 6 (3) The notice may deal with the time by which, or period during  
7 which, it is to be complied with.
- 8 (4) The body corporate has power to comply with the notice despite  
9 anything in its constitution or any contract or arrangement to which  
10 it is a party.
- 11 (5) APRA may, by notice in writing to the body corporate, vary the  
12 notice mentioned in subsection (2) if, at the time of the variation, it  
13 considers that the variation is necessary and appropriate.
- 14 (6) The notice mentioned in subsection (2) has effect until APRA  
15 revokes it by notice in writing to the body corporate. APRA may  
16 revoke the notice mentioned in subsection (2) if, at the time of  
17 revocation, it considers that the notice is no longer necessary or  
18 appropriate.
- 19 (7) Part VI applies to a decision to give a notice under subsection (2).
- 20 (8) Section 108 applies in relation to a notice to a body corporate  
21 under subsection (2) in the same way in which it applies to a  
22 direction to a general insurer under section 104.
- 23 (9) However, section 108 does not apply to a contravention by a body  
24 corporate of a requirement in a notice under subsection (2) if:  
25 (a) the contravention happens merely because APRA refuses to  
26 authorise the body corporate (or its subsidiary) under  
27 section 18; and  
28 (b) APRA's reasons for that refusal do not include the reason  
29 that one or more conditions specified in the notice are not  
30 satisfied.

## 17 Subparagraph 32(3)(a)(iv)

Omit "NOHCs; or", substitute "NOHCs;".

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# EXPOSURE DRAFT

Schedule 2 Amendment of the Insurance Act 1973

Part 1 Main amendments

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1 **18 After subparagraph 32(3)(a)(iv)**

2 Insert:

- 3 (v) each subsidiary of a general insurer or of an authorised  
4 NOHC; or  
5 (vi) each subsidiary of a general insurer or of an authorised  
6 NOHC, included in a specified class of subsidiaries; or

7 **19 After Division 1 of Part IIIA**

8 Insert:

9 **Division 2—Conversion and write-off provisions**

10 **36A Definitions**

11 In this Subdivision:

12 conversion and write-off provisions means the provisions of the  
13 prudential standards that relate to the conversion or writing off of:

- 14 (a) Additional Tier 1 and Tier 2 capital; or  
15 (b) any other instrument.

16 **conversion entity:** an entity (the *first entity*) is a **conversion entity**  
17 for an instrument if:

- 18 (a) the instrument is issued by another entity; and  
19 (b) the instrument converts, in accordance with the terms of the  
20 instrument, into one or more ordinary shares of the first entity  
21 for the purposes of the conversion and write-off provisions.

22 **converts:** an instrument **converts** into one or more ordinary shares  
23 of an entity including by redeeming or cancelling the instrument  
24 and replacing the instrument with ordinary shares.

25 **related subsidiary** of a general insurer means a subsidiary of a  
26 holding company of the general insurer.

27 **specified law** means any of the following:

- 28 (a) the *Financial Sector (Shareholdings) Act 1998*;  
29 (b) the *Foreign Acquisitions and Takeovers Act 1975*;  
30 (c) Chapter 6 of the *Corporations Act 2001* (takeovers);
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# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

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- 1 (d) any other Australian law, or law of a foreign country or part  
2 of a foreign country, prescribed by the regulations for the  
3 purposes of this paragraph.

## 4 **36B Conversion and write-off provisions**

### 5 *Application*

- 6 (1) This section applies in relation to an instrument that contains terms  
7 that are for the purposes of the conversion and write-off provisions  
8 and that is issued by:  
9 (a) a general insurer; or  
10 (b) a holding company of a general insurer; or  
11 (c) a subsidiary or related subsidiary of a general insurer; or  
12 (d) an entity of a kind prescribed by the regulations for the  
13 purposes of this paragraph.

### 14 *Conversion of instrument despite other laws etc.*

- 15 (2) The instrument may be converted in accordance with the terms of  
16 the instrument despite:  
17 (a) any Australian law or any law of a foreign country or a part  
18 of a foreign country, other than a specified law; and  
19 (b) the constitution of the entity issuing the instrument, or any  
20 conversion entity for the instrument; and  
21 (c) any contract or arrangement to which the entity issuing the  
22 instrument, or any conversion entity for the instrument, is a  
23 party; and  
24 (d) any listing rules of a financial market in whose official list  
25 the entity issuing the instrument, or any conversion entity for  
26 the instrument, is included.

### 27 *Write-off of instrument despite other laws etc.*

- 28 (3) The instrument may be written off in accordance with the terms of  
29 the instrument despite:  
30 (a) any Australian law or any law of a foreign country or a part  
31 of a foreign country; and  
32 (b) the constitution of the entity issuing the instrument; and
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# EXPOSURE DRAFT

Schedule 2 Amendment of the Insurance Act 1973

Part 1 Main amendments

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- 1 (c) any contract or arrangement to which the entity issuing the  
2 instrument is a party; and  
3 (d) any listing rules of a financial market in whose official list  
4 the entity issuing the instrument is included.

## 5 **36C Conversion or write-off etc. not grounds for denial of** 6 **obligations**

- 7 (1) This section applies if an entity (the *first entity*) is party to a  
8 contract, whether the proper law of the contract is:  
9 (a) Australian law (including the law of a State or Territory); or  
10 (b) law of a foreign country (including the law of part of a  
11 foreign country).
- 12 (2) None of the matters mentioned in subsection (3) allows the  
13 contract, or a party to the contract, to do any of the following:  
14 (a) deny any obligation under the contract;  
15 (b) accelerate any debt under the contract;  
16 (c) close out any transaction relating to the contract;  
17 (d) enforce any security under the contract.  
18 This subsection has effect subject to subsection (4).
- 19 (3) The matters are as follows:  
20 (a) a relevant instrument being converted for the purposes of the  
21 conversion and write-off provisions;  
22 (b) a relevant instrument being written off for the purposes of the  
23 conversion and write-off provisions;  
24 (c) the occurrence of an event (which may be the making of a  
25 determination (however described) by APRA) that results in  
26 a relevant instrument being required to be converted or  
27 written off for the purposes of the conversion and write-off  
28 provisions.
- 29 (4) Subsection (2) does not prevent the first entity:  
30 (a) denying an obligation to another entity; or  
31 (b) accelerating a debt to an another entity; or  
32 (c) closing out a transaction with another entity; or  
33 (d) enforcing a security against another entity;
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# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

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1 unless the first entity is a body corporate and the other entity is a  
2 related body corporate of the first entity.

3 (5) In this section:

4 ***relevant instrument*** means an instrument to which section 36B  
5 applies:

6 (a) that is issued by the first entity, or for which the first entity is  
7 a conversion entity; or

8 (b) if the first entity is a body corporate:

9 (i) that is issued by a related body corporate of the first  
10 entity; or

11 (ii) for which a related body corporate of the first entity is a  
12 conversion entity.

## 13 **20 Section 49C**

14 Repeal the section.

## 15 **21 At the end of section 50**

16 Add:

17 (3) The question whether bodies corporate are related to each other for  
18 the purposes of this Part is to be determined in the same way as the  
19 question whether bodies corporate are related to each other would  
20 be determined under the *Corporations Act 2001* if, in section 46 of  
21 that Act:

22 (a) the reference to a body corporate that is in a position to cast,  
23 or control the casting of, more than one-half of the maximum  
24 number of votes that might be cast at a general meeting of  
25 another body corporate were a reference to a body corporate  
26 that is in a position to cast, or control the casting of, more  
27 than one-quarter of that number of votes; and

28 (b) the reference to a body corporate holding more than one-half  
29 of the issued share capital of another body corporate were a  
30 reference to a body corporate holding more than one-quarter  
31 of the issued share capital of another body corporate.

## 32 **22 Section 62L (Note)**

33 Repeal the note, substitute:

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# EXPOSURE DRAFT

Schedule 2 Amendment of the Insurance Act 1973

Part 1 Main amendments

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1 Note: This section and other provisions relating to judicial management do  
2 not apply to the aspects described in subsection 62ZVB(1) of the  
3 business and management of a foreign general insurer.

## 4 **23 Section 62M (Note 1)**

5 Repeal the note, substitute:

6 Note 1: This section and other provisions relating to judicial management do  
7 not apply to the aspects described in subsection 62ZVB(1) of the  
8 business and management of a foreign general insurer.

## 9 **24 Section 62M**

10 Before “On an application”, insert “(1)”.

## 11 **25 Subparagraph 62M(a)(i)**

12 Before “the general insurer”, insert “in the absence of external  
13 support,”.

## 14 **26 Subparagraph 62M(a)(ii)**

15 After “the general insurer is a foreign general insurer and”, insert “, in  
16 the absence of external support,”.

## 17 **27 After subparagraph 62M(a)(iv)**

18 Insert:

- 19 ; or (iva) an external administrator has been appointed to a  
20 holding company of the general insurer (or a similar  
21 appointment has been made in a foreign country in  
22 respect of such a holding company), and the  
23 requirement in subsection (2) is satisfied; or  
24 (ivb) if the general insurer is a foreign general insurer—an  
25 application for the appointment of an external  
26 administrator of the foreign general insurer, or for a  
27 similar procedure in respect of the foreign general  
28 insurer, has been made in a foreign country;  
29 (ivc) if the general insurer is a foreign general insurer—an  
30 external administrator has been appointed to the foreign  
31 general insurer, or a similar appointment has been made  
32 in respect of the foreign general insurer, in a foreign  
33 country; or

# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

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1 **28 Section 62M (Note 1)**

2 Repeal the note, substitute:

3 Note: This section and other provisions relating to judicial management do  
4 not apply to the aspects described in subsection 62ZVB(1) of the  
5 business and management of a foreign general insurer.

6 **29 At the end of section 62M**

7 Add:

- 8 (2) For the purposes of subparagraph (1)(iva), the requirement in this  
9 subsection is that the appointment mentioned in that subparagraph  
10 poses a significant threat to:  
11 (a) the operation or soundness of the general insurer; or  
12 (b) the interests of policyholders of the general insurer; or  
13 (c) the stability of the financial system in Australia.
- 14 (3) The regulations may specify that a particular form of support for a  
15 general insurer is not to be considered external support for the  
16 purposes of subparagraphs (1)(a)(i) and (ii).

17 **30 Section 62P**

18 Repeal the section, substitute:

19 **62P Moratorium—effect of judicial management on court and**  
20 **tribunal proceedings**

- 21 (1) A person cannot begin or continue a proceeding in a court or  
22 tribunal covered by subsection (7) in respect of a general insurer if  
23 the general insurer is under judicial management.
- 24 (2) Subsection (1) does not apply if:  
25 (a) the court or tribunal grants leave for the proceedings to be  
26 begun or continued on the ground that the person would be  
27 caused hardship if leave were not granted; and  
28 (b) the beginning or continuing of the proceedings is in  
29 accordance with such terms (if any) as the court or tribunal  
30 imposes.

# EXPOSURE DRAFT

## Schedule 2 Amendment of the Insurance Act 1973

### Part 1 Main amendments

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- 1 (3) A person intending to apply for leave of the court under  
2 paragraph (2)(a) must give APRA and the judicial manager at least  
3 10 days notice of the intention to apply (or a shorter period, if the  
4 court or tribunal considers that exceptional circumstances make  
5 this necessary).
- 6 (4) APRA may apply to the court to be joined as a party to the  
7 proceedings for leave. If APRA is joined as a party, the court or  
8 tribunal must have regard to APRA's views in deciding:  
9 (a) whether to grant leave under paragraph (2)(a); and  
10 (b) if the court or tribunal decides to grant the leave—whether to  
11 impose terms as mentioned in paragraph (2)(b); and  
12 (c) if the court or tribunal decides to impose such terms— the  
13 nature of those terms.
- 14 (4A) The judicial manager may apply to the court to be joined as a party  
15 to the proceedings for leave. If the judicial manager is joined as a  
16 party, the court or tribunal must have regard to the judicial  
17 manager's views in deciding:  
18 (a) whether to grant leave under paragraph (2)(a); and  
19 (b) if the court or tribunal decides to grant the leave—whether to  
20 impose terms as mentioned in paragraph (2)(b); and  
21 (c) if the court or tribunal decides to impose such terms— the  
22 nature of those terms.
- 23 (5) Subsection (1) also does not apply if the judicial manager, after  
24 considering APRA's views, consents to the proceedings beginning  
25 or continuing.
- 26 (6) The judicial manager cannot revoke a consent given for the  
27 purposes of subsection (5).
- 28 (6A) The judicial manager is not liable to an action or other proceedings  
29 for damages in respect of a refusal to give consent under  
30 subsection (5).
- 31 (7) A proceeding in a court or tribunal is covered by this subsection in  
32 respect of a general insurer if it is any of the following:  
33 (a) a proceeding against the general insurer (including a  
34 cross-claim or third party claim against the general insurer);
-

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- 1 (b) a proceeding in relation to property of the general insurer;  
2 (c) a proceeding to enforce any security (including a mortgage or  
3 charge) over any property that the general insurer owns, uses,  
4 possesses, occupies or in which the general insurer otherwise  
5 has an interest.
- 6 (8) Subsection (7) does not cover a proceeding in respect of an offence  
7 or a contravention of a provision of a law for which a pecuniary  
8 penalty (however described) may be imposed.
- 9 (9) In this section, a reference to a tribunal includes a reference to the  
10 following:  
11 (a) an industrial tribunal;  
12 (b) an arbitral tribunal.

## 13 **62PA Moratorium—effect of judicial management on enforcement** 14 **process regarding property**

- 15 (1) No enforcement process in relation to property of a general insurer  
16 can be begun or proceeded with if the general insurer is under  
17 judicial management.
- 18 (2) Subsection (1) does not apply if:  
19 (a) the Federal Court grants leave for the process to be begun or  
20 continued on the ground that the person would be caused  
21 hardship if leave were not granted; or  
22 (b) the beginning or continuing of the process is in accordance  
23 with such terms (if any) as the Federal Court imposes.
- 24 (3) A person intending to apply for leave of the Federal Court under  
25 paragraph (2)(a) must give APRA and the judicial manager at least  
26 10 days notice of the intention to apply (or a shorter period, if the  
27 Federal Court considers that exceptional circumstances make this  
28 necessary).
- 29 (3A) APRA may apply to the Federal Court to be joined as a party to the  
30 proceedings for leave. If APRA is joined as a party, the Federal  
31 Court must have regard to APRA's views in deciding:  
32 (a) whether to grant leave under paragraph (2)(a); and

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- 1 (b) if the Federal Court decides to grant the leave—whether to  
2 impose terms as mentioned in paragraph (2)(b); and  
3 (c) if the Federal Court decides to impose such terms— the  
4 nature of those terms.
- 5 (3B) The judicial manager may apply to the Federal Court to be joined  
6 as a party to the proceedings for leave. If the judicial manager is  
7 joined as a party, the Federal Court must have regard to the judicial  
8 manager’s views in deciding:  
9 (a) whether to grant leave under paragraph (2)(a); and  
10 (b) if the Federal Court decides to grant the leave—whether to  
11 impose terms as mentioned in paragraph (2)(b); and  
12 (c) if the Federal Court decides to impose such terms— the  
13 nature of those terms.
- 14 (4) Subsection (1) also does not apply if the judicial manager consents  
15 to the process beginning or continuing.
- 16 (5) The judicial manager cannot revoke a consent given for the  
17 purposes of subsection (4).
- 18 (6) The judicial manager is not liable to an action or other proceedings  
19 for damages in respect of a refusal to give consent under  
20 subsection (4).

## 21 **62PB Moratorium—effect of judicial management on disposal of** 22 **property**

- 23 (1) A person must not dispose of property if:  
24 (a) the property is owned by another person; and  
25 (b) the other person is a general insurer; and  
26 (c) the general insurer is under judicial management.
- 27 Note: The Federal Court may grant an injunction under section 129D in  
28 respect of a contravention of this subsection.
- 29 (2) Subsection (1) does not apply if the judicial manager consents to  
30 the disposal.

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- 1 (3) The judicial manager is not liable to an action or other proceedings  
2 for damages in respect of a refusal to give consent under  
3 subsection (2).

4 **62PC Moratorium—Restrictions on exercise of third party property**  
5 **rights**

- 6 (1) Section 440B of the *Corporations Act 2001* applies during a period  
7 in which a general insurer is under judicial management in the  
8 same way it applies during the administration of a company.

- 9 (2) For the purposes of this section, treat the reference in  
10 paragraph 440B(2)(a) of the *Corporations Act 2001* to the  
11 administrator's written consent as being a reference to the judicial  
12 manager's written consent.

- 13 (2A) The judicial manager is not liable to an action or other proceedings  
14 for damages in respect of a refusal to give consent as mentioned in  
15 subsection (2).

- 16 (3) This section applies despite sections 62P, 62PA and 62PB.

17 **62PD Moratorium—effect of judicial management on supply of**  
18 **essential services**

- 19 (1) If:  
20 (aa) a general insurer is under judicial management; and  
21 (a) the judicial manager requests, or authorises someone else to  
22 request, a person or authority (the *supplier*) to supply an  
23 essential service to the general insurer in Australia; and  
24 (b) the general insurer owes an amount to the supplier in respect  
25 of the supply of the essential service before the day on which  
26 the judicial manager took control of the general insurer's  
27 business;  
28 the supplier must not:  
29 (c) refuse to comply with the request for the reason only that the  
30 amount is owing; or  
31 (d) make it a condition of the supply of the essential service  
32 pursuant to the request that the amount is to be paid.
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1 Note: The Federal Court may grant an injunction under section 129D in  
2 respect of a contravention of this subsection.

3 (2) In this section:

4 *essential service* has the same meaning as in section 600F of the  
5 *Corporations Act 2001*.

#### 6 **62PE Moratorium—effect of judicial management on annual** 7 **general meeting**

8 (1) This section applies to a general insurer that is required under  
9 section 250N or section 601BR of the *Corporations Act 2001* to  
10 hold an annual general meeting within a particular period.

11 (2) Despite section 250N and section 601BR of that Act, if the general  
12 insurer is under judicial management at the end of that period, the  
13 general insurer need not hold that annual general meeting.

#### 14 **31 Section 62Q**

15 Repeal the section.

#### 16 **32 After subsection 62R(1)**

17 Insert:

18 (1A) If, subsequent to that order, a situation arises where there is no  
19 judicial manager of the general insurer, or it appears to the Federal  
20 Court that it is likely that such a situation will arise, the Federal  
21 Court may appoint another judicial manager of the general insurer.

22 (1B) If the Federal Court appoints two or more judicial managers of a  
23 general insurer, or appoints one or more additional judicial  
24 managers of a general insurer:

25 (a) except to the extent (if any) specified in a declaration by the  
26 Federal Court under paragraph (b), the functions and powers  
27 under this Act of a judicial manager of the general insurer  
28 may be performed or exercised by:

29 (i) all of the judicial managers of the general insurer acting  
30 jointly; or



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- 1 (ii) each of the judicial managers of the general insurer  
2 acting individually; and  
3 (b) at the time of appointment, the Federal Court may make a  
4 declaration for the purposes of paragraph (a), specifying  
5 limits or conditions on the judicial managers' ability to  
6 perform functions and exercise powers jointly or  
7 individually; and  
8 (c) treat a reference in this Act to a judicial manager as being a  
9 reference to whichever one or more of those judicial  
10 managers the case requires.

### 11 **33 Subsection 62R(2)**

12 Repeal the subsection, substitute:

- 13 (2) The Federal Court may cancel the appointment of a judicial  
14 manager and appoint another person as judicial manager:  
15 (a) on application by APRA; or  
16 (b) of its own motion.

### 17 **34 Subsection 62R(3)**

18 Omit "However,".

### 19 **35 Section 62T (heading)**

20 Repeal the heading, substitute:

### 21 **62T Effect of judicial management on powers of officers etc.**

### 22 **36 Subsection 62T(1)**

23 Repeal the subsection, substitute:

- 24 (1) Subject to subsections (2) and (3), if the Federal Court has made an  
25 order placing a general insurer under judicial management:  
26 (a) at the time the judicial management commences:  
27 (i) a person with the powers and functions of an officer of  
28 the general insurer immediately before that time ceases  
29 to have those powers and functions; and  
30 (ii) if the general insurer is a foreign general insurer and  
31 there is a person with the powers and functions of an

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- 1 agent of the general insurer for the purposes of  
2 section 118 immediately before that time—the person  
3 ceases to have those powers and functions; and  
4 (iii) the judicial manager appointed by the Court starts to  
5 have the powers and functions mentioned in  
6 subparagraph (i) (and, if applicable, subparagraph (ii));  
7 and  
8 (b) while the general insurer is under judicial management:  
9 (i) if a person mentioned in subparagraph (a)(i) or (ii)  
10 purports to act in relation to the general insurer’s  
11 business, the purported act is invalid and of no effect;  
12 and  
13 (ii) the judicial manager has the powers and functions of the  
14 members of the board of directors of the general insurer  
15 (collectively and individually), including the board’s  
16 powers of delegation.

17 (1A) Subsection (1) does not remove an officer or agent of the general  
18 insurer from office.

## 19 **37 Subsection 62T(3) (note)**

20 Repeal the note, substitute:

21 Note: This section and other provisions relating to statutory management do  
22 not apply to the aspects described in subsection 62ZVB(1) of the  
23 business and management of a foreign general insurer.

## 24 **38 At the end of section 62T**

25 Add:

26 (3) In this section, *officer* has the same meaning as it has in the  
27 *Corporations Act 2001*.

## 28 **39 Subsection 62U(1)**

29 Omit “when the management of the general insurer vests in the judicial  
30 manager appointed by the Federal Court”, substitute “when the judicial  
31 management of the general insurer commences”.

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1 **40 Subsection 62U(2)**

2 Omit “while the management of the general insurer is vested in the  
3 judicial manager appointed by the Federal Court”, substitute “while the  
4 general insurer is under judicial management”.

5 **41 Subsection 62U(3)**

6 Omit “while the management of the general insurer is vested in a  
7 judicial manager”, substitute “while the general insurer is under judicial  
8 management”.

9 **42 Subsection 62U(4)**

10 Omit “that the management of the general insurer vests in the judicial  
11 manager when the judicial management commences”, substitute “that  
12 the general insurer is under judicial management”.

13 **43 Section 62V**

14 Repeal the section, substitute:

15 **62V Judicial management not ground for denial of obligations**

16 (1) This section applies if a body corporate is party to a contract,  
17 whether the proper law of the contract is:

- 18 (a) Australian law (including the law of a State or Territory); or  
19 (b) law of a foreign country (including the law of part of a  
20 foreign country).

21 (2) None of the matters mentioned in subsection (3) allows the  
22 contract, or a party to the contract, to do any of the following:

- 23 (a) deny any obligations under the contract;  
24 (b) accelerate any debt under the contract;  
25 (c) close out any transaction relating to the contract;  
26 (d) enforce any security under the contract.

27 This subsection has effect subject to subsection (4).

28 (3) The matters are as follows:

- 29 (a) if the body corporate is a general insurer—the making by the  
30 Federal Court of an order that the body corporate be placed  
31 under judicial management;
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- 1 (b) if the body corporate is a general insurer—the  
2 commencement of the judicial management of the body  
3 corporate;  
4 (c) the making by the Federal Court of an order that a general  
5 insurer that is a related body corporate of the body corporate  
6 be placed under judicial management;  
7 (d) the commencement of the judicial management of a general  
8 insurer that is a related body corporate of the body corporate.
- 9 (4) Subsection (2) does not prevent the body corporate doing any of  
10 the following:  
11 (a) denying an obligation to an entity that is not a related body  
12 corporate of the body corporate;  
13 (b) accelerating a debt to an entity that is not a related body  
14 corporate of the body corporate;  
15 (c) closing out a transaction with an entity that is not a related  
16 body corporate of the body corporate;  
17 (d) enforcing a security against an entity that is not a related  
18 body corporate of the body corporate.

#### 19 **44 Section 62W**

20 Before “The appointment of”, insert “(1)”.

#### 21 **45 Section 62W**

22 Omit “The appointment of a judicial manager under this Part does not  
23 affect”, substitute “None of the matters mentioned in subsection (2)  
24 affect”.

#### 25 **46 At the end of section 62W**

26 Add:

- 27 (2) The matters are as follows:  
28 (a) the making by the Federal Court of an order that the general  
29 insurer be placed under judicial management;  
30 (b) the commencement of the judicial management of the general  
31 insurer.

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1 **47 Paragraph 62Z(4)(a)**

2 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
3 of section 127B of this Act)”.

4 **48 Paragraph 62Z(4)(d)**

5 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
6 financial market (as defined in that section)”, substitute “of a financial  
7 market”.

8 **49 Section 62ZB**

9 Repeal the section, substitute:

10 **62ZB Act under section 62Z not ground for denial of obligations**

11 (1) This section applies if a body corporate is party to a contract,  
12 whether the proper law of the contract is:

- 13 (a) Australian law (including the law of a State or Territory); or  
14 (b) law of a foreign country (including the law of part of a  
15 foreign country).

16 (2) None of the matters mentioned in subsection (3) allows the  
17 contract, or a party to the contract, to do any of the following:

- 18 (a) deny any obligations under the contract;  
19 (b) accelerate any debt under the contract;  
20 (c) close out any transaction relating to the contract;  
21 (d) enforce any security under the contract.

22 This subsection has effect subject to subsection (4).

23 (3) The matters are as follows:

- 24 (a) if the body corporate is a general insurer—a judicial manager  
25 doing an act under subsection 62Z(1) relating to the body  
26 corporate;  
27 (b) a judicial manager doing an act under subsection 62Z(1)  
28 relating to a general insurer that is a related body corporate of  
29 the body corporate.

30 (4) Subsection (2) does not prevent the body corporate doing any of  
31 the following:

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- 1 (a) denying an obligation to an entity that is not a related body  
2 corporate of the body corporate;  
3 (b) accelerating a debt to an entity that is not a related body  
4 corporate of the body corporate;  
5 (c) closing out a transaction with an entity that is not a related  
6 body corporate of the body corporate;  
7 (d) enforcing a security against an entity that is not a related  
8 body corporate of the body corporate.

## 9 **50 Subsection 62ZF(5)**

10 Repeal the subsection, substitute:

- 11 (5) At the time when an order cancelling the judicial management of  
12 the general insurer comes into force:  
13 (a) the judicial manager ceases to have the powers and functions  
14 of an officer of the general insurer; and  
15 (b) the board of directors or other governing body of the general  
16 insurer starts to have those powers.

## 17 **51 Paragraph 62ZI(2)(aa)**

18 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
19 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
20 *1999*”.

## 21 **52 After paragraph 62ZI(2)(aa)**

22 Insert:

- 23 (ab) to transfer shares in the company to another company under  
24 section 25AA of the *Financial Sector (Transfer and*  
25 *Restructure) Act 1999*;

## 26 **53 Subparagraph 62ZJ(3)(b)(i)**

27 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
28 of section 127B of this Act)”.

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1 **54 Subparagraph 62ZJ(3)(b)(iv)**

2 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
3 financial market (as defined in that section)”, substitute “of a financial  
4 market”.

5 **55 Subsection 62ZK(2)**

6 Omit “the management of the general insurer continues to be vested in  
7 the judicial manager”, substitute “the general insurer continues to be  
8 under judicial management”.

9 **56 Subsection 62ZM**

10 Repeal the section, substitute:

11 **62ZM Immunity**

- 12 (1) A judicial manager, or a person acting on behalf of a judicial  
13 manager, is not subject to any liability (whether civil or criminal)  
14 in respect of anything done, or omitted to be done, in the exercise  
15 or performance, or the purported exercise or performance, of  
16 powers, functions or duties conferred or imposed on the judicial  
17 manager by or under this Act.
- 18 (2) Subsection (1) does not apply to an act or omission in bad faith.
- 19 (3) A judicial manager is not liable under section 588G of the  
20 *Corporations Act 2001*. This subsection does not limit the scope of  
21 subsection (1).
- 22 (4) Subsection (1) does not limit, and is not limited by any of the  
23 following provisions:  
24 (a) *[provisions to be listed at a later stage]*;  
25 (b) section 58 of the *Australian Prudential Regulation Authority*  
26 *Act 1998*.
- 27 *Signpost to secrecy obligations*
- 28 (5) Part 6 of the *Australian Prudential Regulation Authority Act 1998*  
29 prohibits certain disclosures of information received by judicial  
30 managers under this Act.

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1 **57 Section 62ZO**

2 Repeal the section.

3 **58 Part VB (heading)**

4 Repeal the heading, substitute:

5 **Part VB—Judicial management, statutory**  
6 **management, other external administration**  
7 **and winding up**

8 **59 After Division 1 of Part VB**

9 Insert:

10 **Division 1A—Statutory management of general insurers**

11 **Subdivision A—General provisions relating to statutory**  
12 **management**

13 *[The following provisions will be renumbered in the final version of the*  
14 *legislation.*

15 **@13A-IA Consequences of inability or failure of general insurer etc.**  
16 **to meet certain requirements**

17 *Appointment of administrator or control by APRA*

18 (1) APRA may take control of a general insurer's business or appoint  
19 an administrator to take control of the general insurer's business if  
20 both of the following requirements are met:

21 (a) APRA is satisfied of the matters of which the Federal Court  
22 is required to be satisfied for the purposes of section 62L or  
23 62M;

24 (b) subsection (1A) applies.

25 (1A) This subsection applies if APRA is satisfied that at least one of the  
26 following situations exists:

27 (a) both:

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- 1 (i) an AFS statutory manager has taken control of a body  
2 corporate under this Act, the *Banking Act 1959* or the  
3 *Life Insurance Act 1995* (or APRA intends for that to  
4 occur); and  
5 (ii) the general insurer and the body corporate are related  
6 bodies corporate;  
7 (b) both:  
8 (i) the general insurer's financial position is deteriorating  
9 rapidly, or is likely to deteriorate rapidly; and  
10 (ii) failure to respond quickly to the deterioration would be  
11 likely to prejudice the interests of policyholders of the  
12 insurer;  
13 (c) it is likely that the insurer will be unable to carry on  
14 insurance business in Australia consistently with the stability  
15 of the financial system in Australia;  
16 (d) an external administrator has been appointed to a holding  
17 company of the general insurer (or a similar appointment has  
18 been made in a foreign country in respect of such a holding  
19 company), and the appointment poses a significant threat to:  
20 (i) the operation or soundness of the general insurer; or  
21 (ii) the interests of policyholders of the general insurer; or  
22 (iii) the stability of the financial system in Australia; or  
23 (e) if the general insurer is a foreign general insurer:  
24 (i) an application for the appointment of an external  
25 administrator of the foreign general insurer, or for a  
26 similar procedure in respect of the foreign general  
27 insurer, has been made in a foreign country;  
28 (ii) an external administrator has been appointed to the  
29 foreign general insurer, or a similar appointment has  
30 been made in respect of the foreign general insurer, in a  
31 foreign country.

32 *Appointment of administrator, or control by APRA*

- 33 (1B) APRA may take any of the actions mentioned in subsection (1C) in  
34 relation to a body corporate (the *target body corporate*) if:  
35 (a) the target body corporate is a body corporate that is any of  
36 the following:

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- 1 (i) an authorised NOHC of a general insurer (the *relevant*  
2 *general insurer*);
- 3 (ii) a subsidiary of an authorised NOHC of a general insurer  
4 (also the *relevant general insurer*);
- 5 (iii) a subsidiary of a general insurer (also the *relevant*  
6 *general insurer*); and
- 7 (b) the condition in subsection (1D), (1E) or (1F) is satisfied; and
- 8 (c) the target body corporate is not a body corporate of a kind  
9 specified in regulations (if any) made for the purposes of this  
10 paragraph.
- 11 (1C) The actions are as follows:
- 12 (a) taking control of the business of the target body corporate;
- 13 (b) appointing an administrator to take control of the business of  
14 the target body corporate.
- 15 (1D) The condition in this subsection is satisfied if:
- 16 (a) either:
- 17 (i) an Insurance Act statutory manager has taken control of  
18 the relevant general insurer; or
- 19 (ii) the conditions in paragraphs (1)(a) and (b) are satisfied  
20 in relation to the relevant general insurer, and APRA  
21 intends that an Insurance Act statutory manager will  
22 take control of the relevant general insurer; and
- 23 (b) APRA considers that the target body corporate provides  
24 services that are, or conducts business that is, essential to the  
25 capacity of the relevant general insurer to maintain its  
26 operations.
- 27 (1E) The condition in this subsection is satisfied if:
- 28 (a) either:
- 29 (i) an Insurance Act statutory manager has taken control of  
30 the relevant general insurer; or
- 31 (ii) the conditions in paragraphs (1)(a) and (b) are satisfied  
32 in relation to the relevant general insurer, and APRA  
33 intends that an Insurance Act statutory manager will  
34 take control of the relevant general insurer; and
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- 1 (b) APRA considers that it is necessary for an Insurance Act  
2 statutory manager to take control of the target body  
3 corporate, in order to facilitate the resolution of any of the  
4 following:
- 5 (i) the relevant general insurer;  
6 (ii) an authorised NOHC of the relevant general insurer;  
7 (iii) a relevant group of bodies corporate of which the  
8 relevant general insurer is a member;  
9 (iv) a particular member or particular members of such a  
10 group.
- 11 (1F) The condition in this subsection is satisfied if:
- 12 (a) there is an external administrator of the target body  
13 corporate, or APRA considers that, in the absence of external  
14 support:
- 15 (i) the target body corporate may become unable to meet its  
16 obligations; or  
17 (ii) the target body corporate may suspend payment; and
- 18 (b) APRA considers that it is necessary to take an action  
19 mentioned in subsection (1C) in respect of the target body  
20 corporate in order to enable the relevant general insurer to  
21 maintain its operations, or in order to facilitate the resolution  
22 of any of the following:
- 23 (i) the relevant general insurer;  
24 (ii) an authorised NOHC of the relevant general insurer;  
25 (iii) a relevant group of bodies corporate of which the  
26 relevant general insurer is a member;  
27 (iv) a particular member or particular members of such a  
28 group.
- 29 (2) If:
- 30 (a) APRA is in control of a body corporate's business under this  
31 Subdivision—APRA is the ***Insurance Act statutory manager***  
32 of the body corporate; or  
33 (b) an administrator appointed by APRA is in control of a body  
34 corporate's business under this Subdivision—the  
35 administrator is the ***Insurance Act statutory manager*** of the  
36 body corporate.
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1 Note: This section and other provisions relating to statutory management do  
2 not apply to the aspects described in subsection 62ZVB(1) of the  
3 business and management of a foreign general insurer.

- 4 (2A) If APRA appoints two or more Insurance Act statutory managers  
5 of a body corporate, or appoints one or more additional Insurance  
6 Act statutory managers of a body corporate:
- 7 (a) the functions and powers under this Act of an Insurance Act  
8 statutory manager of the body corporate may be performed or  
9 exercised by:
- 10 (i) all of the Insurance Act statutory managers of the body  
11 corporate acting jointly; or
- 12 (ii) each of the Insurance Act statutory managers of the  
13 body corporate acting individually (except to the extent  
14 (if any) specified in a notice given by APRA under  
15 paragraph (b)); and
- 16 (b) at the time of appointment, APRA may give all of the  
17 Insurance Act statutory managers of the body corporate a  
18 notice in writing for the purposes of subparagraph (a)(ii),  
19 specifying limits or conditions on their ability to perform  
20 functions and exercise powers individually; and
- 21 (c) treat a reference in this Act to an Insurance Act statutory  
22 manager as being a reference to whichever one or more of  
23 those Insurance Act statutory managers the case requires.

#### 24 **@13BA-IA Start of control of body corporate's business by** 25 **Insurance Act statutory manager**

- 26 (1) After the decision that an Insurance Act statutory manager will  
27 take control of a body corporate's business is made, APRA must  
28 give the body corporate written notice that the Insurance Act  
29 statutory manager will take, or is taking, control of the business.

30 Note: Subsections @15A-IA(4) and @16A-IA(3) also require APRA to give  
31 notice of the taking of control.

- 32 (2) An Insurance Act statutory manager takes control of a body  
33 corporate's business:
- 34 (a) at the time specified in a notice under this section as the time  
35 when the Insurance Act statutory manager takes control of

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- 1 the business (which must not be earlier than the notice is  
2 given); or  
3 (b) if a notice under this section does not specify a time as the  
4 time when the Insurance Act statutory manager takes control  
5 of the business—at the time the notice is given.
- 6 (3) A notice under subsection (1) is not a legislative instrument.

## 7 **@13C-IA Insurance Act statutory managers—termination of** 8 **control**

### 9 *Conditions necessary for termination of control*

- 10 (1) If APRA assumes control of a body corporate's business or  
11 appoints an administrator of a body corporate's business, APRA  
12 must ensure that either it or an administrator of the body  
13 corporate's business has control of the body corporate's business  
14 until:  
15 (a) APRA considers that it is no longer necessary for it or an  
16 administrator to remain in control of the body corporate's  
17 business; or  
18 (b) APRA has applied for the body corporate to be wound up.  
19 A termination of control that is permitted under this section is  
20 called an *ultimate termination of control*.

21 Note: This provision does not prevent a change, or changes, between control  
22 of a body corporate's business by APRA and an administrator or  
23 between administrators.

### 24 *Events to precede termination*

- 25 (2) Before making an ultimate termination of control by an Insurance  
26 Act statutory manager of a body corporate's business, APRA must:  
27 (a) do both of the following:  
28 (i) ensure that directors of the body corporate have been  
29 appointed or elected under the body corporate's  
30 constitution at a meeting called by the statutory manager  
31 in accordance with the body corporate's constitution;

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- 1 (ii) if the body corporate is a foreign general insurer—  
2 appoint an agent in Australia for the purpose of  
3 section 118 by instrument in writing; or  
4 (b) do both of the following:  
5 (i) appoint directors of the body corporate by instrument in  
6 writing;  
7 (ii) if the body corporate is a foreign general insurer—  
8 appoint an agent in Australia for the purpose of  
9 section 118 by instrument in writing; or  
10 (c) ensure that a liquidator has been appointed:  
11 (i) unless subparagraph (ii) applies—for the body  
12 corporate; or  
13 (ii) if the body corporate is a foreign general insurer—for  
14 the body corporate in relation to its Australian business  
15 assets and liabilities.

16 *Power to terminate control*

- 17 (3) If the requirements in subsections (1) and (2) are satisfied, APRA  
18 may by instrument in writing make an ultimate termination of  
19 control of a body corporate's business by an Insurance Act  
20 statutory manager.  
21 (4) If the Insurance Act statutory manager at the time of the  
22 termination is an administrator, the instrument of termination also  
23 operates as a termination of the appointment of the administrator.  
24 A copy of the instrument must be given to the administrator.  
25 However, mere failure to give the copy to the administrator does  
26 not affect the termination of the appointment.

27 *Period of director's appointment*

- 28 (5) If a director is elected or appointed under subsection (2), the  
29 director takes office on the termination of the Insurance Act  
30 statutory manager's control of the body corporate's business. If the  
31 director was appointed by APRA, the director holds office until the  
32 body corporate's next annual general meeting, subject to any terms  
33 and conditions imposed by APRA on the director's appointment. If

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Amendment of the Insurance Act 1973 **Schedule 2**  
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1 the director was appointed or elected under the body corporate's  
2 constitution, the constitution governs the appointment.

3 Note: For further information about what happens when an Insurance Act  
4 statutory manager is in control of a body corporate's business, see  
5 Subdivision B.

6 **Subdivision B—Provisions dealing with control of a body**  
7 **corporate's business by an Insurance Act statutory**  
8 **manager**

9 **@14A-IA Insurance Act statutory manager's powers and functions**

10 *Insurance Act statutory manager's powers and functions include*  
11 *powers and functions of board*

12 (1) An Insurance Act statutory manager has the powers and functions  
13 of the members of the board of directors of the body corporate  
14 (collectively and individually), including the board's powers of  
15 delegation.

16 Note: When an Insurance Act statutory manager takes control of the  
17 business of a body corporate, the directors of the body corporate cease  
18 to hold office (see section @15-IA).

19 *Insurance Act statutory manager's power to obtain information*

20 (2) An Insurance Act statutory manager may, for the purposes of this  
21 Division, require a person who has, at any time, been an officer of  
22 the body corporate to give the Insurance Act statutory manager any  
23 information relating to the business of the body corporate that the  
24 Insurance Act statutory manager requires. A requirement to give  
25 information may include a requirement to produce books, accounts  
26 or documents.

27 (2A) A person who is or has been an officer of a body corporate  
28 commits an offence if:

29 (a) there is an Insurance Act statutory manager in relation to the  
30 body corporate; and

31 (b) under subsection (2), the Insurance Act statutory manager  
32 requires the person to give information or to produce books,  
33 accounts or documents; and

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- 1 (c) the person fails to comply with the requirement.
- 2 Penalty: Imprisonment for 12 months.
- 3 Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of  
4 criminal responsibility.
- 5 Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a  
6 fine instead of, or in addition to, a term of imprisonment. The  
7 maximum fine a court may impose is worked out as provided in that  
8 subsection.
- 9 Note 3: If a body corporate is convicted of an offence against this subsection,  
10 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
11 fine of up to 5 times the maximum fine worked out as mentioned in  
12 Note 2.
- 13 (3) An individual is not excused from complying with a requirement  
14 under subsection (2) to give information on the ground that doing  
15 so would tend to incriminate the individual or make the individual  
16 liable to a penalty.
- 17 (4) If:
- 18 (a) before giving information in compliance with a requirement  
19 under subsection (2), an individual claims that giving the  
20 information might tend to incriminate the individual or make  
21 the individual liable to a penalty; and
- 22 (b) giving the information might in fact tend to incriminate the  
23 individual or make the individual so liable;
- 24 the information given in compliance with the requirement is not  
25 admissible in evidence against the individual in a criminal  
26 proceeding or a proceeding for the imposition of a penalty, other  
27 than a proceeding in respect of the falsity of the information.
- 28 (4A) Subsections (3) and (4) apply to the production of books, accounts  
29 or documents in a corresponding way to the way in which they  
30 apply to the giving of information.
- 31 *Insurance Act statutory manager's power to sell whole or part of*  
32 *body corporate's business*
- 33 (5) An Insurance Act statutory manager may sell or otherwise dispose  
34 of the whole or any part of the body corporate's business. The sale
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1 or disposal may occur on any terms and conditions that the  
2 Insurance Act statutory manager considers appropriate.

3 *Insurance Act statutory manager's powers to alter body*  
4 *corporate's constitution etc.*

5 (5A) An Insurance Act statutory manager may, if the body corporate  
6 concerned is registered under the *Corporations Act 2001*, alter the  
7 body corporate's constitution, rules or other arrangements for  
8 governance if the alteration:

9 (a) is necessary or convenient for enabling or facilitating the  
10 performance of the Insurance Act statutory manager's  
11 functions and duties, or the exercise of the Insurance Act  
12 statutory manager's other powers, under this Division in  
13 relation to the body corporate; and

14 (b) promotes:

15 (i) the protection of the policyholders of the body  
16 corporate; and

17 (ii) financial system stability in Australia.

18 (5B) An Insurance Act statutory manager may do an act under  
19 subsection (5) or (5A) despite:

20 (a) the *Corporations Act 2001*; and

21 (b) the body corporate's constitution; and

22 (c) any contract or arrangement to which the body corporate is  
23 party; and

24 (d) any listing rules of a financial market in whose official list  
25 the body corporate is included.

26 *Interpretation*

27 (6) In this section:

28 **officer** has the meaning given by section 9 of the *Corporations Act*  
29 *2001*.



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- 1 (a) the body corporate under management is an authorised  
2 NOHC of a general insurer; and  
3 (b) the performance or the exercise requires using funds of the  
4 body corporate or a subsidiary of the body corporate to  
5 increase the level of capital of the general insurer to a  
6 specified level; and  
7 (c) the shareholders of the body corporate have not agreed, by  
8 ordinary resolution, to that use of the funds.
- 9 (4) Treat the requirement in subparagraph (2)(b)(iii) as not being met  
10 if:  
11 (a) the body corporate under management is an authorised  
12 NOHC of a general insurer; and  
13 (b) the transfer of assets mentioned in that subparagraph is a  
14 transfer of funds to increase the level of capital of the general  
15 insurer to a specified level; and  
16 (c) the shareholders of the body corporate have agreed, by  
17 ordinary resolution, to that use of the funds.

## 18 **@14AA-IA Insurance Act statutory manager's additional powers to** 19 **facilitate recapitalisation**

### 20 *Powers*

- 21 (1) An Insurance Act statutory manager of a body corporate that is a  
22 company that has a share capital and is registered under the  
23 *Corporations Act 2001* may do one or more of the following acts  
24 on terms determined by the Insurance Act statutory manager:  
25 (a) issue shares, or rights to acquire shares, in the company;  
26 (b) cancel shares, or rights to acquire shares, in the company;  
27 (c) reduce the company's share capital by cancelling any paid-up  
28 share capital that is not represented by available assets;  
29 (d) sell shares, or rights to acquire shares, in the company;  
30 (e) vary or cancel rights or restrictions attached to shares in a  
31 class of shares in the company.

32 Note: Before doing such an act, the Insurance Act statutory manager will  
33 usually need to get and consider a report on the fair value of each  
34 share or right concerned: see section @14AB-IA.

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1

*Giving company members notice of exercise of powers*

2

- (2) As soon as practicable after doing an act described in paragraph (1)(a), (b), (c) or (e) or subsection (3), the Insurance Act statutory manager must give written notice to the persons who were members (under section 231 of the *Corporations Act 2001*) of the company just before the act, identifying the act and explaining its effect on their interests as members.

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4

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- (3) One of the acts to which subsection (2) relates is the offering of shares, or rights to acquire shares, in the company for sale under paragraph (1)(d).

9

10

11

*Exercise of powers despite other laws etc.*

12

- (4) An Insurance Act statutory manager may do an act under subsection (1) despite:

13

14

15

16

17

18

19

(a) the *Corporations Act 2001*; and

(b) the company's constitution; and

(c) any contract or arrangement to which the company is party; and

(d) any listing rules of a financial market in whose official list the company is included.

20

*Section does not apply to foreign general insurers etc.*

21

- (5) This section does not apply in relation to a body corporate that is:

22

23

24

(a) a foreign general insurer; or

(b) a subsidiary of a foreign general insurer; or

(c) an authorised NOHC of a foreign general insurer.

25

## **@14AB-IA Considering report before acting under section**

26

### **@14AA-IA**

27

*Getting and considering report on fair value of shares or rights*

28

- (1) Before determining terms for an act under subsection @14AA-IA(1), the Insurance Act statutory manager must:

29

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31

(a) obtain a report meeting the requirements in subsection (2) of this section on the fair value of the shares or rights concerned

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1 from an expert who is not an associate of the statutory  
2 manager, or of the company, under Division 2 of Part 1.2 of  
3 the *Corporations Act 2001*; and  
4 (b) consider the report;  
5 unless APRA determines under subsection (8) that this subsection  
6 does not apply in relation to that act relating to those shares or  
7 rights.

## 8 *Content of report*

- 9 (2) The report must set out:
- 10 (a) the amount that is, in the expert's opinion, the fair value for  
11 each share or right concerned; and
  - 12 (b) the reasons for forming the opinion; and
  - 13 (c) any relationship between the expert and any of the following  
14 persons:
    - 15 (i) the Insurance Act statutory manager;
    - 16 (ii) a person who is an associate of the Insurance Act  
17 statutory manager under Division 2 of Part 1.2 of the  
18 *Corporations Act 2001*;
    - 19 (iii) the body corporate;
    - 20 (iv) a person who is an associate of the body corporate under  
21 Division 2 of Part 1.2 of the *Corporations Act 2001*;
  - 22 including any circumstances in which the expert gives them  
23 advice, or acts on their behalf, in the proper performance of  
24 the functions attaching to the expert's professional capacity  
25 or business relationship with them; and
  - 26 (d) any financial or other interest of the expert that could  
27 reasonably be regarded as being capable of affecting the  
28 expert's ability to give an unbiased opinion in relation to the  
29 matter being reported on.

## 30 *Determining fair value of shares*

- 31 (3) In determining for the purposes of paragraph (2)(a) the amount that  
32 is, in the expert's opinion, the fair value for each share concerned,  
33 the expert must:

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- 1 (a) first, assess the value of the company as a whole, in  
2 accordance with the assumptions (if any) notified to the  
3 expert by the Minister for the valuation of the company; and  
4 (b) then allocate that value among the classes of shares in the  
5 company that either have been issued or that the Insurance  
6 Act statutory manager proposes to issue (taking into account  
7 the relative financial risk, and voting and distribution rights,  
8 of the classes); and  
9 (c) then allocate the value of each class pro rata among the  
10 shares in that class that either have been issued or that the  
11 Insurance Act statutory manager proposes to issue (without  
12 allowing a premium or applying a discount for particular  
13 shares in that class).

14 *Assumptions for valuation of company*

- 15 (4) The Minister may give the expert written notice of assumptions for  
16 the valuation of the company. The Minister may, by further written  
17 notice given to the expert, revoke, but not vary, notice of the  
18 assumptions. A notice under this subsection is not a legislative  
19 instrument.

20 *Determining fair value of rights*

- 21 (5) In determining for the purposes of paragraph (2)(a) the amount that  
22 is, in the expert's opinion, the fair value for each right concerned,  
23 the expert must act in accordance with the assumptions (if any)  
24 notified to the expert by the Minister for the valuation of the right.

25 *Assumptions for valuation of rights*

- 26 (6) The Minister may give the expert written notice of assumptions for  
27 the valuation of the rights concerned. The Minister may, by further  
28 written notice given to the expert, revoke, but not vary, notice of  
29 the assumptions. A notice under this subsection is not a legislative  
30 instrument.

31 *Contravention does not invalidate act*

- 32 (7) A contravention of subsection (1), (2), (3), (5) or (9) does not  
33 affect the validity of anything done under section @14AA-IA.
-



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- 1 (ii) an Insurance Act statutory manager of a body corporate  
2 that is a related body corporate of the contracting body  
3 corporate does an act under subsection @14AA-IA(1)  
4 relating to the contracting body corporate.
- 5 (2) The fact that the Insurance Act statutory manager does the act does  
6 not allow the contract, or a party to the contract, to do any of the  
7 following:
- 8 (a) deny any obligations under the contract;  
9 (b) accelerate any debt under the contract;  
10 (c) close out any transaction relating to the contract;  
11 (d) enforce any security under the contract.
- 12 (3) Subsection (2) does not prevent the contracting body corporate  
13 doing any of the following:
- 14 (a) denying an obligation to an entity that is not a related body  
15 corporate of the contracting body corporate;  
16 (b) accelerating a debt to an entity that is not a related body  
17 corporate of the contracting body corporate;  
18 (c) closing out a transaction with an entity that is not a related  
19 body corporate of the contracting body corporate;  
20 (d) enforcing a security against an entity that is not a related  
21 body corporate of the contracting body corporate.

22 **@14AD-IA APRA may require a person to give information etc. for**  
23 **the purposes of this Division**

24 *APRA may require person to give information etc.*

- 25 (1) APRA may require a person, by written notice given to the person,  
26 to give APRA information, or documents containing information,  
27 relating to the business of a body corporate that has an Insurance  
28 Act statutory manager if:
- 29 (a) in a case where the Insurance Act statutory manager is  
30 APRA:
- 31 (i) APRA believes, on reasonable grounds, that the person  
32 has such information or documents; and



# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
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- 1 (ii) APRA requires the information or documents for the  
2 purposes of this Division; and
- 3 (b) in a case where the Insurance Act statutory manager is not  
4 APRA:
- 5 (i) the Insurance Act statutory manager requests, in  
6 writing, that APRA require the person to give the  
7 information or documents under this subsection; and
- 8 (ii) APRA believes, on reasonable grounds, that the person  
9 has such information or documents; and
- 10 (iii) APRA is satisfied that the Insurance Act statutory  
11 manager requires the information or documents for the  
12 purposes of this Division.
- 13 (2) The notice:
- 14 (a) must specify a period within which the information or  
15 documents must be given to APRA; and
- 16 (b) may specify the form and manner in which the information or  
17 documents must be given to APRA.
- 18 (3) The period specified under paragraph (2)(a) must be reasonable in  
19 all the circumstances.
- 20 *Offence*
- 21 (4) A person commits an offence if:
- 22 (a) APRA requires the person to give APRA information or  
23 documents under subsection (1); and
- 24 (b) the person refuses or fails to give the information or  
25 documents as required.
- 26 Penalty: Imprisonment for 12 months or 50 penalty units, or both.
- 27 *Self-incrimination*
- 28 (5) A person is not excused from complying with a requirement under  
29 subsection (1) to give information or documents on the ground that  
30 doing so would tend to incriminate the individual or make the  
31 individual liable to a penalty.
- 32 (6) However, in the case of an individual:
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- 1 (a) the information or document given; and  
2 (b) giving the information or document; and  
3 (c) any information, document or thing obtained as a direct or  
4 indirect consequence of giving the information or document;  
5 are not admissible in evidence against the individual in a criminal  
6 proceeding or a proceeding for the imposition of a penalty, other  
7 than a proceeding in respect of the falsity of the information or  
8 document.

9 *Section @14A-IA not limited*

- 10 (7) This section does not limit section @14A-IA.

11 **@14B-IA Administrator in control—additional powers to**  
12 **recommend action by APRA**

13 *Types of recommendation*

- 14 (1) An administrator of a body corporate's business may make any of  
15 the following recommendations to APRA, by instrument in writing  
16 given to APRA:  
17 (a) that APRA make a particular direction under subsection  
18 @14D-IA(3) or Division 2 of Part IX in respect of the body  
19 corporate;  
20 (b) that APRA apply for the body corporate to be wound up;  
21 (c) if the body corporate is a general insurer—that APRA revoke  
22 the general insurer's authorisation under section 12;  
23 (d) if the body corporate is an authorised NOHC—that APRA  
24 revoke the authorised NOHC's authorisation under  
25 section 18.

26 *Effect of recommendation*

- 27 (2) If an administrator of a body corporate's business makes a  
28 recommendation under this section, APRA must consider the  
29 recommendation but is not required to act on it.



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- 1 (a) the transaction was entered into at a time when an Insurance  
2 Act statutory manager was in control of the body corporate's  
3 business; and  
4 (b) the transaction is:  
5 (i) an uncommercial transaction (within the meaning of  
6 that Act) of the body corporate; or  
7 (ii) an unfair preference (within the meaning of that Act)  
8 given by the body corporate to a creditor of the  
9 company; or  
10 (iii) an insolvent transaction (within the meaning of that Act)  
11 of the body corporate.

## 12 @14D-IA Administrator in control—additional duties

### 13 *Duty to report to APRA on request*

- 14 (1) A person who is an administrator of a body corporate's business  
15 must give to APRA a written report showing how the control of the  
16 body corporate's business is being carried out if APRA requests  
17 that such a report be provided to it. The report must be given to  
18 APRA within a reasonable time after the request.

### 19 *Duty to report to APRA on termination of appointment*

- 20 (2) A person who was an administrator of a body corporate's business  
21 must give to APRA a written report showing how the control of the  
22 body corporate's business was carried out over the period of the  
23 administrator's appointment if the administrator's appointment has  
24 been terminated. The report must be given to APRA within a  
25 reasonable time of the termination.

### 26 *Duty to follow directions by APRA*

- 27 (3) APRA may give an administrator of a body corporate's business a  
28 direction relating to the control of the body corporate's business,  
29 and may alter such a direction. If a direction (including an altered  
30 direction) is given to an administrator by APRA, the administrator  
31 must:  
32 (a) act in accordance with the direction; or

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- 1 (b) immediately provide to APRA information relating to the  
2 control of the body corporate's business and request APRA  
3 to alter the direction.
- 4 (4) If an administrator of a body corporate's business requests APRA  
5 to alter a direction and APRA considers the request then confirms  
6 the direction, the administrator must act in accordance with the  
7 direction.

8 **@14DAA-IA Administrator in control—additional duties where**  
9 **action may affect financial system stability in Australia**

- 10 (1) If an administrator of a body corporate's business has reasonable  
11 cause to believe that an action that the administrator proposes to  
12 take is an action that is likely to have a detrimental effect on  
13 financial system stability in Australia, the administrator must:  
14 (a) notify APRA as soon as practicable; and  
15 (b) obtain APRA's written consent before taking the action.
- 16 (2) The administrator is not required to comply with subsection (1) if  
17 the administrator is satisfied that it is not reasonably practicable to  
18 do so, having regard to urgency or other similar constraint.
- 19 (3) The performance of a function or the exercise of a power by an  
20 administrator is not invalid merely because of a failure by the  
21 administrator to comply with this section.

22 **@14E-IA Termination of Insurance Act statutory manager's**  
23 **appointment**

- 24 (1) APRA may terminate the appointment of an administrator of a  
25 body corporate's business and either appoint another person as  
26 administrator of the body corporate's business or itself take control  
27 of the body corporate's business if:  
28 (a) the administrator contravenes a requirement of this Division;  
29 or  
30 (b) APRA considers such action necessary to:  
31 (i) facilitate the resolution of the body corporate, a relevant  
32 group of bodies corporate of which the body corporate  
33 is a member, or another member of such a group; or
-

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- 1 (ii) if the body corporate is a general insurer—protect the  
2 interests of policyholders of the general insurer; or  
3 (iii) promote financial system stability in Australia.
- 4 (2A) If:  
5 (a) APRA is the statutory manager of a body corporate; and  
6 (b) the requirement in paragraph (1)(b) is satisfied;  
7 it may cease to be the statutory manager of the body corporate and  
8 appoint a person as administrator of the body corporate's business.
- 9 (3) This section has effect subject to section @13C-IA.

## 10 @15-IA Effect on directors of Insurance Act statutory manager 11 taking control of a body corporate's business

- 12 (1) The directors of a body corporate cease to hold office when an  
13 Insurance Act statutory manager takes control of the body  
14 corporate's business.
- 15 Note: For the definition of *director*, see subsection (4).
- 16 (2) A director of a body corporate must not be appointed or elected  
17 while an Insurance Act statutory manager is in control of the body  
18 corporate's business unless the appointment is made under  
19 subsection @13C-IA(2).
- 20 (2A) The appointment of an agent of a body corporate under section 118  
21 ceases to have effect when an Insurance Act statutory manager  
22 takes control of the body corporate's business.
- 23 (2B) A person must not be appointed as an agent of a body corporate  
24 under section 118 while an Insurance Act statutory manager is in  
25 control of the body corporate's business unless the appointment is  
26 made under subsection @13C-IA(2).
- 27 (3) If a person who ceased to hold office as a director of a body  
28 corporate under subsection (1), or a purported director of a body  
29 corporate appointed or elected in contravention of subsection (2),  
30 purports to act in relation to the body corporate's business while an  
31 Insurance Act statutory manager has control of the body  
32 corporate's business, those acts are invalid and of no effect.

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- 1 (3AA) If a person whose appointment as an agent of a body corporate  
2 under section 118 ceased to have effect under subsection (2A)  
3 purports to act in relation to the body corporate's business while an  
4 Insurance Act statutory manager has control of the body  
5 corporate's business, those acts are invalid and of no effect.
- 6 (3A) Subsections (1), (2) and (3) do not apply in relation to a body  
7 corporate that is a foreign general insurer.
- 8 (3B) Subsection (3C) applies if:  
9 (a) subsections (1), (2) and (3) do not apply in relation to a body  
10 corporate because of subsection (3A); and  
11 (b) an Insurance Act statutory manager takes control of the body  
12 corporate's business; and  
13 (c) a director of the body corporate acts, or purports to act in  
14 relation to the body corporate's business while the Insurance  
15 Act statutory manager has control of the body corporate's  
16 business.
- 17 (3C) Those acts are invalid and of no effect to the extent that they relate  
18 to:  
19 (a) the Australian business assets and liabilities of the body  
20 corporate; or  
21 (b) the management of the body corporate, to the extent that the  
22 management relates to the Australian business assets and  
23 liabilities of the body corporate.
- 24 (4) For the purposes of this section, *director* has the same meaning as  
25 it has in the *Corporations Act 2001*.

26 **@15A-IA Effect on external administrator of Insurance Act**  
27 **statutory manager taking control of a body corporate's**  
28 **business**

- 29 (1) The appointment of an external administrator of a body corporate  
30 is terminated when an Insurance Act statutory manager takes  
31 control of the body corporate's business.
- 32 Note: For the definition of *external administrator*, see subsection 5(1).

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- 1 (2) An external administrator of a body corporate must not be  
2 appointed while an Insurance Act statutory manager is in control of  
3 the body corporate's business unless APRA approves the  
4 appointment.
- 5 (3) If a person who ceased to be the external administrator of a body  
6 corporate under subsection (1), or a purported external  
7 administrator of the body corporate appointed in contravention of  
8 subsection (2), purports to act in relation to the body corporate's  
9 business while an Insurance Act statutory manager has control of  
10 the body corporate's business, those acts are invalid and of no  
11 effect.
- 12 (4) APRA must inform the external administrator of a body corporate  
13 that an Insurance Act statutory manager will take control of the  
14 body corporate's business as soon as possible after the decision  
15 that an Insurance Act statutory manager will take control of the  
16 body corporate's business is made. However, failure to inform the  
17 external administrator does not affect the operation of this section.

18 **@15B-IA Moratorium—effect of Insurance Act statutory**  
19 **management on court and tribunal proceedings**

- 20 (1) A person cannot begin or continue a proceeding in a court or  
21 tribunal covered by subsection (7) in respect of a body corporate if  
22 an Insurance Act statutory manager is in control of the body  
23 corporate's business.
- 24 (2) Subsection (1) does not apply if:  
25 (a) the court or tribunal grants leave for the proceedings to be  
26 begun or continued on the ground that the person would be  
27 caused hardship if leave were not granted; and  
28 (b) the beginning or continuing of the proceedings is in  
29 accordance with such terms (if any) as the court or tribunal  
30 imposes.
- 31 (3) A person intending to apply for leave of the court under  
32 paragraph (2)(a) must give APRA at least 10 days notice of the  
33 intention to apply (or a shorter period, if the court or tribunal  
34 considers that exceptional circumstances make this necessary).



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- 1 (4) APRA may apply to the court to be joined as a party to the  
2 proceedings for leave. If APRA is joined as a party, the court or  
3 tribunal must have regard to APRA's views in deciding:  
4 (a) whether to grant leave under paragraph (2)(a); and  
5 (b) if the court or tribunal decides to grant the leave—whether to  
6 impose terms as mentioned in paragraph (2)(b); and  
7 (c) if the court or tribunal decides to impose such terms— the  
8 nature of those terms.
- 9 (5) Subsection (1) also does not apply if:  
10 (a) APRA consents in writing to the proceedings beginning or  
11 continuing; or  
12 (b) the Insurance Act statutory manager, after considering  
13 APRA's views, consents to the proceedings beginning or  
14 continuing.
- 15 (6) APRA (or the Insurance Act statutory manager) cannot revoke a  
16 consent given for the purposes of subsection (5).
- 17 (6A) Neither APRA nor the Insurance Act statutory manager is liable to  
18 an action or other proceedings for damages in respect of a refusal  
19 to give consent under subsection (5).
- 20 (7) A proceeding in a court or tribunal is covered by this subsection in  
21 respect of a body corporate if it is any of the following:  
22 (a) a proceeding against the body corporate (including a  
23 cross-claim or third party claim against the body corporate);  
24 (b) a proceeding in relation to property of the body corporate;  
25 (c) a proceeding to enforce any security (including a mortgage or  
26 charge) over any property that the body corporate owns, uses,  
27 possesses, occupies or in which the body corporate otherwise  
28 has an interest.
- 29 (8) Subsection (7) does not cover a proceeding in respect of an offence  
30 or a contravention of a provision of a law for which a pecuniary  
31 penalty (however described) may be imposed.
- 32 (9) In this section, a reference to a tribunal includes a reference to the  
33 following:  
34 (a) an industrial tribunal;
-

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1

(b) an arbitral tribunal.

2

## **@15BA-IA Moratorium—effect of Insurance Act statutory**

3

### **management on enforcement process regarding property**

4

(1) No enforcement process in relation to property of a body corporate can be begun or proceeded with if an Insurance Act statutory manager is in control of the body corporate's business.

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(2) Subsection (1) does not apply if:

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(a) the Federal Court grants leave for the process to be begun or continued on the ground that the person would be caused hardship if leave were not granted; or

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(b) the beginning or continuing of the process is in accordance with such terms (if any) as the Federal Court imposes.

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(3) A person intending to apply for leave of the Federal Court under paragraph (2)(a) must give APRA at least 10 days notice of the intention to apply (or a shorter period, if the Federal Court considers that exceptional circumstances make this necessary).

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(3A) APRA may apply to the Federal Court to be joined as a party to the proceedings for leave. If APRA is joined as a party, the Federal Court must have regard to APRA's views in deciding:

(a) whether to grant leave under paragraph (2)(a); and

(b) if the Federal Court decides to grant the leave—whether to impose terms as mentioned in paragraph (2)(b); and

(c) if the Federal Court decides to impose such terms— the nature of those terms.

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(4) Subsection (1) also does not apply if:

(a) APRA consents to the process beginning or continuing; or

(b) the Insurance Act statutory manager consents to the process beginning or continuing.

29

30

(5) APRA (or the Insurance Act statutory manager) cannot revoke a consent given for the purposes of subsection (4).

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- 1 (6) Neither APRA nor the Insurance Act statutory manager is liable to  
2 an action or other proceedings for damages in respect of a refusal  
3 to give consent under subsection (4).

4 **@15BB-IA Moratorium—effect of Insurance Act statutory**  
5 **management on disposal of property**

- 6 (1) A person must not dispose of property if:  
7 (a) the property is owned by another person; and  
8 (b) the other person is a body corporate; and  
9 (c) an Insurance Act statutory manager is in control of the body  
10 corporate's business.

11 Note: The Federal Court may grant an injunction under section 65A in  
12 respect of a contravention of this subsection.

- 13 (2) Subsection (1) does not apply if:  
14 (a) APRA consents to the disposal; or  
15 (b) the Insurance Act statutory manager consents to the disposal.  
16 (3) Neither APRA nor the Insurance Act statutory manager is liable to  
17 an action or other proceedings for damages in respect of a refusal  
18 to give consent under subsection (2).

19 **@15BC-IA Moratorium—Restrictions on exercise of third party**  
20 **property rights**

- 21 (1) Section 440B of the *Corporations Act 2001* applies during a period  
22 in which an Insurance Act statutory manager is in control of a body  
23 corporate's business in the same way it applies during the  
24 administration of a company.  
25 (2) For the purposes of this section, treat the reference in  
26 paragraph 440B(2)(a) of the *Corporations Act 2001* to the  
27 administrator's written consent as being a reference to:  
28 (a) the Insurance Act statutory manager's written consent; or  
29 (b) APRA's written consent.

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1 (2A) Neither APRA nor an Insurance Act statutory manager is liable to  
2 an action or other proceedings for damages in respect of a refusal  
3 to give consent as mentioned in subsection (2).

4 (3) This section applies despite sections @15B-IA, @15BA-IA and  
5 @15BB-IA.

6 **@15BD-IA Moratorium—effect of Insurance Act statutory**  
7 **management on supply of essential services**

8 (1) If:

9 (aa) an Insurance Act statutory manager is in control of a body  
10 corporate's business; and

11 (a) the Insurance Act statutory manager requests, or authorises  
12 someone else to request, a person or authority (the *supplier*)  
13 to supply an essential service to the body corporate in  
14 Australia; and

15 (b) the body corporate owes an amount to the supplier in respect  
16 of the supply of the essential service before the day on which  
17 the Insurance Act statutory manager took control of the body  
18 corporate's business;

19 the supplier must not:

20 (c) refuse to comply with the request for the reason only that the  
21 amount is owing; or

22 (d) make it a condition of the supply of the essential service  
23 pursuant to the request that the amount is to be paid.

24 Note: The Federal Court may grant an injunction under section 129D in  
25 respect of a contravention of this subsection.

26 (2) In this section:

27 *essential service* has the same meaning as in section 600F of the  
28 *Corporations Act 2001*.



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- 1 (a) denying an obligation to an entity that is not a related body  
2 corporate of the body corporate;  
3 (b) accelerating a debt to an entity that is not a related body  
4 corporate of the body corporate;  
5 (c) closing out a transaction with an entity that is not a related  
6 body corporate of the body corporate;  
7 (d) enforcing a security against an entity that is not a related  
8 body corporate of the body corporate.

9 **@15D-IA Application of other provisions**

- 10 (1) None of the matters mentioned in subsection (2) affect:  
11 (a) the continued operation of other provisions of this Act or the  
12 operation of the *Financial Sector (Collection of Data) Act*  
13 *2001* in relation to a body corporate; or  
14 (b) the obligation of a body corporate to comply with those other  
15 provisions and that Act.
- 16 (2) The matters are as follows:  
17 (a) the appointment of an Insurance Act statutory manager of the  
18 body corporate's business under this Division;  
19 (b) the fact that an Insurance Act statutory manager is in control  
20 of the body corporate's business.
- 21 (3) The *Public Governance, Performance and Accountability Act 2013*  
22 does not apply to a body corporate that has an Insurance Act  
23 statutory manager.

24 **@16-IA Costs of statutory management**

- 25 (1) APRA's costs (including costs in the nature of remuneration and  
26 expenses) of being in control of a body corporate's business, or of  
27 having an administrator in control of a body corporate's business,  
28 are payable from the body corporate's funds and are a debt due to  
29 APRA.
- 30 (2) Despite anything contained in any law relating to the winding-up  
31 of companies, debts due to APRA by a body corporate under

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1 subsection (1) have priority in a winding-up of the body corporate  
2 over all other unsecured debts.

3 **@16A-IA APRA must report to Treasurer and publish information**  
4 **about statutory management**

5 *Reports to the Treasurer*

- 6 (1) If the Treasurer requests APRA to give him or her a written report  
7 concerning the activities of Insurance Act statutory managers in  
8 respect of specified body corporates or in respect of a specified  
9 period, APRA must give the Treasurer such a written report within  
10 a reasonable time after the Treasurer requests it.
- 11 (2) If an Insurance Act statutory manager takes control of a body  
12 corporate's business during a financial year, or if there is an  
13 ultimate termination of control during a financial year, APRA must  
14 give the Treasurer a written report within a reasonable time after  
15 the end of the financial year concerning activities of all Insurance  
16 Act statutory managers and each ultimate termination of control  
17 that occurred during that financial year.

18 *Requirement to publish notices in Gazette*

- 19 (3) If APRA:  
20 (a) takes control of a body corporate's business; or  
21 (b) appoints an administrator of a body corporate's business; or  
22 (c) makes an ultimate termination of control in respect of a body  
23 corporate's business;

24 APRA must publish notice of that fact in the *Gazette*. However,  
25 mere failure to publish such a notice does not affect the validity of  
26 the act.

27 **@16AA-IA Exceptions to Part IV of the Competition and Consumer**  
28 **Act 2010**

29 For the purposes of subsection 51(1) of the *Competition and*  
30 *Consumer Act 2010*, the following things are specified and  
31 specifically authorised:

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- 1 (a) the acquisition of assets in:
- 2 (i) a sale or disposal of the whole or part of the business of
- 3 a body corporate under this Division by an Insurance
- 4 Act statutory manager in control of the body corporate's
- 5 business; or
- 6 (ii) a transfer of insurance business of a general insurer
- 7 under a scheme prepared by an Insurance Act statutory
- 8 manager in control of the general insurer's business and
- 9 confirmed (with or without modifications) by the
- 10 Federal Court under Division 3A of Part III;
- 11 (whether the assets are shares in another body corporate or
- 12 other assets);
- 13 (b) the acquisition of shares in a body corporate as a direct result
- 14 of:
- 15 (i) the issue or sale of the shares under this Division by an
- 16 Insurance Act statutory manager in control of the body
- 17 corporate's business; or
- 18 (ii) the exercise of a right to acquire shares that was issued
- 19 or sold under this Division by an Insurance Act
- 20 statutory manager in control of the body corporate's
- 21 business.

## 22 **60 Section 62ZQ**

23 Repeal the section, substitute:

## 24 **62ZQ Involving APRA in proposed appointment of external**

25 **administrators of general insurers and NOHCs**

- 26 (1) At least 2 weeks before a person other than APRA:
- 27 (a) makes an application to a court under Chapter 5 of the
- 28 *Corporations Act 2001* for the appointment of an external
- 29 administrator of a general insurer or of an authorised NOHC
- 30 of a general insurer; or
- 31 (b) makes another kind of application (whether or not to a court)
- 32 for the appointment of an external administrator of a general
- 33 insurer or of an authorised NOHC of a general insurer; or



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- 1 (c) appoints an external administrator of a general insurer or of  
2 an authorised NOHC of a general insurer (otherwise than as  
3 the result of an application made by another person);  
4 the person must give APRA written notice that the person proposes  
5 to make the application or appointment.
- 6 (2) If there is an approved form for the notice, the person must give the  
7 notice in the approved form.
- 8 (2A) Subsection (1) does not apply if APRA gives the person written  
9 notice, before the person makes the application or appointment,  
10 that APRA consents to the person making the application or  
11 appointment.
- 12 (3) APRA is entitled to be heard on the application.
- 13 (4) After receiving the notice, APRA may request the person to  
14 provide details of the proposed application.

## 15 *Offence*

- 16 (5) A person (other than APRA) commits an offence if:  
17 (a) the person:  
18 (i) makes an application to a court under Chapter 5 of the  
19 *Corporations Act 2001* for the appointment of an  
20 external administrator of a general insurer or of an  
21 authorised NOHC of a general insurer; or  
22 (ii) makes another kind of application (whether or not to a  
23 court) for the appointment of an external administrator  
24 of a general insurer or of an authorised NOHC of a  
25 general insurer; or  
26 (iii) appoints an external administrator of a general insurer  
27 or of an authorised NOHC of a general insurer  
28 (otherwise than as the result of an application made by  
29 another person); and  
30 (b) APRA did not give the person written notice, before the  
31 person made the application or appointment, of APRA's  
32 consent to the person making the application or appointment,  
33 in accordance with subsection (2A); and

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- 1 (c) at least 2 weeks before making the application or  
2 appointment:  
3 (i) if there is an approved form for the purposes of this  
4 paragraph—the person did not give APRA notice in the  
5 approved form indicating that the person proposed to  
6 make the application or appointment; or  
7 (ii) otherwise—the person did not give APRA written  
8 notice indicating that the person proposed to make the  
9 application or appointment.

10 Penalty: 60 penalty units.

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

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

## 13 **61 Subsection 62ZR(1)**

14 Omit “the winding-up of a general insurer”, substitute “the winding-up  
15 of an entity covered by subsection (4), or the proposed winding-up of an  
16 entity covered by subsection (4)”.

## 17 **62 At the end of section 62ZR**

18 Add:

- 19 (4) This subsection covers the following entities:  
20 (a) a general insurer;  
21 (b) an authorised NOHC;  
22 (c) a subsidiary of a general insurer or authorised NOHC.

## 23 **63 Subsection 62ZS(1)**

24 Repeal the subsection, substitute:

- 25 (1) APRA may apply to the Federal Court for directions regarding any  
26 matter arising under:  
27 (a) the winding-up of an entity covered by subsection 62ZR(4)  
28 (whether the winding-up occurs as a result of an application  
29 made under the *Corporations Act 2001* or by APRA under  
30 Division 3 of this Part); or

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- 1 (b) the proposed winding-up of an entity covered by  
2 subsection 62ZR(4) (whether the winding-up will occur as a  
3 result of an application made, or proposed to be made, under  
4 the *Corporations Act 2001* or by APRA under Division 3 of  
5 this Part).

## 6 **64 Subsection 62ZT(1)**

7 Repeal the subsection, substitute:

- 8 (1) APRA may request a liquidator of an entity covered by  
9 subsection 62ZR(4) in writing to give APRA, within a reasonable  
10 time specified in the request, specified information in writing  
11 about:
- 12 (a) the winding-up of the entity (whether the winding-up occurs  
13 as a result of an application made under the *Corporations Act*  
14 *2001* or by APRA under Division 3 of this Part) and the other  
15 affairs of the general insurer; or
- 16 (b) the proposed winding-up of the entity (whether the  
17 winding-up will occur as a result of an application made, or  
18 proposed to be made, under the *Corporations Act 2001* or by  
19 APRA under Division 3 of this Part) and the other affairs of  
20 the general insurer.

## 21 **65 At the end of section 62ZU**

22 Add:

- 23 (3) To avoid doubt, subsection (1) applies even if an Insurance Act  
24 statutory manager is in control of:
- 25 (a) unless paragraph (b) applies—the general insurer’s business;  
26 or
- 27 (b) if the general insurer is a foreign general insurer—the  
28 Australian business assets and liabilities of the foreign  
29 general insurer.

## 30 **66 At the end of section 62ZV**

- 31 Note: APRA may choose to apply under section 62ZU for an order that a  
32 general insurer be wound up. Alternatively, APRA may choose to  
33 apply under the *Corporations Act 2001* for an order that the general

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1 insurer be wound up (for example, under section 459P or 462 of that  
2 Act).

## 3 **67 At the end of Part VB**

4 Add:

## 5 **Division 4—Special provisions relating to foreign general** 6 **insurers**

### 7 **62ZVB Limited application of this Part to foreign general insurers**

8 (1) This Part does not apply in relation to:

9 (a) business of a foreign general insurer (other than Australian  
10 business assets and liabilities); or

11 (b) the management of a foreign general insurer, to the extent  
12 that the management relates to such business of the foreign  
13 general insurer.

14 (2) In this section:

15 ***Australian business assets and liabilities***, of a foreign general  
16 insurer, means the following:

17 (a) the assets and liabilities of the foreign general insurer in  
18 Australia;

19 (b) any other assets and liabilities that the foreign general insurer  
20 has as a result of its operations in Australia.

21 ***asset*** has the same meaning as in the *Financial Sector (Business*  
22 *Transfer and Group Restructure) Act 1999*.

23 ***liability*** has the same meaning as in the *Financial Sector (Business*  
24 *Transfer and Group Restructure) Act 1999*.

## 25 **68 After subparagraph 62ZW(a)(i)**

26 Insert:

27 (ia) that is under statutory management under Division 1A  
28 of Part VB; or

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1 **69 At the end of section 62ZW**

2 Add:

- 3 ; and (d) allows APRA to facilitate a transfer of business from the  
4 declared general insurer to a receiving body under the  
5 *Financial Sector (Transfer and Restructure) Act 1999* by  
6 entitling the receiving body to amounts in respect of the  
7 protected policies.

8 **70 Paragraph 62ZZC(1)(a)**

9 Repeal the paragraph, substitute:

10 (a) any of the following requirements are satisfied:

- 11 (i) the general insurer is under judicial management under  
12 Division 1 of Part VB;  
13 (ii) the general insurer is under statutory management under  
14 Division 1A of Part VB; or  
15 (iii) an external administrator for the general insurer has  
16 been appointed under Chapter 5 of the *Corporations Act*  
17 *2001*; and

18 **71 Subsection 62ZZC(1) (note)**

19 After “the judicial management” insert “or statutory management”.

20 **72 After subsection 62ZZF(3)**

21 Insert:

22 *Interim claims and payments*

23 (3A) Subsection (3B) applies if:

- 24 (a) the person is entitled under subsection (2) or (3) to be paid an  
25 amount by APRA; and  
26 (b) APRA becomes aware that the person has made one or more  
27 interim claims for payment of part or parts of that liability;  
28 and  
29 (c) APRA determines, in accordance with regulations made for  
30 the purposes of this subsection, the total amount of the  
31 interim claims mentioned in paragraph (b); and

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1 (d) if the regulations prescribe conditions for the purposes of this  
2 paragraph—those conditions are met.

3 (3B) The person is entitled to be paid by APRA an amount equal to the  
4 total amount mentioned in paragraph (3A)(c).

5 (3C) The person’s entitlement under subsection (3B) to be paid an  
6 amount discharges, to the extent of that amount, the person’s  
7 entitlement mentioned in paragraph (3A)(a).

## 8 **73 Subsection 62ZZG(2) (Note)**

9 Omit “under section 51 of the *Insurance Contracts Act 1984*”, substitute  
10 “under various provisions”.

## 11 **74 Subsection 62ZZG(3) (Note 1)**

12 Omit “under section 51 of the *Insurance Contracts Act 1984*”, substitute  
13 “under various provisions”.

## 14 **75 At the end of section 62ZZG**

15 Add:

16 *Interim claims and payments*

17 (4) Subsection (5) applies if:

18 (a) the person is entitled under subsection (2) or (3) to be paid an  
19 amount by APRA; and

20 (b) APRA becomes aware that the person has made one or more  
21 interim claims for payment of part or parts of that liability;  
22 and

23 (c) APRA determines, in accordance with regulations made for  
24 the purposes of this subsection, the total amount of the  
25 interim claims mentioned in paragraph (b); and

26 (d) if the regulations prescribe conditions for the purposes of this  
27 paragraph—those conditions are met.

28 (5) The person is entitled to be paid by APRA an amount equal to the  
29 total amount mentioned in paragraph (4)(c).

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1 (6) The person's entitlement under subsection (5) to be paid an amount  
2 discharges, to the extent of that amount, the person's entitlement  
3 mentioned in paragraph (4)(a).

## 4 **76 Subsection 62ZZJ(3)**

5 Omit "section 51 of the *Insurance Contracts Act 1984*, or  
6 section 601AG of the *Corporations Act 2001*," substitute "any  
7 provision mentioned in subsection (4B)".

## 8 **77 Paragraph 62ZZJ(4)(a)**

9 Omit "section 51 of the *Insurance Contracts Act 1984*, or  
10 section 601AG of the *Corporations Act 2001*," substitute "any  
11 provision mentioned in subsection (4B)".

## 12 **78 After subsection 62ZZJ(4A)**

13 Insert:

14 (4B) The provisions are as follows:

- 15 (a) section 51 of the *Insurance Contracts Act 1984*;  
16 (b) section 601AG of the *Corporations Act 2001*;  
17 (c) any provision of any law specified in the regulations for the  
18 purposes of this paragraph.

## 19 **79 Subsection 62ZZKA(3)**

20 Repeal the subsection.

## 21 **80 After subsection 62ZZM**

22 Insert:

23 (1A) To avoid doubt, for the purposes of subsection 562(1) of the  
24 *Corporations Act 2001*, the amount taken to have been paid by the  
25 general insurer to the person under subsection (1) is taken to have  
26 been received by the person from the general insurer.

## 27 **81 At the end of Division 3 of Part VC**

28 Add:

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1       **6ZZMA APRA may make transferred liabilities determination**  
2               **where transfer of business**

- 3               (1) APRA may make a determination (a *transferred liabilities*  
4               *determination*) if:
- 5                       (a) a general insurer is a declared general insurer as a result of  
6                       the Minister having made a declaration under section 6ZZC;  
7                       and
- 8                       (b) APRA has made, or proposes to make, a determination under  
9                       section 25 of the *Financial Sector (Transfer and Restructure)*  
10                      *Act 1999* (compulsory transfer determination) that there is to  
11                      be a total transfer or partial transfer of business from the  
12                      declared general insurer to a receiving body (within the  
13                      meaning of that Act); and
- 14                      (ba) the transfer of business will transfer the liabilities of the  
15                      declared general insurer in respect of one or more protected  
16                      policies issued by the declared general insurer; and
- 17                      (c) APRA is satisfied that it will be able to identify each of those  
18                      protected policies; and
- 19                      (d) APRA has worked out an amount (the *FCS amount*) that is  
20                      APRA's reasonable estimate of the total amount to which  
21                      policyholders of those protected policies will be entitled  
22                      (disregarding the determination) under sections 6ZZF and  
23                      6ZZG as a result of the Minister's declaration mentioned in  
24                      paragraph (a); and
- 25                      (e) APRA has worked out a payment amount in accordance with  
26                      section 6ZZMB; and
- 27                      (f) APRA considers that it is reasonable in the circumstances to  
28                      make the determination.

29               (1A) However, APRA cannot make the determination if APRA has  
30               already issued a certificate of transfer under section 33 of the  
31               *Financial Sector (Transfer and Restructure) Act 1999* stating that  
32               the transfer is to take effect.

33               (2) The determination must be in writing.

34               (3) The determination must specify the following:

- 35                      (a) the declared general insurer;
-



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- 1 (b) the receiving body;  
2 (c) a description, in general or detailed terms, of all the protected  
3 policies of the declared general insurer;  
4 (d) the FCS amount;  
5 (e) the payment amount;  
6 (f) any other information that APRA considers appropriate.
- 7 (4) A determination under subsection (1) may be varied, but not  
8 revoked, in accordance with subsection 33(3) of the *Acts*  
9 *Interpretation Act 1901*.
- 10 (5) A determination made under subsection (1) is not a legislative  
11 instrument.

## 12 **6ZZMB Payment amount under transferred liabilities** 13 **determination**

- 14 (1) For the purposes of paragraph 6ZZMA(1)(e), APRA may work  
15 out an amount (the *payment amount*) that:  
16 (a) is equal to or less than the FCS amount; and  
17 (b) APRA considers to be appropriate.
- 18 (2) In working out the payment amount, APRA must have regard to  
19 the following:  
20 (a) the total value of the assets that will be transferred to the  
21 receiving body in accordance with the transfer of business;  
22 (b) the total value of the liabilities that will be transferred from  
23 the declared general insurer to the receiving body in  
24 accordance with the transfer of business;  
25 (c) any other matter that APRA considers appropriate.

## 26 **6ZZMC Consequences of transferred liabilities determination once** 27 **certificate of transfer issued**

### 28 *Application of section*

- 29 (1) This section applies if:  
30 (a) APRA has made a transferred liabilities determination; and

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1 (b) APRA has issued a certificate of transfer under section 33 of  
2 the *Financial Sector (Transfer and Restructure) Act 1999*  
3 stating that the transfer is to take effect.

4 *Receiving body entitled to payment amount*

5 (2) The receiving body is entitled to be paid by APRA an amount  
6 equal to the payment amount specified in the determination.

7 *Reduction of rights and entitlements of policyholder*

8 (3) A policyholder's entitlement under this Division to be paid an  
9 amount in respect of a protected policy with the declared general  
10 insurer is reduced to nil, if the transfer of business will transfer the  
11 liability of the declared general insurer in respect of that protected  
12 policy.

13 *Declared general insurer liable to APRA for payment amount*

14 (4) The declared general insurer is liable to pay to APRA an amount  
15 equal to the sum of the payment amount specified in the  
16 determination.

17 (5) That liability is due and payable to APRA when the certificate of  
18 transfer comes into force.

19 **6ZZZMD Certain provisions do not apply in relation to entitlement**  
20 **of receiving body as a result of transferred liabilities**  
21 **determination**

22 To avoid doubt, section 6ZZZK, 6ZZZKA, 6ZZZL and 6ZZZM do  
23 not apply in relation to an entitlement under  
24 subsection 6ZZZMC(2).

25 **82 Paragraph 6ZZZO(b)**

26 Omit "(including a provisional liquidator)".

27 **83 After paragraph 6ZZZO(1)(c)**

28 Insert:

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1 (d) an administrator appointed under subsection @13A-IA(1) to  
2 take control of a general insurer's business.

3 **84 Paragraph 62ZZP(1)(b)**

4 Omit "(including a provisional liquidator)".

5 **85 After paragraph 62ZZP(1)(c)**

6 Insert:

7 ; or (d) an administrator appointed under subsection @13A-IA(1) to  
8 take control of a general insurer's business; or

9 (e) any other person;

10 **86 Subsection 62ZZP(1)**

11 Omit "or judicial manager", substitute ", judicial manager,  
12 administrator or other person".

13 **87 Paragraph 62ZZP(4)(da)**

14 Omit "or report".

15 **88 Subsection 62ZZQ(5)**

16 Omit "(including a provisional liquidator)".

17 **89 Subsection 62ZZQ(7)**

18 Omit "(including a provisional liquidator)".

19 **90 At the end of section 62ZZQ**

20 Add:

21 *Requirement made of other person—civil penalty*

22 (11) A person mentioned in paragraph 62ZZP(1)(e) must comply with a  
23 requirement made of the person under subsection 62ZZP(1).

24 Civil penalty: 200 penalty units.

25 **91 Section 103A**

26 Before "This Division", insert "(1)".

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1 **92 At the end of section 103A**

2 Add:

3 (2) Subsections (3) and (4) apply if:

4 (a) APRA has given a recapitalisation direction to the general  
5 insurer under subsection 103B(1) (the *primary*  
6 *recapitalisation direction*); and

7 (b) the general insurer is a subsidiary of a NOHC/NOHC  
8 subsidiary; and

9 (c) the NOHC/NOHC subsidiary is a company that:

10 (i) is registered under the *Corporations Act 2001*; and

11 (ii) has a share capital; and

12 (d) the NOHC/NOHC subsidiary does not have an Insurance Act  
13 statutory manager.

14 (3) This Division applies to the NOHC/NOHC subsidiary in the same  
15 way that it does to a general insurer.

16 (4) However, disregard the following provisions in applying this  
17 Division to the NOHC/NOHC subsidiary:

18 (a) subsection 103B(1);

19 (b) subsection 103C(1).

20 (5) In this section:

21 *NOHC/NOHC subsidiary* means a body corporate that is any of  
22 the following:

23 (a) an authorised NOHC;

24 (b) a subsidiary of an authorised NOHC.

25 **93 Paragraph 103B(1)(b)**

26 After “APRA considers that”, insert “, in the absence of external  
27 support”.

28 **94 After subsection 103B(1)**

29 Insert:

30 (1A) Subsection (1B) applies if subsections 103A(3) and (4) apply to a  
31 NOHC/NOHC subsidiary because of a primary recapitalisation

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1 direction given to a general insurer (as mentioned in  
2 subsection 103A(2)).

3 (1B) For the purposes of facilitating compliance with the primary  
4 recapitalisation direction, APRA may give the NOHC/NOHC  
5 subsidiary a direction (also a *recapitalisation direction*) that  
6 requires the NOHC/NOHC subsidiary to do anything that is  
7 specified in the direction.

## 8 **95 After subsection 103B(2)**

9 Insert:

10 (2A) The regulations may specify that a particular form of support is not  
11 external support for the purposes of paragraph (1)(b).

## 12 **96 At the end of section 103B**

13 Add:

14 (4) A recapitalisation direction may deal with the time by which, or  
15 period during which, it is to be complied with.

16 (5) APRA may, by notice in writing to the general insurer, vary the  
17 recapitalisation direction if, at the time of the variation, it considers  
18 that the variation is necessary and appropriate.

19 (6) The direction has effect until APRA revokes it by notice in writing  
20 to the general insurer. APRA may revoke the direction if, at the  
21 time of revocation, it considers that the direction is no longer  
22 necessary or appropriate.

## 23 **97 After subsection 103C(1)**

24 Insert:

25 (1A) If the recapitalisation direction is a direction to a NOHC/NOHC  
26 subsidiary under subsection 103B(1B), the direction may direct the  
27 NOHC/NOHC subsidiary to do any of the following:

28 (a) issue:

29 (i) shares, or rights to acquire shares, in the NOHC/NOHC  
30 subsidiary; or

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- 1 (ii) other capital instruments in the NOHC/NOHC  
2 subsidiary of a kind specified in the direction;
- 3 (b) acquire:
- 4 (i) shares, or rights to acquire shares, in the general insurer  
5 mentioned in subsection 103B(1A); or
- 6 (ii) other capital instruments in the general insurer  
7 mentioned in subsection 103B(1A) of a kind specified  
8 in the direction;
- 9 (c) acquire:
- 10 (i) shares, or rights to acquire shares, in a specified body  
11 corporate covered by subsection (1B); or
- 12 (ii) other capital instruments in a specified body corporate  
13 covered by subsection (1B), of a kind specified in the  
14 direction.
- 15 (1B) This subsection covers a body corporate if:
- 16 (a) the body corporate is a subsidiary of the NOHC/NOHC  
17 subsidiary; and
- 18 (b) the general insurer is a subsidiary of the body corporate.
- 19 (1C) Without limiting the generality of subsections (1), (1A) and (2), but  
20 subject to subsection (3), a direction referred to in those  
21 subsections may:
- 22 (a) deal with some only of the matters referred to in those  
23 subsections; or
- 24 (b) deal with a particular class or particular classes of those  
25 matters; or
- 26 (c) make different provision with respect to different matters or  
27 different classes of matters.

## 98 Subsection 103C(2)

28 Omit “paragraph (1)(a)”, substitute “paragraph (1)(a) or  
29 subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i)”.

## 99 Subsection 103C(3)

30 Omit “paragraph (1)(b)”, substitute “paragraph (1)(b) or  
31 subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii)”.

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1 **100 Subsection 103D(3) (heading)**

2 Repeal the heading, substitute:

3 *Issue or acquisition of shares etc. despite other laws etc.*

4 **101 Subsection 103D(3)**

5 After “issue”, insert “or acquire”.

6 **102 Paragraph 103D(3)(a)**

7 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
8 of section 127B of this Act)”.

9 **103 Paragraph 103D(3)(d)**

10 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
11 financial market (as defined in that section)”, substitute “of a financial  
12 market”.

13 **104 After subsection 103E(1)**

14 Insert:

15 (1A) If the recapitalisation direction is a direction to a NOHC/NOHC  
16 subsidiary under subsection 103B(1B), treat the reference in  
17 paragraph (1)(a) to “the policyholders of the insurer” as being a  
18 reference to “the policyholders of the general insurer mentioned in  
19 subsection 103B(1A)”.

20 **105 At the end of section 103E**

21 Add:

22 (4) If the recapitalisation direction is a direction to a NOHC/NOHC  
23 subsidiary under subsection 103B(1B), treat the references in  
24 paragraph (3)(c) to “the insurer” as being a reference to “the  
25 NOHC/NOHC subsidiary mentioned in subsection 103B(1B)”.

26 **106 Section 103K**

27 Repeal the section, substitute:

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## 103K Recapitalisation direction not grounds for denial of obligations

- 1  
2 (1) This section applies if a body corporate is party to a contract,  
3 whether the proper law of the contract is:  
4 (a) Australian law (including the law of a State or Territory); or  
5 (b) law of a foreign country (including the law of part of a  
6 foreign country).
- 7 (2) None of the matters mentioned in subsection (3) allows the  
8 contract, or a party to the contract, to do any of the following:  
9 (a) deny any obligations under the contract;  
10 (b) accelerate any debt under the contract;  
11 (c) close out any transaction relating to the contract;  
12 (d) enforce any security under the contract.  
13 This subsection has effect subject to subsection (4).
- 14 (3) The matters are as follows:  
15 (a) the body corporate being subject to a recapitalisation  
16 direction;  
17 (b) a related body corporate of the body corporate being subject  
18 to a recapitalisation direction.
- 19 (4) Subsection (2) does not prevent the body corporate doing any of  
20 the following:  
21 (a) denying an obligation to an entity that is not a related body  
22 corporate of the body corporate;  
23 (b) accelerating a debt to an entity that is not a related body  
24 corporate of the body corporate;  
25 (c) closing out a transaction with an entity that is not a related  
26 body corporate of the body corporate;  
27 (d) enforcing a security against an entity that is not a related  
28 body corporate of the body corporate.

## 107 Subsection 103L(9)

29 Repeal the subsection.  
30



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1 **108 Subsection 104(1)**

2 Omit “Without limiting subsection (1A), APRA may”, substitute  
3 “APRA may”.

4 **109 Paragraph 104(1)(b)**

5 Omit “and such a contravention is likely to give rise to a prudential  
6 risk”, substitute “and the direction is reasonably necessary for one or  
7 more prudential matters relating to the body corporate”.

8 **110 Subsection 104(1A)**

9 Repeal the subsection, substitute:

10 (1AA) APRA may give a body corporate that is a general insurer or is an  
11 authorised NOHC a direction of a kind specified in subsection (3)  
12 if APRA has reason to believe that:

- 13 (a) a subsidiary of the body corporate has contravened a  
14 provision of this Act, regulations made under this Act,  
15 prudential standards, or the *Financial Sector (Collection of*  
16 *Data) Act 2001*; or  
17 (b) a subsidiary of the body corporate is likely to contravene this  
18 Act, regulations made under this Act, prudential standards, or  
19 the *Financial Sector (Collection of Data) Act 2001*; or  
20 (d) the direction is in respect of a subsidiary of the body  
21 corporate and is necessary in the interests of:  
22 (i) if the body corporate is a general insurer—policyholders  
23 of the general insurer; or  
24 (ii) if the body corporate is an authorised NOHC—  
25 policyholders of any general insurer that is a subsidiary  
26 of the NOHC; or  
27 (e) a subsidiary of the body corporate is, or is about to become,  
28 unable to meet the subsidiary’s liabilities; or  
29 (f) there is, or there might be, a material risk to the security of  
30 the assets of a subsidiary of the body corporate; or  
31 (g) there has been, or there might be, a material deterioration in  
32 the financial condition of a subsidiary of the body corporate;  
33 or

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- 1 (h) a subsidiary of the body corporate is conducting the  
2 subsidiary's affairs in an improper or financially unsound  
3 way; or
- 4 (j) a subsidiary of the body corporate is conducting the  
5 subsidiary's affairs in a way that may cause or promote  
6 instability in the Australian financial system; or
- 7 (k) a subsidiary of the body corporate is conducting the  
8 subsidiary's affairs in a way that may cause it to be unable to  
9 continue to supply services to:
- 10 (i) if the body corporate is a general insurer—the general  
11 insurer; or
- 12 (ii) if the body corporate is an authorised NOHC—any  
13 general insurer that is a subsidiary of the NOHC; or
- 14 (l) the direction is in respect of a subsidiary of the body  
15 corporate and the failure to issue a direction would materially  
16 prejudice the interests of:
- 17 (i) if the body corporate is a general insurer—policyholders  
18 of the general insurer; or
- 19 (ii) if the body corporate is an authorised NOHC—  
20 policyholders of any general insurer that is a subsidiary  
21 of the NOHC.
- 22 (1AB) However, APRA can only make a direction as a result of a ground  
23 referred to in (1AA)(a), (b), (c), (e), (f), (g), (h) or (k) if APRA  
24 considers that the direction is reasonably necessary for one or more  
25 prudential matters relating to the body corporate.
- 26 (1AC) APRA may give a body corporate that is a subsidiary of a general  
27 insurer or of an authorised NOHC a direction of a kind specified in  
28 subsection (3) if:
- 29 (a) APRA has given the general insurer or authorised NOHC a  
30 direction under subsection (1AA) because one or more of the  
31 grounds referred to in that subsection have been satisfied in  
32 respect of the subsidiary; or
- 33 (b) APRA may give the general insurer or authorised NOHC a  
34 direction under subsection (1AA) because one or more of the  
35 grounds referred to in that subsection have been satisfied in  
36 respect of the subsidiary.
-

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1 (1AD) APRA cannot give a direction under subsection (1AC) to a body  
2 corporate of a kind specified in regulations (if any) made for the  
3 purposes of this subsection.

4 (1AE) Subsections (1), (1AA) and (1AC) do not limit each other.

## 5 **111 Paragraph 104(2)(b)**

6 Repeal the paragraph, substitute:

7 (b) specify:

- 8 (i) in the case of a direction under subsection (1AC)— the  
9 ground referred to in subsection (1AA) as a result of  
10 which the direction is given; or  
11 (ii) otherwise—the ground referred to in subsection (1) or  
12 (1AA) as a result of which the direction is given

## 13 **112 After subsection 104(2)**

14 Insert:

15 *APRA may disregard external support*

16 (2A) In deciding whether to give a direction under subsection (1), (1AA)  
17 or (1AC) to a body corporate, APRA may disregard any external  
18 support for the body corporate.

19 (2B) The regulations may specify that a particular form of support is not  
20 external support for the purposes of subsection (2A).

## 21 **113 Paragraph 104(3)(u)**

22 Repeal the paragraph, substitute:

- 23 (u) to make changes to the body corporate's systems, business  
24 practices or operations;  
25 (v) to reconstruct, amalgamate or otherwise alter all or part of  
26 any of the following:  
27 (i) the business, structure or organisation of the body  
28 corporate;  
29 (ii) the business, structure or organisation of the group  
30 constituted by the body corporate and its subsidiaries;

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1 (w) to do, or to refrain from doing, anything else in relation to the  
2 affairs of the body corporate.

3 **114 After subsection 104(4)**

4 Insert:

5 (4A) Without limiting the generality of paragraph (3)(w), a direction  
6 under that paragraph to a foreign general insurer may be any one or  
7 more of the following:

8 (a) a direction that the foreign general insurer act in a way so as  
9 to ensure that:

10 (i) a particular asset, or a particular class of assets, of the  
11 foreign general insurer is returned to the control  
12 (however described) of the part of the foreign general  
13 insurer's insurance business that is carried on in  
14 Australia; or

15 (ii) a particular liability, or a particular class of liabilities, of  
16 the foreign general insurer ceases to be the  
17 responsibility (however described) of the part of the  
18 foreign general insurer's insurance business that is  
19 carried on in Australia;

20 (b) a direction that the foreign general insurer not act in a way  
21 that has the result that:

22 (i) a particular asset, or a particular class of assets, of the  
23 foreign general insurer ceases to be under the control  
24 (however described) of the part of the foreign general  
25 insurer's insurance business that is carried on in  
26 Australia; or

27 (ii) a particular liability, or a particular class of liabilities, of  
28 the foreign general insurer becomes the responsibility  
29 (however described) of the part of the foreign general  
30 insurer's insurance business that is carried on in  
31 Australia.

32 (4B) The kinds of direction that may be given as mentioned in  
33 subsection (3) are not limited by any other provision in this Part.

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1 (4C) The kinds of direction that may be given as mentioned in a  
2 particular paragraph of subsection (3) are not limited by any other  
3 paragraph of that subsection.

## 4 **115 Subsections 105(1) to (2)**

5 Repeal the subsections, substitute:

6 (1) This section applies if a body corporate is party to a contract,  
7 whether the proper law of the contract is:  
8 (a) Australian law (including the law of a State or Territory); or  
9 (b) law of a foreign country (including the law of part of a  
10 foreign country).

11 (1A) None of the matters mentioned in subsection (1B) allows the  
12 contract, or a party to the contract, to do any of the following:  
13 (a) deny any obligations under the contract;  
14 (b) accelerate any debt under the contract;  
15 (c) close out any transaction relating to the contract;  
16 (d) enforce any security under the contract.  
17 This subsection has effect subject to subsections (1C), (2) and (3).

18 (1B) The matters are as follows:  
19 (a) the body corporate being subject to a direction by APRA  
20 under section 104;  
21 (b) a body corporate that is a related body corporate of the body  
22 corporate being subject to a direction by APRA under  
23 section 104.

24 (1C) Subsection (1A) does not prevent the body corporate doing any of  
25 the following:  
26 (a) denying an obligation to an entity that is not a related body  
27 corporate of the body corporate;  
28 (b) accelerating a debt to an entity that is not a related body  
29 corporate of the body corporate;  
30 (c) closing out a transaction with an entity that is not a related  
31 body corporate of the body corporate;  
32 (d) enforcing a security against an entity that is not a related  
33 body corporate of the body corporate.

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- 1 (2) If the body corporate is prevented from fulfilling its obligations  
2 under the contract because of a direction under section 104, other  
3 than a direction under paragraph 104(3)(t), the other party or  
4 parties to the contract are, subject to any orders made under  
5 subsection (3) of this section, relieved from obligations owed to the  
6 body corporate under the contract.

7 **116 Section 107**

8 Repeal the section.

9 **117 At the end of Part IX**

10 Add:

11 **Division 3—Secrecy and disclosure provisions relating to**  
12 **all directions**

13 **109 APRA may determine that a direction is covered by secrecy**  
14 **provision**

- 15 (1) This section applies if APRA has given an entity (the *directed*  
16 *entity*) a direction under this Act.
- 17 (2) APRA may determine, in writing, that the direction is covered  
18 under this subsection if APRA considers that the direction is  
19 necessary to protect the policyholders of any general insurer or to  
20 promote financial system stability in Australia.
- 21 Note: For repeal of a determination, see subsection 33(3) of the *Acts*  
22 *Interpretation Act 1901*.
- 23 (3) APRA must give the directed entity a copy of the determination as  
24 soon as practicable after making it.
- 25 (4) An instrument under subsection (2) is not a legislative instrument.
- 26 (5) If APRA makes a determination under subsection (2), APRA must  
27 consider whether it is appropriate in the circumstances to also  
28 make a determination under either or both of subsections 109C(2)  
29 and 109C(5).

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## 109A Secrecy relating to directions

(1) A person commits an offence if:

- (a) APRA has given an entity (the *directed entity*) a direction under this Act; and
- (b) the direction is covered by a determination under subsection 109(2); and
- (c) the person is, or has been, covered by subsection (2) of this section in relation to the direction; and
- (d) the person discloses information; and
- (e) the information reveals the fact that the direction was made.

Penalty: Imprisonment for 2 years.

(2) A person is covered by this subsection in relation to the direction if the person is:

- (a) the directed entity; or
- (b) an officer, employee or contractor of the directed entity at a time on or after APRA gave the directed entity the direction.
- (c) any other person who, because of his or her employment, or in the course of that employment, has acquired information that reveals the fact that the direction was made.

### *Exception*

(3) Subsection (1) does not apply if:

- (a) the disclosure is authorised by section 109B, 109C, 109D, 109E or 109F; or
- (b) the disclosure is required by an order or direction of a court or tribunal.

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

## 109B Disclosure of publicly available information

A person covered by subsection 109A(2) in relation to a direction may disclose information that reveals the fact that the direction was made, to the extent that the information has already been lawfully made available to the public.

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## 109C Disclosure allowed by APRA

- 1  
2 (1) A person covered by subsection 109A(2) in relation to a direction  
3 may disclose information that reveals the fact that the direction was  
4 made if:  
5 (a) a determination under subsection (2) allows the disclosure by  
6 the person; and  
7 (b) if APRA has included conditions in the determination—those  
8 conditions are satisfied.

### *Determinations relating to specified person*

- 9  
10 (2) APRA may, in writing, make a determination allowing:  
11 (a) a specified person covered by subsection 109A(2) in relation  
12 to a specified direction; or  
13 (b) a specified person covered by subsection 109A(2) in relation  
14 to a direction that is in a specified class of directions;  
15 to disclose specified information in relation to the direction.  
16 (3) An instrument under subsection (2) is not a legislative instrument.  
17 (4) APRA must give a copy of the determination as soon as practicable  
18 after making it to:  
19 (a) the directed entity; and  
20 (b) the person specified, or each person specified, in the  
21 determination.

### *Determinations relating to specified class of persons*

- 22  
23 (5) APRA may, by legislative instrument, make a determination  
24 allowing:  
25 (a) a specified class of persons covered by subsection 109A(2) in  
26 relation to a specified direction; or  
27 (b) a specified class of persons covered by subsection 109A(2) in  
28 relation to a direction that is in a specified class of directions;  
29 to disclose specified information in relation to the direction.



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1 *Conditions in determinations*

- 2 (6) APRA may include conditions in a determination under  
3 subsection (2) or (5) that relate to any of the following:  
4 (a) the kind of entities to which the disclosure may be made;  
5 (b) the way in which the disclosure is to be made;  
6 (c) any other matter that APRA considers appropriate.

7 **109D Disclosure to legal representative for purpose of seeking legal**  
8 **advice**

9 A person covered by subsection 109A(2) in relation to a direction  
10 may disclose information that reveals the fact that the direction was  
11 made if:

- 12 (a) the disclosure is to the person's legal representative; and  
13 (b) the purpose of the person making the disclosure is for the  
14 legal representative to provide legal advice, or another legal  
15 service, in relation to the direction.

16 **109E Disclosure allowed by APRA Act secrecy provision**

- 17 (1) A person covered by subsection 109A(2) in relation to a direction  
18 may disclose information that reveals the fact that the direction was  
19 made if:  
20 (a) the person is:  
21 (i) an APRA member (within the meaning of  
22 subsection 56(1) of the *Australian Prudential*  
23 *Regulation Authority Act 1998*); or  
24 (ii) an APRA staff member (within the meaning of that  
25 subsection); or  
26 (iii) a Commonwealth officer (within the meaning of the  
27 *Crimes Act 1914*) who is covered by paragraph (c) of  
28 the definition of "officer" in subsection 56(1) of the  
29 *Australian Prudential Regulation Authority Act 1998*;  
30 and  
31 (b) the information is protected information (within the meaning  
32 of that subsection), or is contained in a protected document  
33 (within the meaning of that subsection); and

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1 (c) the disclosure is in accordance with subsection 56(3), (4), (5),  
2 (5AA), (6), (6A), (7), (7A), (7B) or (7C) of that Act.

3 *Relationship to APRA Act secrecy provision*

4 (2) Disclosure of information in relation to a direction is not an  
5 offence under section 56 of the *Australian Prudential Regulation*  
6 *Authority Act 1998* if the disclosure is authorised by section 109B,  
7 109C, 109D, 109F or 109G.

## 8 **109F Disclosure in circumstances set out in the regulations**

9 A person covered by subsection 109A(2) in relation to a direction  
10 may disclose information that reveals the fact that the direction was  
11 made, if the disclosure is made in circumstances (if any) set out in  
12 the regulations.

## 13 **109G Disclosure for purpose**

14 A person covered by subsection 109A(2) (the *relevant person*) in  
15 relation to a direction may disclose information that reveals the fact  
16 that the direction was made if:

- 17 (a) another person covered by subsection 109A(2) in relation to  
18 the direction disclosed that information to the relevant person  
19 for a particular purpose in accordance with section 109C,  
20 109D, 109E or 109F, or in accordance with a previous  
21 operation of this section; and  
22 (b) the disclosure by the relevant person is for the same purpose.

## 23 **109H Exceptions operate independently**

24 Sections 109B, 109C, 109D, 109E, 109F and 109G do not limit  
25 each other.

## 26 **118 After section 127A**

27 Insert:

# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Main amendments **Part 1**

---

1 **127B Protection from liability—general**

- 2 (1) A person is not subject to any liability to any person in respect of  
3 anything done, or omitted to be done, in good faith and without  
4 negligence in the exercise or performance, or the purported  
5 exercise or performance, of powers, functions or duties under this  
6 Act.
- 7 (2) To avoid doubt, any information provided by a person to APRA  
8 under section 49B is taken, for the purposes of subsection (1), to be  
9 provided in the exercise of a power or the performance of a  
10 function under this Act.
- 11 (3) Subsection (1) does not apply to a person referred to in section 58  
12 of the *Australian Prudential Regulation Authority Act 1998* and, to  
13 avoid doubt, does not affect the operation of that section.

14 **127C Protection from liability—directions and secrecy**

- 15 (1) An action, suit or proceeding (whether criminal or civil) does not  
16 lie against a person in relation to anything done, or omitted to be  
17 done, in good faith by the person if:
- 18 (a) the person does the thing, or omits to do the thing, for the  
19 purpose of any of the following:
- 20 (i) complying with a direction under this Act given by  
21 APRA to a body corporate;
- 22 (ii) complying with section 109A (secrecy); and
- 23 (b) it is reasonable for the person to do the thing, or to omit to do  
24 the thing, in order to achieve that purpose; and
- 25 (c) the person is any of the following:
- 26 (i) an officer or senior manager of the body corporate, of a  
27 subsidiary of the body corporate, of an authorised  
28 NOHC of the body corporate or of a subsidiary of an  
29 authorised NOHC of the body corporate;
- 30 (ii) an employee or agent of the body corporate, of a  
31 subsidiary of the body corporate, of an authorised  
32 NOHC of the body corporate or of a subsidiary of an  
33 authorised NOHC of the body corporate.
- 34 (2) In subsection (1):
-



# EXPOSURE DRAFT

Amendment of the Insurance Act 1973 **Schedule 2**  
Consequential amendments **Part 2**

---

1 **Part 2—Consequential amendments**

2 **120 Subsection 38A(2)**

3 Omit “related body corporate” (wherever occurring), substitute  
4 “whistleblower related body corporate”.

5 **121 Subsection 38A(3)**

6 Omit “*related body corporate*”, substitute “*whistleblower related body*  
7 *corporate*”.

8 **122 Subsection 38E(1)**

9 Omit “related body corporate” (wherever occurring), substitute  
10 “whistleblower related body corporate”.

11 **Part 3—Application provisions**

12 *[These provisions will be drafted following exposure.*

13

# EXPOSURE DRAFT

Schedule 3 Amendment of the Life Insurance Act 1995

Part 1 Main amendments

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1 **Schedule 3—Amendment of the Life Insurance**  
2 **Act 1995**

3 **Part 1—Main amendments**

4 *Life Insurance Act 1995*

5 **1 After paragraph 3(2)(d)**

6 Insert:

- 7 (da) providing for statutory management of life companies and  
8 related entities, so as to protect the interests of policy owners  
9 and financial system stability in Australia;

10 **2 After section 15**

11 Insert:

12 **15A Relevant group of bodies corporate**

13 For the purposes of this Act:

- 14 (a) a life company and its subsidiaries together constitute a  
15 *relevant group of bodies corporate*; and  
16 (b) a registered NOHC and its subsidiaries together also  
17 constitute a *relevant group of bodies corporate*.

18 **3 Section 16 (heading)**

19 Repeal the heading, substitute:

20 **16 Related bodies corporate and subsidiaries**

21 **4 Section 16ZE**

22 Repeal the section, substitute:

23 **16ZE Limited application of Act to eligible foreign life insurance**  
24 **companies**

25 (1) Part 8 does not apply in relation to:

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# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

---

- 1 (a) business of an eligible foreign life insurance company (other  
2 than Australian business assets and liabilities); or  
3 (b) the management of an eligible foreign life insurance  
4 company, to the extent that the management relates to such  
5 business of the eligible foreign life insurance company.

6 (2) This Act (apart from Part 8) does not apply in relation to life  
7 insurance business carried on outside Australia by an eligible  
8 foreign life insurance company.

9 (3) In this section:

10 *Australian business assets and liabilities*, of an eligible foreign  
11 life insurance company, means the following:

- 12 (a) the assets and liabilities of the eligible foreign life insurance  
13 company in Australia;  
14 (b) any other assets and liabilities that the eligible foreign life  
15 insurance company has as a result of its operations in  
16 Australia.

17 *asset* has the same meaning as in the *Financial Sector (Business*  
18 *Transfer and Group Restructure) Act 1999*.

19 *liability* has the same meaning as in the *Financial Sector (Business*  
20 *Transfer and Group Restructure) Act 1999*.

## 21 **5 Section 22**

22 Repeal the section, substitute:

## 23 **22 Conditions on registration**

- 24 (1) APRA may, at any time, by giving written notice to a company:  
25 (a) impose conditions, or additional conditions, on the  
26 company's registration under section 21; or  
27 (b) vary or revoke conditions imposed on the company's  
28 registration under section 21.

29 The conditions must relate to prudential matters.

- 30 (2) A condition may be expressed to have effect despite anything in  
31 the prudential standards.

# EXPOSURE DRAFT

## Schedule 3 Amendment of the Life Insurance Act 1995

### Part 1 Main amendments

---

- 1 (3) Without limiting the conditions that APRA may impose on a  
2 registration, APRA may make the registration conditional on a  
3 body corporate, of which the company is a subsidiary, being an  
4 authorised NOHC.
- 5 (4) If APRA imposes, varies or revokes the conditions on a company's  
6 registration, APRA must:  
7 (a) give written notice to the company; and  
8 (b) ensure that notice that the action has been taken is published  
9 in the *Gazette*.
- 10 (5) The taking of an action is not invalid merely because of a failure to  
11 comply with subsection (4).

### 22A Breach of registration conditions

- 13 (1) A company commits an offence if:  
14 (a) the company does an act or fails to do an act; and  
15 (b) doing the act or failing to do the act results in a contravention  
16 of a condition of the company's registration under section 21;  
17 and  
18 (c) there is no determination in force under section 7A that this  
19 subsection does not apply to the company.
- 20 Penalty: 300 penalty units.
- 21 (2) If an individual:  
22 (a) commits an offence against subsection (1) because of Part 2.4  
23 of the *Criminal Code*; or  
24 (b) commits an offence under Part 2.4 of the *Criminal Code* in  
25 relation to an offence against subsection (1);  
26 he or she is punishable, on conviction, by a fine not exceeding 60  
27 penalty units.
- 28 (3) An offence against this section is an offence of strict liability.
- 29 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.
- 30 Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of  
31 criminal responsibility.



# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

---

1 **6 Section 26**

2 Repeal the section, substitute:

3 **26 When APRA may revoke registration**

4 (1) APRA may revoke (in writing) a company's registration under  
5 section 21 if APRA is satisfied that the company has no liabilities  
6 in respect of life insurance business carried on by it in Australia  
7 and that:

8 (a) the company has failed to comply with:

9 (i) a requirement of this Act (including the requirement to  
10 comply with the prudential standards) or of an  
11 instrument made for the purposes of this Act; or

12 (ii) a requirement of the *Financial Sector (Collection of*  
13 *Data) Act 2001*; or

14 (iia) a requirement of a provision of another law of the  
15 Commonwealth, if the provision is specified in the  
16 regulations; or

17 (iii) a direction under this Act; or

18 (iv) a condition of the company's registration; or

19 (b) it would be contrary to the national interest for the  
20 registration to remain in force; or

21 (c) the company has failed to pay:

22 (i) an amount of levy or late penalty to which the *Financial*  
23 *Institutions Supervisory Levies Collection Act 1998*  
24 applies; or

25 (ii) an amount of charge fixed under section 51 of the  
26 *Australian Prudential Regulation Authority Act 1998*; or

27 (d) the company is insolvent and is unlikely to return to solvency  
28 within a reasonable period of time; or

29 (e) the company has inadequate capital and is unlikely to have  
30 adequate capital within a reasonable period of time; or

31 (f) the company has ceased to carry on life insurance business in  
32 Australia; or

33 (g) the company has not, within the period of 12 months after it  
34 was granted a registration, carried on life insurance business  
35 in Australia; or

# EXPOSURE DRAFT

Schedule 3 Amendment of the Life Insurance Act 1995

Part 1 Main amendments

---

- 1 (h) both of the following apply:
- 2 (i) the company is a foreign corporation within the
- 3 meaning of paragraph 51(xx) of the Constitution;
- 4 (ii) an authorisation (however described) for the company
- 5 to carry on life insurance business in a foreign country
- 6 has been revoked or otherwise withdrawn in that foreign
- 7 country.
- 8 (2) Before revoking a company's registration, APRA must give
- 9 written notice to the company advising it that:
- 10 (a) APRA is considering revoking the registration for the reasons
- 11 specified; and
- 12 (b) the company may make submissions about the revocation to
- 13 APRA, in accordance with the notice, by a specified date
- 14 (which must be at least 90 days after the notice is given).
- 15 (3) To avoid doubt, APRA may give a notice under subsection (2) to a
- 16 company even if, at the time the notice is given, APRA is not
- 17 satisfied that the company has no liabilities in respect of life
- 18 insurance business carried on by it in Australia.
- 19 (4) If APRA gives a notice under subsection (2) to a company, APRA
- 20 must not revoke the company's registration until after the date
- 21 specified in the notice, and after consideration of any submission,
- 22 as mentioned in paragraph (2)(b).
- 23 (5) APRA may decide that subsection (2) does not apply if APRA is
- 24 satisfied that complying with that subsection could result in a delay
- 25 in revocation that would be contrary to the national interest.
- 26 (6) If APRA revokes a company's registration, APRA must:
- 27 (a) give written notice to the company; and
- 28 (b) ensure that notice of the revocation is published in the
- 29 *Gazette*.
- 30 (7) A revocation is not invalid merely because of a failure to comply
- 31 with subsection (5).

EXPOSURE DRAFT

# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

---

1 **7 Subsection 27(1)**

2 Omit “APRA may cancel (under this section) the registration under  
3 section 21 of the company by giving the company written notice of  
4 cancellation”, substitute “APRA may revoke (under this section) the  
5 registration under section 21 of the company by giving the company  
6 written notice of revocation”.

7 **8 Subsection 27(2)**

8 Repeal the subsection, substitute:

- 9 (2) Revocation under this section of the registration of a company  
10 takes effect when APRA gives the company written notice of  
11 revocation.

12 **9 At the end of Division 1 of Part 3**

13 Add:

14 **27A Assignment of liabilities to enable revocation**

- 15 (1) If APRA considers that it would, under section 26, revoke a  
16 company’s registration if the company had no liabilities in respect  
17 of life insurance business carried on by it in Australia, APRA may  
18 direct the company to arrange, subject to APRA’s approval, to  
19 assign those liabilities to one or more other companies that are  
20 registered under section 21. The company must effect the  
21 assignment of the liabilities within the period specified in the  
22 direction and comply with such conditions relating to the  
23 assignment as are specified by APRA in the direction.

- 24 (2) Subsection (1) has effect despite subsection 190(1).

25 Note: A company that has asked APRA for a revocation under section 27  
26 may, for the purpose of obtaining the revocation, make an application  
27 to the Court under Part 9 for an order transferring the company’s life  
28 insurance business to another company.

- 29 (3) A company must not assign its liabilities under this section, and a  
30 purported assignment under this section is of no effect, unless the  
31 assignment is approved by APRA under subsection (4).

# EXPOSURE DRAFT

## Schedule 3 Amendment of the Life Insurance Act 1995

### Part 1 Main amendments

---

- 1 (4) APRA may only approve a proposed assignment of a company's  
2 liabilities under this section if APRA is satisfied that the  
3 assignment is appropriate, having regard to:  
4 (a) the interests of the company's policy owners; and  
5 (b) the interests of the policy owners of the company or  
6 companies to which the liabilities are to be assigned; and  
7 (c) the national interest; and  
8 (d) any other matter APRA considers relevant.  
9 The approval must be in writing and may be made subject to  
10 specified conditions.
- 11 (5) If a company (the *first company*) accepts an assignment of  
12 liabilities from another company (the *second company*) approved  
13 by APRA under subsection (4), the following are taken to have  
14 occurred:  
15 (a) policies in respect of which liability is accepted by the first  
16 company (the *transferring policies*) are to be treated for all  
17 purposes as if each policy had been transferred by novation  
18 from the second company to the first company;  
19 (b) a policy owner of a transferring policy is taken to have the  
20 same rights against the first company as the person would  
21 have against that company had the person's policy been  
22 transferred by novation to the first company;  
23 (c) the rights of the first company against policy owners of  
24 transferring policies are the same as they would be had the  
25 transferring policies been transferred by novation to the first  
26 company from the second company.
- 27 (6) If APRA approves an assignment, the company must:  
28 (a) comply with the conditions on the approval; and  
29 (b) give reasonable notice (in writing) of the assignment to the  
30 company's policy owners; and  
31 (c) give APRA such written evidence of the assignment as  
32 APRA reasonably requires.
- 33 (7) An assignment of liabilities under this section may include the  
34 assignment of any rights or benefits in connection with life policies  
35 in respect of the life insurance business carried on in Australia by  
36 the company concerned.
-

# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

---

- 1 (8) A direction under subsection (1) has effect despite anything in the  
2 *Insurance Acquisitions and Takeovers Act 1991*.
- 3 (9) A company commits an offence if:  
4 (a) the company does, or fails to do, an act; and  
5 (b) by doing or failing to do the act, the company fails to comply  
6 with a direction under this section.
- 7 Penalty: 300 penalty units.
- 8 (10) If an individual:  
9 (a) commits an offence against subsection (9) because of Part 2.4  
10 of the *Criminal Code*; or  
11 (b) commits an offence under Part 2.4 of the *Criminal Code* in  
12 relation to an offence against subsection (9);  
13 he or she is punishable, on conviction, by a fine not exceeding 60  
14 penalty units.
- 15 (11) An offence against this section is an offence of strict liability.
- 16 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.
- 17 Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of  
18 criminal responsibility.

## 19 **10 Section 28**

20 Omit “cancels a company’s registration by a notice under  
21 subsection 26(2) or 27(1), the notice may state that the registration  
22 continues in effect in relation to a specified matter or specified period,  
23 as though the cancellation”, substitution “revokes a company’s  
24 registration by a notice under subsection 26(1) or 27(1), the notice may  
25 state that the registration continues in effect in relation to a specified  
26 matter or specified period, as though the revocation”.

## 27 **11 At the end of Division 2 of Part 3**

28 Add:

### 29 **28AA APRA may give notice to ensure that life company has a** 30 **registered NOHC**

- 31 (1) This section applies if:
-

# EXPOSURE DRAFT

## Schedule 3 Amendment of the Life Insurance Act 1995

### Part 1 Main amendments

---

- 1 (a) a body corporate is a holding company of a life company;  
2 and  
3 (b) the life company is not a subsidiary of a registered NOHC.
- 4 (2) APRA may by notice in writing to the body corporate, require it to  
5 ensure, in accordance with the conditions (if any) specified in the  
6 notice, that either of the following occurs:  
7 (a) the body corporate becomes a registered NOHC of the life  
8 company;  
9 (b) a subsidiary of the body corporate becomes a registered  
10 NOHC of the life company.
- 11 Note: See Part 4A of the *Financial Sector (Business Transfer and Group*  
12 *Restructure) Act 1999* for other provisions that deal with a restructure  
13 arrangement to make an operating body a subsidiary of a NOHC.
- 14 (3) The notice may deal with the time by which, or period during  
15 which, it is to be complied with.
- 16 (4) The body corporate has power to comply with the notice despite  
17 anything in its constitution or any contract or arrangement to which  
18 it is a party.
- 19 (5) APRA may, by notice in writing to the body corporate, vary the  
20 notice mentioned in subsection (2) if, at the time of the variation, it  
21 considers that the variation is necessary and appropriate.
- 22 (6) The notice mentioned in subsection (2) has effect until APRA  
23 revokes it by notice in writing to the body corporate. APRA may  
24 revoke the notice mentioned in subsection (2) if, at the time of  
25 revocation, it considers that the notice is no longer necessary or  
26 appropriate.
- 27 (7) Section 230F applies in relation to a notice to a body corporate  
28 under subsection (2) in the same way in which it applies to a  
29 direction to a life company under section 230B.
- 30 (8) However, section 230F does not apply to a contravention by a body  
31 corporate of a requirement in a notice under subsection (2) if:  
32 (a) the contravention happens merely because APRA refuses to  
33 register the body corporate (or its subsidiary) under  
34 Division 2 of Part 3; and
-

# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

---

1 (b) APRA’s reasons for that refusal do not include the reason  
2 that one or more conditions specified in the notice are not  
3 satisfied.

## 4 **12 Subparagraph 28C(1)(a)(iii)**

5 Repeal of subparagraph, substitute:  
6 (iii) a direction under this Act to the authorised NOHC; or

## 7 **13 Paragraph 43(3)(c)**

8 Omit “a statutory fund in a related company that is not a subsidiary of  
9 the life company”, substitute “a statutory fund in a company that is  
10 related to the life company but is not a subsidiary of the life company”.

## 11 **14 Subsection 88A(1)**

12 Omit “(1)”.

## 13 **15 Subsection 88A(2)**

14 Repeal the subsection.

## 15 **16 Subsection 98A(1)**

16 Omit “(1)”.

## 17 **17 Subsection 98A(2)**

18 Repeal the subsection.

## 19 **18 After Division 1 of Part 8**

20 Insert:

## 21 **Division 1AA—Statutory management of life company**

### 22 **Subdivision A—General provisions relating to statutory** 23 **management**

24 *[The following provisions will be renumbered in the final version of the*  
25 *legislation.*

# EXPOSURE DRAFT

Schedule 3 Amendment of the Life Insurance Act 1995

Part 1 Main amendments

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1     **@13A-LIA Consequences of inability or failure of life company etc.**  
2             **to meet certain requirements**

3             *Appointment of administrator or control by APRA*

4             (1) APRA may take control of a life company's business or appoint an  
5             administrator to take control of the life company's business if both  
6             of the following requirements are met:

7                 (a) APRA is satisfied of the matters of which the Federal Court  
8                 is required to be satisfied for the purposes of section 158 or  
9                 159;

10                (b) subsection (1A) applies.

11             (1A) This subsection applies if APRA is satisfied that at least one of the  
12             following situations exists:

13                (a) both:

14                   (i) an AFS statutory manager has taken control of a body  
15                   corporate under this Act, the *Banking Act 1959* or the  
16                   *Insurance Act 1973* (or APRA intends for that to occur);  
17                   and

18                   (ii) the life company and the body corporate are related  
19                   bodies corporate;

20                (b) both:

21                   (i) the life company's financial position is deteriorating  
22                   rapidly, or is likely to deteriorate rapidly; and

23                   (ii) failure to respond quickly to the deterioration would be  
24                   likely to prejudice the interests of policy owners of the  
25                   life company;

26                (c) it is likely that the life company will be unable to carry on  
27                life insurance business in Australia consistently with the  
28                stability of the financial system in Australia.

29                (d) an external administrator has been appointed to a holding  
30                company of the life company (or a similar appointment has  
31                been made in a foreign country in respect of such a holding  
32                company), and the appointment poses a significant threat to:

33                   (i) the operation or soundness of the life company; or

34                   (ii) the interests of policy owners of the life company; or

35                   (iii) the stability of the financial system in Australia; or

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# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

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- 1 (e) if the life company is an eligible foreign life insurance  
2 company:  
3 (i) an application for the appointment of an external  
4 administrator of the eligible foreign life insurance  
5 company, or for a similar procedure in respect of the  
6 eligible foreign life insurance company, has been made  
7 in a foreign country;  
8 (ii) an external administrator has been appointed to the  
9 eligible foreign life insurance company, or a similar  
10 appointment has been made in respect of the eligible  
11 foreign life insurance company, in a foreign country.

12 *Appointment of administrator, or control by APRA*

- 13 (1B) APRA may take any of the actions mentioned in subsection (1C) in  
14 relation to a body corporate (the **target body corporate**) if:  
15 (a) the target body corporate is a body corporate that is any of  
16 the following:  
17 (i) a registered NOHC of a life company (the **relevant life**  
18 **company**);  
19 (ii) a subsidiary of a registered NOHC of a life company  
20 (also the **relevant life company**);  
21 (iii) a subsidiary of a life company (also the **relevant life**  
22 **company**); and  
23 (b) the condition in subsection (1D), (1E) or (1F) is satisfied; and  
24 (c) the target body corporate is not a body corporate of a kind  
25 specified in regulations (if any) made for the purposes of this  
26 paragraph.

- 27 (1C) The actions are as follows:  
28 (a) taking control of the business of the target body corporate;  
29 (b) appointing an administrator to take control of the business of  
30 the target body corporate.

- 31 (1D) The condition in this subsection is satisfied if:  
32 (a) either:  
33 (i) a Life Insurance Act statutory manager has taken  
34 control of the relevant life company; or

# EXPOSURE DRAFT

## Schedule 3 Amendment of the Life Insurance Act 1995

### Part 1 Main amendments

---

- 1 (ii) the conditions in paragraphs (1)(a) and (b) are satisfied  
2 in relation to the relevant life company, and APRA  
3 intends that a Life Insurance Act statutory manager will  
4 take control of the relevant life company; and
- 5 (b) APRA considers that the target body corporate provides  
6 services that are, or conducts business that is, essential to the  
7 capacity of the relevant life company to maintain its  
8 operations.
- 9 (1E) The condition in this subsection is satisfied if:
- 10 (a) either:
- 11 (i) a Life Insurance Act statutory manager has taken  
12 control of the relevant life company; or
- 13 (ii) the conditions in paragraphs (1)(a) and (b) are satisfied  
14 in relation to the relevant life company, and APRA  
15 intends that a Life Insurance Act statutory manager will  
16 take control of the relevant life company; and
- 17 (b) APRA considers that it is necessary for a Life Insurance Act  
18 statutory manager to take control of the target body  
19 corporate, in order to facilitate the resolution of any of the  
20 following:
- 21 (i) the relevant life company;
- 22 (ii) a registered NOHC of the relevant life company;
- 23 (iii) a relevant group of bodies corporate of which the  
24 relevant life company is a member;
- 25 (iv) a particular member or particular members of such a  
26 group.
- 27 (1F) The condition in this subsection is satisfied if:
- 28 (a) there is an external administrator of the target body  
29 corporate, or APRA considers that, in the absence of external  
30 support:
- 31 (i) the target body corporate may become unable to meet its  
32 obligations; or
- 33 (ii) the target body corporate may suspend payment; and
- 34 (b) APRA considers that it is necessary to take an action  
35 mentioned in subsection (1C) in respect of the target body  
36 corporate in order to enable the relevant life company to
-

# EXPOSURE DRAFT

Amendment of the Life Insurance Act 1995 **Schedule 3**  
Main amendments **Part 1**

---

1 maintain its operations, or in order to facilitate the resolution  
2 of any of the following:

- 3 (i) the relevant life company;
- 4 (ii) a registered NOHC of the relevant life company;
- 5 (iii) a relevant group of bodies corporate of which the  
6 relevant life company is a member;
- 7 (iv) a particular member or particular members of such a  
8 group.

9 (2) If:

- 10 (a) APRA is in control of a body corporate's business under this  
11 Subdivision—APRA is the *Life Insurance Act statutory*  
12 *manager* of the body corporate; or
- 13 (b) an administrator appointed by APRA is in control of a body  
14 corporate's business under this Subdivision—the  
15 administrator is the *Life Insurance Act statutory manager* of  
16 the body corporate.

17 Note: This section and other provisions relating to statutory management do  
18 not apply to the aspects described in subsection 16ZE(2) of the  
19 business and management of an eligible foreign life insurance  
20 company.

21 (2A) If APRA appoints two or more Life Insurance Act statutory  
22 managers of a body corporate, or appoints one or more additional  
23 Life Insurance Act statutory managers of a body corporate:

- 24 (a) the functions and powers under this Act of a Life Insurance  
25 Act statutory manager of the body corporate may be  
26 performed or exercised by:
    - 27 (i) all of the Life Insurance Act statutory managers of the  
28 body corporate acting jointly; or
    - 29 (ii) each of the Life Insurance Act statutory managers of the  
30 body corporate acting individually (except to the extent  
31 (if any) specified in a notice given by APRA under  
32 paragraph (b)); and
  - 33 (b) at the time of appointment, APRA may give all of the Life  
34 Insurance Act statutory managers of the body corporate a  
35 notice in writing for the purposes of subparagraph (a)(ii),  
36 specifying limits or conditions on their ability to perform  
37 functions and exercise powers individually; and
-

# EXPOSURE DRAFT

Schedule 3 Amendment of the Life Insurance Act 1995

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- 1 (c) treat a reference in this Act to a Life Insurance Act statutory  
2 manager as being a reference to whichever one or more of  
3 those Life Insurance Act statutory managers the case  
4 requires.

5 **@13BA-LIA Start of control of body corporate's business by Life**  
6 **Insurance Act statutory manager**

- 7 (1) After the decision that a Life Insurance Act statutory manager will  
8 take control of a body corporate's business is made, APRA must  
9 give the body corporate written notice that the Life Insurance Act  
10 statutory manager will take, or is taking, control of the business.

11 Note: Subsections @15A-LIA(4) and @16A-LIA(3) also require APRA to  
12 give notice of the taking of control.

- 13 (2) A Life Insurance Act statutory manager takes control of a body  
14 corporate's business:  
15 (a) at the time specified in a notice under this section as the time  
16 when the Life Insurance Act statutory manager takes control  
17 of the business (which must not be earlier than the notice is  
18 given); or  
19 (b) if a notice under this section does not specify a time as the  
20 time when the Life Insurance Act statutory manager takes  
21 control of the business—at the time the notice is given.

- 22 (3) A notice under subsection (1) is not a legislative instrument.

23 **@13C-LIA Life Insurance Act statutory managers—termination of**  
24 **control**

25 *Conditions necessary for termination of control*

- 26 (1) If APRA assumes control of a body corporate's business or  
27 appoints an administrator of a body corporate's business, APRA  
28 must ensure that either it or an administrator of the body  
29 corporate's business has control of the body corporate's business  
30 until:

- 31 (a) APRA considers that it is no longer necessary for it or an  
32 administrator to remain in control of the body corporate's  
33 business; or
-

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1 (b) APRA has applied for the body corporate to be wound up.  
2 A termination of control that is permitted under this section is  
3 called an *ultimate termination of control*.

4 Note: This provision does not prevent a change, or changes, between control  
5 of a body corporate's business by APRA and an administrator or  
6 between administrators.

7 *Events to precede termination*

8 (2) Before making an ultimate termination of control by a Life  
9 Insurance Act statutory manager of a body corporate's business,  
10 APRA must:

11 (a) do both of the following:

- 12 (i) ensure that directors of the body corporate have been  
13 appointed or elected under the body corporate's  
14 constitution at a meeting called by the statutory manager  
15 in accordance with the body corporate's constitution;  
16 (ii) if the body corporate is an eligible foreign life insurance  
17 company—ensure that a Compliance Committee of the  
18 body corporate is established and operating for the  
19 purpose of section 16ZF; or

20 (b) do both of the following:

- 21 (i) appoint directors of the body corporate by instrument in  
22 writing;  
23 (ii) if the body corporate is an eligible foreign life insurance  
24 company—ensure that a Compliance Committee of the  
25 body corporate is established and operating for the  
26 purpose of section 16ZF; or

27 (c) ensure that a liquidator has been appointed:

- 28 (i) unless subparagraph (ii) applies—for the body  
29 corporate; or  
30 (ii) if the body corporate is an eligible foreign life insurance  
31 company—for the body corporate in relation to its  
32 Australian business assets and liabilities.

33 *Power to terminate control*

34 (3) If the requirements in subsections (1) and (2) are satisfied, APRA  
35 may by instrument in writing make an ultimate termination of

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1 control of a body corporate's business by a Life Insurance Act  
2 statutory manager.

3 (4) If the Life Insurance Act statutory manager at the time of the  
4 termination is an administrator, the instrument of termination also  
5 operates as a termination of the appointment of the administrator.  
6 A copy of the instrument must be given to the administrator.  
7 However, mere failure to give the copy to the administrator does  
8 not affect the termination of the appointment.

9 *Period of director's appointment*

10 (5) If a director is elected or appointed under subsection (2), the  
11 director takes office on the termination of the Life Insurance Act  
12 statutory manager's control of the body corporate's business. If the  
13 director was appointed by APRA, the director holds office until the  
14 body corporate's next annual general meeting, subject to any terms  
15 and conditions imposed by APRA on the director's appointment. If  
16 the director was appointed or elected under the body corporate's  
17 constitution, the constitution governs the appointment.

18 Note: For further information about what happens when a Life Insurance  
19 Act statutory manager is in control of a body corporate's business, see  
20 Subdivision B.

21 **Subdivision B—Provisions dealing with control of a body**  
22 **corporate's business by a Life Insurance Act**  
23 **statutory manager**

24 **@14A-LIA Life Insurance Act statutory manager's powers and**  
25 **functions**

26 *Life Insurance Act statutory manager's powers and functions*  
27 *include powers and functions of board*

28 (1) A Life Insurance Act statutory manager has the powers and  
29 functions of the members of the board of directors of the body  
30 corporate (collectively and individually), including the board's  
31 powers of delegation.

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1 Note: When a Life Insurance Act statutory manager takes control of the  
2 business of a body corporate, the directors of the body corporate cease  
3 to hold office (see section @15-LIA).

4 *Life Insurance Act statutory manager's power to obtain*  
5 *information*

6 (2) A Life Insurance Act statutory manager may, for the purposes of  
7 this Division, require a person who has, at any time, been an  
8 officer of the body corporate to give the Life Insurance Act  
9 statutory manager any information relating to the business of the  
10 body corporate that the Life Insurance Act statutory manager  
11 requires. A requirement to give information may include a  
12 requirement to produce books, accounts or documents.

13 (2A) A person who is or has been an officer of a body corporate  
14 commits an offence if:

- 15 (a) there is a Life Insurance Act statutory manager in relation to  
16 the body corporate; and  
17 (b) under subsection (2), the Life Insurance Act statutory  
18 manager requires the person to give information or to  
19 produce books, accounts or documents; and  
20 (c) the person fails to comply with the requirement.

21 **Penalty:** Imprisonment for 12 months.

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

24 Note 2: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a  
25 fine instead of, or in addition to, a term of imprisonment. The  
26 maximum fine a court may impose is worked out as provided in that  
27 subsection.

28 Note 3: If a body corporate is convicted of an offence against this subsection,  
29 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a  
30 fine of up to 5 times the maximum fine worked out as mentioned in  
31 Note 2.

32 (3) An individual is not excused from complying with a requirement  
33 under subsection (2) to give information on the ground that doing  
34 so would tend to incriminate the individual or make the individual  
35 liable to a penalty.

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- 1 (4) If:  
2 (a) before giving information in compliance with a requirement  
3 under subsection (2), an individual claims that giving the  
4 information might tend to incriminate the individual or make  
5 the individual liable to a penalty; and  
6 (b) giving the information might in fact tend to incriminate the  
7 individual or make the individual so liable;  
8 the information given in compliance with the requirement is not  
9 admissible in evidence against the individual in a criminal  
10 proceeding or a proceeding for the imposition of a penalty, other  
11 than a proceeding in respect of the falsity of the information.

- 12 (4A) Subsections (3) and (4) apply to the production of books, accounts  
13 or documents in a corresponding way to the way in which they  
14 apply to the giving of information.

15 *Life Insurance Act statutory manager's power to sell whole or part*  
16 *of body corporate's business*

- 17 (5) A Life Insurance Act statutory manager may sell or otherwise  
18 dispose of the whole or any part of the body corporate's business.  
19 The sale or disposal may occur on any terms and conditions that  
20 the Life Insurance Act statutory manager considers appropriate.

21 *Life Insurance Act statutory manager's powers to alter body*  
22 *corporate's constitution etc.*

- 23 (5A) A Life Insurance Act statutory manager may, if the body corporate  
24 concerned is registered under the *Corporations Act 2001*, alter the  
25 body corporate's constitution, rules or other arrangements for  
26 governance if the alteration:  
27 (a) is necessary or convenient for enabling or facilitating the  
28 performance of the Life Insurance Act statutory manager's  
29 functions and duties, or the exercise of the Life Insurance Act  
30 statutory manager's other powers, under this Division in  
31 relation to the body corporate; and  
32 (b) promotes:  
33 (i) the protection of the policy owners of the body  
34 corporate; and



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- 1 (ii) financial system stability in Australia.
- 2 (5B) A Life Insurance Act statutory manager may do an act under  
3 subsection (5) or (5A) despite:
- 4 (a) the *Corporations Act 2001*; and  
5 (b) the body corporate's constitution; and  
6 (c) any contract or arrangement to which the body corporate is  
7 party; and  
8 (d) any listing rules of a financial market in whose official list  
9 the body corporate is included.

## 10 *Interpretation*

- 11 (6) In this section:

12 *officer* has the meaning given by section 9 of the *Corporations Act*  
13 *2001*.

## 14 **@14AAA-LIA Safeguards on exercise of Life Insurance Act** 15 **statutory manager's powers and functions**

- 16 (1) Despite anything else in this Subdivision, a Life Insurance Act  
17 statutory manager of a body corporate (the *body corporate under*  
18 *management*) may not perform a function or exercise a power  
19 under section 14A if:
- 20 (a) either or both of subsections (2) and (3) apply; and  
21 (b) the performance of the function of the exercise of the power  
22 is not for the purposes of:
- 23 (i) an act of the Life Insurance Act statutory manager under  
24 subsection @14AA(1)-LIA; or  
25 (ii) Part 3 or 4 of the *Financial Sector (Business Transfer*  
26 *and Group Restructure) Act 1999*.
- 27 (2) This subsection applies if:
- 28 (a) the body corporate under management is not a life company;  
29 and  
30 (b) the performance or the exercise would result in:

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- 1 (i) the provision of services by the body corporate under  
2 management to a related body corporate of the body  
3 corporate under management; or
- 4 (ii) the provision of services by a related body corporate of  
5 the body corporate under management to the body  
6 corporate under management; or
- 7 (iii) subject to subsection (4), the transfer of assets between  
8 the body corporate under management and another body  
9 corporate (otherwise than in the ordinary course of  
10 business); and
- 11 (c) the performance or the exercise is not required or permitted  
12 by a binding arrangement that was in existence immediately  
13 before the Life Insurance Act statutory manager started to be  
14 in control of the business of the body corporate under  
15 management; and
- 16 (d) the provision or transfer is not for fair value.
- 17 (3) This subsection applies if:
- 18 (a) the body corporate under management is a registered NOHC  
19 of a life company; and
- 20 (b) the performance or the exercise requires using funds of the  
21 body corporate or a subsidiary of the body corporate to  
22 increase the level of capital of the life company to a specified  
23 level; and
- 24 (c) the shareholders of the body corporate have not agreed, by  
25 ordinary resolution, to that use of the funds.
- 26 (4) Treat the requirement in subparagraph (2)(b)(iii) as not being met  
27 if:
- 28 (a) the body corporate under management is a registered NOHC  
29 of a life company; and
- 30 (b) the transfer of assets mentioned in that subparagraph is a  
31 transfer of funds to increase the level of capital of the life  
32 company to a specified level; and
- 33 (c) the shareholders of the body corporate have agreed, by  
34 ordinary resolution, to that use of the funds.

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1 **@14AA-LIA Life Insurance Act statutory manager's additional**  
2 **powers to facilitate recapitalisation**

3 *Powers*

- 4 (1) A Life Insurance Act statutory manager of a body corporate that is  
5 a company that has a share capital and is registered under the  
6 *Corporations Act 2001* may do one or more of the following acts  
7 on terms determined by the Life Insurance Act statutory manager:  
8 (a) issue shares, or rights to acquire shares, in the company;  
9 (b) cancel shares, or rights to acquire shares, in the company;  
10 (c) reduce the company's share capital by cancelling any paid-up  
11 share capital that is not represented by available assets;  
12 (d) sell shares, or rights to acquire shares, in the company;  
13 (e) vary or cancel rights or restrictions attached to shares in a  
14 class of shares in the company.

15 Note: Before doing such an act, the Life Insurance Act statutory manager  
16 will usually need to get and consider a report on the fair value of each  
17 share or right concerned: see section @14AB-LIA.

18 *Giving company members notice of exercise of powers*

- 19 (2) As soon as practicable after doing an act described in  
20 paragraph (1)(a), (b), (c) or (e) or subsection (3), the Life Insurance  
21 Act statutory manager must give written notice to the persons who  
22 were members (under section 231 of the *Corporations Act 2001*) of  
23 the company just before the act, identifying the act and explaining  
24 its effect on their interests as members.
- 25 (3) One of the acts to which subsection (2) relates is the offering of  
26 shares, or rights to acquire shares, in the company for sale under  
27 paragraph (1)(d).

28 *Exercise of powers despite other laws etc.*

- 29 (4) A Life Insurance Act statutory manager may do an act under  
30 subsection (1) despite:  
31 (a) the *Corporations Act 2001*; and  
32 (b) the company's constitution; and

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- 1 (c) any contract or arrangement to which the company is party;  
2 and  
3 (d) any listing rules of a financial market in whose official list  
4 the company is included.

5 *Section does not apply to EFLICs etc.*

- 6 (5) This section does not apply in relation to a body corporate that is:  
7 (a) an eligible foreign life insurance company; or  
8 (b) a subsidiary of an eligible foreign life insurance company; or  
9 (c) a registered NOHC of an eligible foreign life insurance  
10 company.

11 **@14AB-LIA Considering report before acting under section**  
12 **@14AA-LIA**

13 *Getting and considering report on fair value of shares or rights*

- 14 (1) Before determining terms for an act under subsection  
15 @14AA-LIA(1), the Life Insurance Act statutory manager must:  
16 (a) obtain a report meeting the requirements in subsection (2) of  
17 this section on the fair value of the shares or rights concerned  
18 from an expert who is not an associate of the statutory  
19 manager, or of the company, under Division 2 of Part 1.2 of  
20 the *Corporations Act 2001*; and  
21 (b) consider the report;  
22 unless APRA determines under subsection (8) that this subsection  
23 does not apply in relation to that act relating to those shares or  
24 rights.

25 *Content of report*

- 26 (2) The report must set out:  
27 (a) the amount that is, in the expert's opinion, the fair value for  
28 each share or right concerned; and  
29 (b) the reasons for forming the opinion; and  
30 (c) any relationship between the expert and any of the following  
31 persons:

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- 1 (i) the Life Insurance Act statutory manager;
- 2 (ii) a person who is an associate of the Life Insurance Act
- 3 statutory manager under Division 2 of Part 1.2 of the
- 4 *Corporations Act 2001*;
- 5 (iii) the body corporate;
- 6 (iv) a person who is an associate of the body corporate under
- 7 Division 2 of Part 1.2 of the *Corporations Act 2001*;
- 8 including any circumstances in which the expert gives them
- 9 advice, or acts on their behalf, in the proper performance of
- 10 the functions attaching to the expert's professional capacity
- 11 or business relationship with them; and
- 12 (d) any financial or other interest of the expert that could
- 13 reasonably be regarded as being capable of affecting the
- 14 expert's ability to give an unbiased opinion in relation to the
- 15 matter being reported on.

16 *Determining fair value of shares*

- 17 (3) In determining for the purposes of paragraph (2)(a) the amount that
- 18 is, in the expert's opinion, the fair value for each share concerned,
- 19 the expert must:
- 20 (a) first, assess the value of the company as a whole, in
- 21 accordance with the assumptions (if any) notified to the
- 22 expert by the Minister for the valuation of the company; and
- 23 (b) then allocate that value among the classes of shares in the
- 24 company that either have been issued or that the Life
- 25 Insurance Act statutory manager proposes to issue (taking
- 26 into account the relative financial risk, and voting and
- 27 distribution rights, of the classes); and
- 28 (c) then allocate the value of each class pro rata among the
- 29 shares in that class that either have been issued or that the
- 30 Life Insurance Act statutory manager proposes to issue
- 31 (without allowing a premium or applying a discount for
- 32 particular shares in that class).

33 *Assumptions for valuation of company*

- 34 (4) The Minister may give the expert written notice of assumptions for
- 35 the valuation of the company. The Minister may, by further written

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1 notice given to the expert, revoke, but not vary, notice of the  
2 assumptions. A notice under this subsection is not a legislative  
3 instrument.

4 *Determining fair value of rights*

5 (5) In determining for the purposes of paragraph (2)(a) the amount that  
6 is, in the expert's opinion, the fair value for each right concerned,  
7 the expert must act in accordance with the assumptions (if any)  
8 notified to the expert by the Minister for the valuation of the right.

9 *Assumptions for valuation of rights*

10 (6) The Minister may give the expert written notice of assumptions for  
11 the valuation of the rights concerned. The Minister may, by further  
12 written notice given to the expert, revoke, but not vary, notice of  
13 the assumptions. A notice under this subsection is not a legislative  
14 instrument.

15 *Contravention does not invalidate act*

16 (7) A contravention of subsection (1), (2), (3), (5) or (9) does not  
17 affect the validity of anything done under section @14AA-LIA.

18 *Exemption from subsection (1)*

19 (8) APRA may determine in writing that subsection (1) does not apply  
20 in relation to an act relating to shares or rights if APRA is satisfied  
21 that delaying the act to enable compliance with that subsection in  
22 relation to the act would detrimentally affect:

23 (a) policy owners with:

24 (i) if the company is a life company—the life company; or

25 (ii) if the company is not a life company—the relevant life  
26 company mentioned in subsection @13A-LIA(1B); and

27 (b) financial system stability in Australia.

28 (9) APRA must:

29 (a) publish a copy of a determination under subsection (8) in the  
30 *Gazette*; and

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1 (b) give a copy of a determination under subsection (8) to the  
2 Life Insurance Act statutory manager concerned (unless that  
3 manager is APRA).

4 (10) A determination made under subsection (8) is not a legislative  
5 instrument.

## 6 **@14AC-LIA Act under section @14AA-LIA not ground for denying** 7 **obligation**

8 (1) This section applies if:

9 (a) a body corporate (the *contracting body corporate*) is party to  
10 a contract, whether the proper law of the contract is  
11 Australian law (including the law of a State or Territory) or  
12 law of a foreign country (including the law of part of a  
13 foreign country); and

14 (b) either:

15 (i) a Life Insurance Act statutory manager of the  
16 contracting body corporate does an act under subsection  
17 @14AA-LIA(1) relating to the contracting body  
18 corporate; or

19 (ii) a Life Insurance Act statutory manager of a body  
20 corporate that is a related body corporate of the  
21 contracting body corporate does an act under subsection  
22 @14AA-LIA(1) relating to the contracting body  
23 corporate.

24 (2) The fact that the Life Insurance Act statutory manager does the act  
25 does not allow the contract, or a party to the contract, to do any of  
26 the following:

27 (a) deny any obligations under the contract;

28 (b) accelerate any debt under the contract;

29 (c) close out any transaction relating to the contract;

30 (d) enforce any security under the contract.

31 (3) Subsection (2) does not prevent the contracting body corporate  
32 doing any of the following:

33 (a) denying an obligation to an entity that is not a related body  
34 corporate of the contracting body corporate;

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- 1 (b) accelerating a debt to an entity that is not a related body  
2 corporate of the contracting body corporate;  
3 (c) closing out a transaction with an entity that is not a related  
4 body corporate of the contracting body corporate;  
5 (d) enforcing a security against an entity that is not a related  
6 body corporate of the contracting body corporate.

7 **@14AD-LIA APRA may require a person to give information etc.**  
8 **for the purposes of this Division**

9 *APRA may require person to give information etc.*

10 (1) APRA may require a person, by written notice given to the person,  
11 to give APRA information, or documents containing information,  
12 relating to the business of a body corporate that has a Life  
13 Insurance Act statutory manager if:

- 14 (a) in a case where the Life Insurance Act statutory manager is  
15 APRA:  
16 (i) APRA believes, on reasonable grounds, that the person  
17 has such information or documents; and  
18 (ii) APRA requires the information or documents for the  
19 purposes of this Division; and  
20 (b) in a case where the Life Insurance Act statutory manager is  
21 not APRA:  
22 (i) the Life Insurance Act statutory manager requests, in  
23 writing, that APRA require the person to give the  
24 information or documents under this subsection; and  
25 (ii) APRA believes, on reasonable grounds, that the person  
26 has such information or documents; and  
27 (iii) APRA is satisfied that the Life Insurance Act statutory  
28 manager requires the information or documents for the  
29 purposes of this Division.

30 (2) The notice:

- 31 (a) must specify a period within which the information or  
32 documents must be given to APRA; and  
33 (b) may specify the form and manner in which the information or  
34 documents must be given to APRA.



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1 (3) The period specified under paragraph (2)(a) must be reasonable in  
2 all the circumstances.

3 *Offence*

- 4 (4) A person commits an offence if:  
5 (a) APRA requires the person to give APRA information or  
6 documents under subsection (1); and  
7 (b) the person refuses or fails to give the information or  
8 documents as required.

9 Penalty: Imprisonment for 12 months or 50 penalty units, or both.

10 *Self-incrimination*

11 (5) A person is not excused from complying with a requirement under  
12 subsection (1) to give information or documents on the ground that  
13 doing so would tend to incriminate the individual or make the  
14 individual liable to a penalty.

- 15 (6) However, in the case of an individual:  
16 (a) the information or document given; and  
17 (b) giving the information or document; and  
18 (c) any information, document or thing obtained as a direct or  
19 indirect consequence of giving the information or document;  
20 are not admissible in evidence against the individual in a criminal  
21 proceeding or a proceeding for the imposition of a penalty, other  
22 than a proceeding in respect of the falsity of the information or  
23 document.

24 *Section @14A-LIA not limited*

25 (7) This section does not limit section @14A-LIA.

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1     **@14B-LIA Administrator in control—additional powers to**  
2             **recommend action by APRA**

3             *Types of recommendation*

- 4             (1) An administrator of a body corporate's business may make any of  
5             the following recommendations to APRA, by instrument in writing  
6             given to APRA:
- 7                 (a) that APRA make a particular direction under subsection  
8                 @14D-LIA(3) or Subdivision B of Division 2 of Part 10A in  
9                 respect of the body corporate;
  - 10                (b) that APRA apply for the body corporate to be wound up;
  - 11                (c) if the body corporate is a life company—that APRA revoke  
12                the life company's registration under section 21;
  - 13                (d) if the body corporate is an registered NOHC—that APRA  
14                revoke the registered NOHC's registration under  
15                section 28A.

16             *Effect of recommendation*

- 17             (2) If an administrator of a body corporate's business makes a  
18             recommendation under this section, APRA must consider the  
19             recommendation but is not required to act on it.

20     **@14C-LIA Life Insurance Act statutory manager's liabilities and**  
21             **duties**

22             *Immunity*

- 23             (1) A Life Insurance Act statutory manager, or a person acting on  
24             behalf of a Life Insurance Act statutory manager, is not subject to  
25             any liability (whether civil or criminal) in respect of anything done,  
26             or omitted to be done, in the exercise or performance, or the  
27             purported exercise or performance, of powers, functions or duties  
28             conferred or imposed on the Life Insurance Act statutory manager  
29             by or under this Act.
- 30             (2) Subsection (1) does not apply to an act or omission in bad faith.

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1 (3) To avoid doubt, a Life Insurance Act statutory manager is not  
2 liable under section 588G of the *Corporations Act 2001* in respect  
3 of anything done, or omitted to be done, in the exercise or  
4 performance, or the purported exercise or performance, of powers,  
5 functions or duties conferred or imposed on the Life Insurance Act  
6 statutory manager by or under this Act. This subsection does not  
7 limit the scope of subsection (1).

8 (4) Subsection (1) does not limit, and is not limited by any of the  
9 following provisions:  
10 (a) section 156A, 156B, 246A or 246B;  
11 (b) section 58 of the *Australian Prudential Regulation Authority*  
12 *Act 1998*.

13 *Signpost to secrecy obligations*

14 (5) Part 6 of the *Australian Prudential Regulation Authority Act 1998*  
15 prohibits certain disclosures of information received by Life  
16 Insurance Act statutory managers under this Act.

## 17 **@14CA-LIA Transaction by Life Insurance Act statutory manager** 18 **not voidable under 588FE of the *Corporations Act 2001***

19 A transaction of a body corporate is not voidable under  
20 section 588FE of the *Corporations Act 2001* merely because:

- 21 (a) the transaction was entered into at a time when a Life  
22 Insurance Act statutory manager was in control of the body  
23 corporate's business; and  
24 (b) the transaction is:  
25 (i) an uncommercial transaction (within the meaning of  
26 that Act) of the body corporate; or  
27 (ii) an unfair preference (within the meaning of that Act)  
28 given by the body corporate to a creditor of the  
29 company; or  
30 (iii) an insolvent transaction (within the meaning of that Act)  
31 of the body corporate.





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1 it may cease to be the statutory manager of the body corporate and  
2 appoint a person as administrator of the body corporate's business.

3 (3) This section has effect subject to section @13C-LIA.

4 **@15-LIA Effect on directors of Life Insurance Act statutory**  
5 **manager taking control of a body corporate's business**

6 (1) The directors of a body corporate cease to hold office when a Life  
7 Insurance Act statutory manager takes control of the body  
8 corporate's business.

9 Note: For the definition of *director*, see subsection (4).

10 (2) A director of a body corporate must not be appointed or elected  
11 while a Life Insurance Act statutory manager is in control of the  
12 body corporate's business unless the appointment is made under  
13 subsection @13C-LIA(2).

14 (2A) The appointment of a person as a member of the Compliance  
15 Committee of an eligible foreign life insurance company under  
16 section 16ZF ceases to have effect when a Life Insurance Act  
17 statutory manager takes control of the eligible foreign life  
18 insurance company's business.

19 (2B) A person must not be appointed as a member of the Compliance  
20 Committee of an eligible foreign life insurance company under  
21 section 16ZF while a Life Insurance Act statutory manager is in  
22 control of the eligible foreign life insurance company's business  
23 unless the appointment is made under subsection @13C-LIA(2).

24 (3) If a person who ceased to hold office as a director of a body  
25 corporate under subsection (1), or a purported director of a body  
26 corporate appointed or elected in contravention of subsection (2)  
27 purports to act in relation to the body corporate's business while a  
28 Life Insurance Act statutory manager has control of the body  
29 corporate's business, those acts are invalid and of no effect.

30 (3AA) If a person whose appointment as a member of the Compliance  
31 Committee of a body corporate under section 16ZF ceased to have  
32 effect under subsection (2A) purports to act in relation to the body  
33 corporate's business while a Life Insurance Act statutory manager

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- 1 has control of the body corporate's business, those acts are invalid  
2 and of no effect.
- 3 (3A) Subsections (1), (2) and (3) do not apply in relation to a body  
4 corporate that is an eligible foreign life insurance company.
- 5 (3B) Subsection (3C) applies if:
- 6 (a) subsections (1), (2) and (3) do not apply in relation to a body  
7 corporate because of subsection (3A); and
- 8 (b) a Life Insurance Act statutory manager takes control of the  
9 body corporate's business; and
- 10 (c) a director of the body corporate acts, or purports to act in  
11 relation to the body corporate's business while the Life  
12 Insurance Act statutory manager has control of the body  
13 corporate's business.
- 14 (3C) Those acts are invalid and of no effect to the extent that they relate  
15 to:
- 16 (a) the Australian business assets and liabilities of the body  
17 corporate; or
- 18 (b) the management of the body corporate, to the extent that the  
19 management relates to the Australian business assets and  
20 liabilities of the body corporate.
- 21 (4) For the purposes of this section, *director* has the same meaning as  
22 it has in the *Corporations Act 2001*.

23 **@15A-LIA Effect on external administrator of Life Insurance Act**  
24 **statutory manager taking control of a body corporate's**  
25 **business**

- 26 (1) The appointment of an external administrator of a body corporate  
27 is terminated when a Life Insurance Act statutory manager takes  
28 control of the body corporate's business.
- 29 Note: For the definition of *external administrator*, see subsection 5(1).
- 30 (2) An external administrator of a body corporate must not be  
31 appointed while a Life Insurance Act statutory manager is in  
32 control of the body corporate's business unless APRA approves the  
33 appointment.
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- 1 (3) If a person who ceased to be the external administrator of a body  
2 corporate under subsection (1), or a purported external  
3 administrator of the body corporate appointed in contravention of  
4 subsection (2), purports to act in relation to the body corporate's  
5 business while a Life Insurance Act statutory manager has control  
6 of the body corporate's business, those acts are invalid and of no  
7 effect.
- 8 (4) APRA must inform the external administrator of a body corporate  
9 that a Life Insurance Act statutory manager will take control of the  
10 body corporate's business as soon as possible after the decision  
11 that a Life Insurance Act statutory manager will take control of the  
12 body corporate's business is made. However, failure to inform the  
13 external administrator does not affect the operation of this section.

#### 14 **@15B-LIA Moratorium—effect of Life Insurance Act statutory** 15 **management on court and tribunal proceedings**

- 16 (1) A person cannot begin or continue a proceeding in a court or  
17 tribunal covered by subsection (7) in respect of a body corporate if  
18 a Life Insurance Act statutory manager is in control of the body  
19 corporate's business.
- 20 (2) Subsection (1) does not apply if:  
21 (a) the court or tribunal grants leave for the proceedings to be  
22 begun or continued on the ground that the person would be  
23 caused hardship if leave were not granted; and  
24 (b) the beginning or continuing of the proceedings is in  
25 accordance with such terms (if any) as the court or tribunal  
26 imposes.
- 27 (3) A person intending to apply for leave of the court under  
28 paragraph (2)(a) must give APRA at least 10 days notice of the  
29 intention to apply (or a shorter period, if the court or tribunal  
30 considers that exceptional circumstances make this necessary).
- 31 (4) APRA may apply to the court to be joined as a party to the  
32 proceedings for leave. If APRA is joined as a party, the court or  
33 tribunal must have regard to APRA's views in deciding:  
34 (a) whether to grant leave under paragraph (2)(a); and



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- 1 (b) if the court or tribunal decides to grant the leave—whether to  
2 impose terms as mentioned in paragraph (2)(b); and  
3 (c) if the court or tribunal decides to impose such terms— the  
4 nature of those terms.
- 5 (5) Subsection (1) also does not apply if:  
6 (a) APRA consents in writing to the proceedings beginning or  
7 continuing; or  
8 (b) the Life Insurance Act statutory manager, after considering  
9 APRA’s views, consents to the proceedings beginning or  
10 continuing.
- 11 (6) APRA (or the Life Insurance Act statutory manager) cannot revoke  
12 a consent given for the purposes of subsection (5).
- 13 (6A) Neither APRA nor the Life Insurance Act statutory manager is  
14 liable to an action or other proceedings for damages in respect of a  
15 refusal to give consent under subsection (5).
- 16 (7) A proceeding in a court or tribunal is covered by this subsection in  
17 respect of a body corporate if it is any of the following:  
18 (a) a proceeding against the body corporate (including a  
19 cross-claim or third party claim against the body corporate);  
20 (b) a proceeding in relation to property of the body corporate;  
21 (c) a proceeding to enforce any security (including a mortgage or  
22 charge) over any property that the body corporate owns, uses,  
23 possesses, occupies or in which the body corporate otherwise  
24 has an interest.
- 25 (8) Subsection (7) does not cover a proceeding in respect of an offence  
26 or a contravention of a provision of a law for which a pecuniary  
27 penalty (however described) may be imposed.
- 28 (9) In this section, a reference to a tribunal includes a reference to the  
29 following:  
30 (a) an industrial tribunal;  
31 (b) an arbitral tribunal.

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1     **@15BA-LIA Moratorium—effect of Life Insurance Act statutory**  
2             **management on enforcement process regarding property**

3             (1) No enforcement process in relation to property of a body corporate  
4                 can be begun or proceeded with if a Life Insurance Act statutory  
5                 manager is in control of the body corporate's business.

6             (2) Subsection (1) does not apply if:

7                 (a) the Federal Court grants leave for the process to be begun or  
8                 continued on the ground that the person would be caused  
9                 hardship if leave were not granted; or

10                (b) the beginning or continuing of the process is in accordance  
11                with such terms (if any) as the Federal Court imposes.

12             (3) A person intending to apply for leave of the Federal Court under  
13                 paragraph (2)(a) must give APRA at least 10 days notice of the  
14                 intention to apply (or a shorter period, if the Federal Court  
15                 considers that exceptional circumstances make this necessary).

16             (3A) APRA may apply to the Federal Court to be joined as a party to the  
17                 proceedings for leave. If APRA is joined as a party, the Federal  
18                 Court must have regard to APRA's views in deciding:

19                 (a) whether to grant leave under paragraph (2)(a); and

20                 (b) if the Federal Court decides to grant the leave—whether to  
21                 impose terms as mentioned in paragraph (2)(b); and

22                 (c) if the Federal Court decides to impose such terms— the  
23                 nature of those terms.

24             (4) Subsection (1) also does not apply if:

25                 (a) APRA consents to the process beginning or continuing; or

26                 (b) the Life Insurance Act statutory manager consents to the  
27                 process beginning or continuing.

28             (5) APRA (or the Life Insurance Act statutory manager) cannot revoke  
29                 a consent given for the purposes of subsection (4).

30             (6) Neither APRA nor the Life Insurance Act statutory manager is  
31                 liable to an action or other proceedings for damages in respect of a  
32                 refusal to give consent under subsection (4).



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- 1 (3) This section applies despite sections @15B-LIA, @15BA-LIA and  
2 @15BB-LIA.

3 **@15BD-LIA Moratorium—effect of Life Insurance Act statutory**  
4 **management on supply of essential services**

- 5 (1) If:  
6 (aa) a Life Insurance Act statutory manager is in control of a body  
7 corporate's business; and  
8 (a) the Life Insurance Act statutory manager requests, or  
9 authorises someone else to request, a person or authority (the  
10 *supplier*) to supply an essential service to the body corporate  
11 in Australia; and  
12 (b) the body corporate owes an amount to the supplier in respect  
13 of the supply of the essential service before the day on which  
14 the Life Insurance Act statutory manager took control of the  
15 body corporate's business;  
16 the supplier must not:  
17 (c) refuse to comply with the request for the reason only that the  
18 amount is owing; or  
19 (d) make it a condition of the supply of the essential service  
20 pursuant to the request that the amount is to be paid.

21 Note: The Federal Court may grant an injunction under section 235 in  
22 respect of a contravention of this subsection.

- 23 (2) In this section:

24 *essential service* has the same meaning as in section 600F of the  
25 *Corporations Act 2001*.

26 **@15BF-LIA Moratorium—effect of Life Insurance Act statutory**  
27 **management on annual general meeting**

- 28 (1) This section applies to a body corporate that is required under  
29 section 250N or section 601BR of the *Corporations Act 2001* to  
30 hold an annual general meeting within a particular period.  
31 (2) Despite section 250N and section 601BR of that Act, if a Life  
32 Insurance Act statutory manager is in control of the body

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1 corporate's business at the end of that period, the body corporate  
2 need not hold that annual general meeting.

3 **@15C-LIA Life Insurance Act statutory manager being in control**  
4 **not grounds for denial of obligations**

5 (1) This section applies if a body corporate is party to a contract,  
6 whether the proper law of the contract is Australian law (including  
7 the law of a State or Territory) or law of a foreign country  
8 (including the law of part of a foreign country).

9 (2) None of the matters mentioned in subsection (3) allow the contract,  
10 or a party to the contract, to do any of the following:

- 11 (a) deny any obligations under the contract;
- 12 (b) accelerate any debt under the contract;
- 13 (c) close out any transaction relating to the contract;
- 14 (d) enforce any security under the contract.

15 This subsection has effect subject to subsection (4).

16 (3) The matters are as follows:

- 17 (a) a Life Insurance Act statutory manager being in control, or  
18 being appointed to take control, of the business of the body  
19 corporate;
- 20 (b) a Life Insurance Act statutory manager being in control, or  
21 being appointed to take control, of the business of a related  
22 body corporate of the body corporate.

23 (4) Subsection (2) does not prevent the body corporate doing any of  
24 the following:

- 25 (a) denying an obligation to an entity that is not a related body  
26 corporate of the body corporate;
- 27 (b) accelerating a debt to an entity that is not a related body  
28 corporate of the body corporate;
- 29 (c) closing out a transaction with an entity that is not a related  
30 body corporate of the body corporate;
- 31 (d) enforcing a security against an entity that is not a related  
32 body corporate of the body corporate.



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1 **@16A-LIA APRA must report to Treasurer and publish**  
2 **information about statutory management**

3 *Reports to the Treasurer*

4 (1) If the Treasurer requests APRA to give him or her a written report  
5 concerning the activities of Life Insurance Act statutory managers  
6 in respect of specified body corporates or in respect of a specified  
7 period, APRA must give the Treasurer such a written report within  
8 a reasonable time after the Treasurer requests it.

9 (2) If a Life Insurance Act statutory manager takes control of a body  
10 corporate's business during a financial year, or if there is an  
11 ultimate termination of control during a financial year, APRA must  
12 give the Treasurer a written report within a reasonable time after  
13 the end of the financial year concerning activities of all Life  
14 Insurance Act statutory managers and each ultimate termination of  
15 control that occurred during that financial year.

16 *Requirement to publish notices in Gazette*

- 17 (3) If APRA:  
18 (a) takes control of a body corporate's business; or  
19 (b) appoints an administrator of a body corporate's business; or  
20 (c) makes an ultimate termination of control in respect of a body  
21 corporate's business;

22 APRA must publish notice of that fact in the *Gazette*. However,  
23 mere failure to publish such a notice does not affect the validity of  
24 the act.

25 **@16AA-LIA Exceptions to Part IV of the Competition and**  
26 **Consumer Act 2010**

27 For the purposes of subsection 51(1) of the *Competition and*  
28 *Consumer Act 2010*, the following things are specified and  
29 specifically authorised:

- 30 (a) the acquisition of assets in:  
31 (i) a sale or disposal of the whole or part of the business of  
32 a body corporate under this Division by a Life Insurance
-

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- 1 Act statutory manager in control of the body corporate's  
2 business; or  
3 (ii) a transfer of life insurance business of a life company  
4 under a scheme prepared by a Life Insurance Act  
5 statutory manager in control of the life company's  
6 business and confirmed (with or without modifications)  
7 by the Federal Court under Part 9;  
8 (whether the assets are shares in another body corporate or  
9 other assets);  
10 (b) the acquisition of shares in a body corporate as a direct result  
11 of:  
12 (i) the issue or sale of the shares under this Division by a  
13 Life Insurance Act statutory manager in control of the  
14 body corporate's business; or  
15 (ii) the exercise of a right to acquire shares that was issued  
16 or sold under this Division by a Life Insurance Act  
17 statutory manager in control of the body corporate's  
18 business.

## 19 At the end of section 158

20 Add:

21 Note: This section and other provisions relating to judicial management do  
22 not apply to the aspects described in subsection 16ZE(2) of the  
23 business and management of an eligible foreign life insurance  
24 company.

## 25 20 Section 159

26 Before "On an application", insert "(1)".

## 27 21 Subparagraph 159(a)(i)

28 Before "the company", insert "in the absence of external support,".

## 29 22 After subparagraph 159(a)(iii)

30 Insert:

31 ; or (iiia) an external administrator has been appointed to a  
32 holding company of the company (or a similar  
33 appointment has been made in a foreign country in



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- 1 respect of such a holding company), and the  
2 requirement in subsection (2) is satisfied; or  
3 (iiib) if the company is an eligible foreign life insurance  
4 company—an application for the appointment of an  
5 external administrator of the eligible foreign life  
6 insurance company, or for a similar procedure in respect  
7 of the eligible foreign life insurance company, has been  
8 made in a foreign country; or  
9 (iiic) if the company is an eligible foreign life insurance  
10 company—an external administrator has been appointed  
11 to the eligible foreign life insurance company, or a  
12 similar appointment has been made in respect of the  
13 eligible foreign life insurance company, in a foreign  
14 country; or

## 23 At the end of section 159

15 Add:

- 16  
17 (2) For the purposes of subparagraph (1)(iia), the requirement in this  
18 subsection is that the appointment mentioned in that subparagraph  
19 poses a significant threat to:  
20 (a) the operation or soundness of the life company; or  
21 (b) the interests of policyholders of the life company; or  
22 (c) the stability of the financial system in Australia.  
23 (3) The regulations may specify that a particular form of support for a  
24 company is not to be considered external support for the purposes  
25 of subparagraph (1)(a)(i).

## 24 Section 161

26 Repeal the section, substitute:

### 27 **161 Moratorium—effect of judicial management on court and 28 tribunal proceedings**

- 29  
30 (1) A person cannot begin or continue a proceeding in a court or  
31 tribunal covered by subsection (7) in respect of a life company if  
32 the life company is under judicial management.

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## Schedule 3 Amendment of the Life Insurance Act 1995

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- 1 (2) Subsection (1) does not apply if:
- 2 (a) the court or tribunal grants leave for the proceedings to be
- 3 begun or continued on the ground that the person would be
- 4 caused hardship if leave were not granted; and
- 5 (b) the beginning or continuing of the proceedings is in
- 6 accordance with such terms (if any) as the court or tribunal
- 7 imposes.
- 8 (3) A person intending to apply for leave of the court under
- 9 paragraph (2)(a) must give APRA and the judicial manager at least
- 10 10 days notice of the intention to apply (or a shorter period, if the
- 11 court or tribunal considers that exceptional circumstances make
- 12 this necessary).
- 13 (4) APRA may apply to the court to be joined as a party to the
- 14 proceedings for leave. If APRA is joined as a party, the court or
- 15 tribunal must have regard to APRA's views in deciding:
- 16 (a) whether to grant leave under paragraph (2)(a); and
- 17 (b) if the court or tribunal decides to grant the leave—whether to
- 18 impose terms as mentioned in paragraph (2)(b); and
- 19 (c) if the court or tribunal decides to impose such terms— the
- 20 nature of those terms.
- 21 (4A) The judicial manager may apply to the court to be joined as a party
- 22 to the proceedings for leave. If the judicial manager is joined as a
- 23 party, the court or tribunal must have regard to the judicial
- 24 manager's views in deciding:
- 25 (a) whether to grant leave under paragraph (2)(a); and
- 26 (b) if the court or tribunal decides to grant the leave—whether to
- 27 impose terms as mentioned in paragraph (2)(b); and
- 28 (c) if the court or tribunal decides to impose such terms— the
- 29 nature of those terms.
- 30 (5) Subsection (1) also does not apply if the judicial manager, after
- 31 considering APRA's views, consents to the proceedings beginning
- 32 or continuing.
- 33 (6) The judicial manager cannot revoke a consent given for the
- 34 purposes of subsection (5).
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- 1 (6A) The judicial manager is not liable to an action or other proceedings  
2 for damages in respect of a refusal to give consent under  
3 subsection (5).
- 4 (7) A proceeding in a court or tribunal is covered by this subsection in  
5 respect of a life company if it is any of the following:  
6 (a) a proceeding against the life company (including a  
7 cross-claim or third party claim against the life company);  
8 (b) a proceeding in relation to property of the life company;  
9 (c) a proceeding to enforce any security (including a mortgage or  
10 charge) over any property that the life company owns, uses,  
11 possesses, occupies or in which the life company otherwise  
12 has an interest.
- 13 (8) Subsection (7) does not cover a proceeding in respect of an offence  
14 or a contravention of a provision of a law for which a pecuniary  
15 penalty (however described) may be imposed.
- 16 (9) In this section, a reference to a tribunal includes a reference to the  
17 following:  
18 (a) an industrial tribunal;  
19 (b) an arbitral tribunal.

## 20 **161A Moratorium—effect of judicial management on enforcement** 21 **process regarding property**

- 22 (1) No enforcement process in relation to property of a life company  
23 can be begun or proceeded with if the life company is under  
24 judicial management.
- 25 (2) Subsection (1) does not apply if:  
26 (a) the Federal Court grants leave for the process to be begun or  
27 continued on the ground that the person would be caused  
28 hardship if leave were not granted; or  
29 (b) the beginning or continuing of the process is in accordance  
30 with such terms (if any) as the Federal Court imposes.
- 31 (3) A person intending to apply for leave of the Federal Court under  
32 paragraph (2)(a) must give APRA and the judicial manager at least  
33 10 days notice of the intention to apply (or a shorter period, if the

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- 1 Federal Court considers that exceptional circumstances make this  
2 necessary).
- 3 (3A) APRA may apply to the Federal Court to be joined as a party to the  
4 proceedings for leave. If APRA is joined as a party, the Federal  
5 Court must have regard to APRA's views in deciding:  
6 (a) whether to grant leave under paragraph (2)(a); and  
7 (b) if the Federal Court decides to grant the leave—whether to  
8 impose terms as mentioned in paragraph (2)(b); and  
9 (c) if the Federal Court decides to impose such terms— the  
10 nature of those terms.
- 11 (3B) The judicial manager may apply to the Federal Court to be joined  
12 as a party to the proceedings for leave. If the judicial manager is  
13 joined as a party, the Federal Court must have regard to the judicial  
14 manager's views in deciding:  
15 (a) whether to grant leave under paragraph (2)(a); and  
16 (b) if the Federal Court decides to grant the leave—whether to  
17 impose terms as mentioned in paragraph (2)(b); and  
18 (c) if the Federal Court decides to impose such terms— the  
19 nature of those terms.
- 20 (4) Subsection (1) also does not apply if the judicial manager consents  
21 to the process beginning or continuing.
- 22 (5) The judicial manager cannot revoke a consent given for the  
23 purposes of subsection (4).
- 24 (6) The judicial manager is not liable to an action or other proceedings  
25 for damages in respect of a refusal to give consent under  
26 subsection (4).

## 27 **161B Moratorium—effect of judicial management on disposal of** 28 **property**

- 29 (1) A person must not dispose of property if:  
30 (a) the property is owned by another person; and  
31 (b) the other person is a life company; and  
32 (c) the life company is under judicial management.

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1 Note: The Federal Court may grant an injunction under section 235 in  
2 respect of a contravention of this subsection.

3 (2) Subsection (1) does not apply if the judicial manager consents to  
4 the disposal.

5 (3) The judicial manager is not liable to an action or other proceedings  
6 for damages in respect of a refusal to give consent under  
7 subsection (2).

## 8 **161C Moratorium—Restrictions on exercise of third party property** 9 **rights**

10 (1) Section 440B of the *Corporations Act 2001* applies during a period  
11 in which a life company is under judicial management in the same  
12 way it applies during the administration of a company.

13 (2) For the purposes of this section, treat the reference in  
14 paragraph 440B(2)(a) of the *Corporations Act 2001* to the  
15 administrator's written consent as being a reference to the judicial  
16 manager's written consent.

17 (2A) The judicial manager is not liable to an action or other proceedings  
18 for damages in respect of a refusal to give consent as mentioned in  
19 subsection (2).

20 (3) This section applies despite sections 161, 161A and 161B.

## 21 **161D Moratorium—effect of judicial management on supply of** 22 **essential services**

23 (1) If:

24 (aa) a life company is under judicial management; and

25 (a) the judicial manager requests, or authorises someone else to  
26 request, a person or authority (the *supplier*) to supply an  
27 essential service to the life company in Australia; and

28 (b) the life company owes an amount to the supplier in respect of  
29 the supply of the essential service before the day on which  
30 the judicial manager took control of the life company's  
31 business;

32 the supplier must not:

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1 (c) refuse to comply with the request for the reason only that the  
2 amount is owing; or

3 (d) make it a condition of the supply of the essential service  
4 pursuant to the request that the amount is to be paid.

5 Note: The Federal Court may grant an injunction under section 235 in  
6 respect of a contravention of this subsection.

7 (2) In this section:

8 *essential service* has the same meaning as in section 600F of the  
9 *Corporations Act 2001*.

## 10 **161E Moratorium—effect of judicial management on annual** 11 **general meeting**

12 (1) This section applies to a life company that is required under  
13 section 250N or section 601BR of the *Corporations Act 2001* to  
14 hold an annual general meeting within a particular period.

15 (2) Despite section 250N and section 601BR of that Act, if the life  
16 company is under judicial management at the end of that period,  
17 the life company need not hold that annual general meeting.

18 (3) To avoid doubt, subsection (2) does not apply if only part of the  
19 business of the life company is under judicial management.

## 20 **25 Section 162**

21 Repeal the section.

## 22 **26 After subsection 163(1)**

23 Insert:

24 (1A) If, subsequent to that order, a situation arises where there is no  
25 judicial manager of the company, or it appears to the Court that it  
26 is likely that such a situation will arise, the Court may appoint  
27 another judicial manager of the company.

28 (1B) If the Court appoints two or more judicial managers of a company,  
29 or appoints one or more additional judicial managers of a  
30 company:

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- 1 (a) except to the extent (if any) specified in a declaration by the  
2 Court under paragraph (b), the functions and powers under  
3 this Act of a judicial manager of the company may be  
4 performed or exercised by:
- 5 (i) all of the judicial managers of the company acting  
6 jointly; or  
7 (ii) each of the judicial managers of the company acting  
8 individually; and
- 9 (b) at the time of appointment, the Court may make a declaration  
10 for the purposes of paragraph (a), specifying limits or  
11 conditions on the judicial managers' ability to perform  
12 functions and exercise powers jointly or individually; and
- 13 (c) treat a reference in this Act to a judicial manager as being a  
14 reference to whichever one or more of those judicial  
15 managers the case requires.

## 16 **27 Subsection 163(2)**

17 Repeal the subsection, substitute:

- 18 (2) The Court may cancel the appointment of a judicial manager and  
19 appoint another person as judicial manager:  
20 (a) on application by APRA; or  
21 (b) of its own motion.

## 22 **28 Subsection 163(3)**

23 Omit "However,".

## 24 **29 Section 165 (heading)**

25 Repeal the heading, substitute:

## 26 **165 Effect of judicial management on powers of officers etc.**

## 27 **30 Subsection 165(1)**

28 Repeal the subsection, substitute:

- 29 (1) Subject to subsection (2), if the Federal Court has made an order  
30 placing a company under judicial management:  
31 (a) at the time the judicial management commences:
-

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- 1 (i) a person with the powers and functions of an officer of  
2 the company immediately before that time ceases to  
3 have those powers and functions; and
- 4 (ii) if the company is an eligible foreign life insurance  
5 company and there is a person with the powers and  
6 functions of a member of the Compliance Committee of  
7 the company immediately before that time—the person  
8 ceases to have those powers and functions; and
- 9 (iii) the judicial manager appointed by the Court starts to  
10 have the powers and functions mentioned in  
11 subparagraph (i) (and, if applicable, subparagraph (ii));  
12 and
- 13 (b) while the company is under judicial management:
- 14 (i) if a person mentioned in subparagraph (a)(i) or (ii)  
15 purports to act in relation to the company's business, the  
16 purported act is invalid and of no effect; and
- 17 (ii) the judicial manager has the powers and functions of the  
18 members of the board of directors of the company  
19 (collectively and individually), including the board's  
20 powers of delegation.
- 21 (1A) Subject to subsection (2), if the Federal Court has made an order  
22 placing part of the business of a company under judicial  
23 management:
- 24 (a) at the time the judicial management commences:
- 25 (i) a person with the powers and functions of an officer of  
26 the company in relation to that part of the business  
27 immediately before that time ceases to have those  
28 powers and functions in relation to that part of the  
29 business; and
- 30 (ii) if the company is an eligible foreign life insurance  
31 company and there is a person with the powers and  
32 functions of a member of the Compliance Committee of  
33 the company immediately before that time in relation to  
34 that part of the business—the person ceases to have  
35 those powers and functions in relation to that part of the  
36 business; and



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- 1 (iii) the judicial manager appointed by the Court starts to  
2 have the powers and functions mentioned in  
3 subparagraph (i) (and, if applicable, subparagraph (ii))  
4 in relation to that part of the business; and  
5 (b) while the company is under judicial management:  
6 (i) if a person mentioned in subparagraph (a)(i) or (ii)  
7 purports to act in relation to that part of the business, the  
8 purported act is invalid and of no effect; and  
9 (ii) the judicial manager has the powers and functions of the  
10 members of the board of directors of the company  
11 (collectively and individually), including the board's  
12 powers of delegation, in relation to that part of the  
13 business.

14 (1B) Subsections (1) and (1A) do not remove an officer or member of  
15 the Compliance Committee of the company from office.

## 16 **31 At the end of section 165**

17 Add:

18 (5) In this section, *officer* has the same meaning as it has in the  
19 *Corporations Act 2001*.

## 20 **32 Subsection 165A(1)**

21 Omit “when the management of the company vests in the judicial  
22 manager appointed by the Court”, substitute “when the judicial  
23 management of the company commences”.

## 24 **33 Subsection 165A(2)**

25 Omit “while the management of the company is vested in the judicial  
26 manager appointed by the Court”, substitute “while the company is  
27 under judicial management”.

## 28 **34 Subsection 165A(3)**

29 Omit “while the management of the company is vested in a judicial  
30 manager”, substitute “while the company is under judicial  
31 management”.

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1 **35 Subsection 165A(4)**

2 Omit “that the management of the company vests in the judicial  
3 manager when the judicial management commences”, substitute “that  
4 the company is under judicial management”.

5 **36 Section 165B**

6 Repeal the section, substitute:

7 **165B Judicial management not ground for denial of obligations**

8 (1) This section applies if a body corporate is party to a contract,  
9 whether the proper law of the contract is:

- 10 (a) Australian law (including the law of a State or Territory); or  
11 (b) law of a foreign country (including the law of part of a  
12 foreign country).

13 (2) None of the matters mentioned in subsection (3) allows the  
14 contract, or a party to the contract, to do any of the following:

- 15 (a) deny any obligations under the contract;  
16 (b) accelerate any debt under the contract;  
17 (c) close out any transaction relating to the contract;  
18 (d) enforce any security under the contract.

19 This subsection has effect subject to subsection (4).

20 (3) The matters are as follows:

- 21 (a) if the body corporate is a life company—the making by the  
22 Court of an order that the body corporate, or part of the  
23 business of the body corporate, be placed under judicial  
24 management;  
25 (b) if the body corporate is a life company—the commencement  
26 of the judicial management of the body corporate, or of part  
27 of the business of the body corporate;  
28 (c) the making by the Court of an order that a life company that  
29 is a related body corporate of the body corporate be placed  
30 under judicial management;  
31 (d) the making by the Court of an order that part of the business  
32 of a life company that is a related body corporate of the body  
33 corporate be placed under judicial management;
-

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- 1 (e) the commencement of the judicial management of a life  
2 company that is a related body corporate of the body  
3 corporate;  
4 (f) the commencement of the judicial management of part of the  
5 business of a life company that is a related body corporate of  
6 the body corporate.
- 7 (4) Subsection (2) does not prevent the body corporate doing any of  
8 the following:  
9 (a) denying an obligation to an entity that is not a related body  
10 corporate of the body corporate;  
11 (b) accelerating a debt to an entity that is not a related body  
12 corporate of the body corporate;  
13 (c) closing out a transaction with an entity that is not a related  
14 body corporate of the body corporate;  
15 (d) enforcing a security against an entity that is not a related  
16 body corporate of the body corporate.

## 37 Section 166

17 Before “The appointment of”, insert “(1)”.

## 38 Section 166

19 Omit “The appointment of a judicial manager under this Part does not  
20 affect”, substitute “None of the matters mentioned in subsection (2)  
21 affect”.

## 39 At the end of section 166

23 Add:

- 24 (2) The matters are as follows:  
25 (a) the making by the Court of an order that the life company be  
26 placed under judicial management;  
27 (b) the commencement of the judicial management of the life  
28 company.  
29

## 40 Paragraph 168A(4)(a)

30 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
31 of section 251AA of this Act)”.

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1 **41 Paragraph 168A(4)(d)**

2 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
3 financial market (as defined in that section)”, substitute “of a financial  
4 market”.

5 **42 Section 168C**

6 Repeal the section, substitute:

7 **168C Act under section 168A not ground for denial of obligations**

8 (1) This section applies if a body corporate is party to a contract,  
9 whether the proper law of the contract is:

- 10 (a) Australian law (including the law of a State or Territory); or  
11 (b) law of a foreign country (including the law of part of a  
12 foreign country).

13 (2) None of the matters mentioned in subsection (3) allows the  
14 contract, or a party to the contract, to do any of the following:

- 15 (a) deny any obligations under the contract;  
16 (b) accelerate any debt under the contract;  
17 (c) close out any transaction relating to the contract;  
18 (d) enforce any security under the contract.

19 This subsection has effect subject to subsection (4).

20 (3) The matters are as follows:

- 21 (a) if the body corporate is a life company—a judicial manager  
22 doing an act under subsection 168A(1) relating to the body  
23 corporate;  
24 (b) a judicial manager doing an act under subsection 168A(1)  
25 relating to a life company that is a related body corporate of  
26 the body corporate.

27 (4) Subsection (2) does not prevent the body corporate doing any of  
28 the following:

- 29 (a) denying an obligation to an entity that is not a related body  
30 corporate of the body corporate;  
31 (b) accelerating a debt to an entity that is not a related body  
32 corporate of the body corporate;
-

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- 1 (c) closing out a transaction with an entity that is not a related  
2 body corporate of the body corporate;  
3 (d) enforcing a security against an entity that is not a related  
4 body corporate of the body corporate.

## 5 **43 Subsection 172(5)**

6 Repeal the subsection, substitute:

- 7 (5) At the time when an order cancelling the judicial management of  
8 the life company comes into force:  
9 (a) the judicial manager ceases to have the powers and functions  
10 of an officer of the life company; and  
11 (b) the board of directors or other governing body of the life  
12 company starts to have those powers.

## 13 **44 Paragraph 175(2)(aa)**

14 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
15 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
16 *1999*”.

## 17 **45 After paragraph 175(2)(aa)**

18 Insert:

- 19 (ab) to transfer shares in the company to another company under  
20 section 25AA of the *Financial Sector (Transfer and*  
21 *Restructure) Act 1999*;

## 22 **46 Subparagraph 176(3)(b)(i)**

23 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
24 of section 251AA of this Act)”.

## 25 **47 Subparagraph 176(3)(b)(iv)**

26 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
27 financial market (as defined in that section)”, substitute “of a financial  
28 market”.

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1 **48 Subsection 177(2)**

2 Omit “the management of the company, or of that part of the business  
3 of the company, as the case may be, continues to be vested in the  
4 judicial manager”, substitute “the company continues to be under  
5 judicial management”.

6 **49 Subsection 179**

7 Repeal the section, substitute:

8 **179 Immunity**

- 9 (1) A judicial manager, or a person acting on behalf of a judicial  
10 manager, is not subject to any liability (whether civil or criminal)  
11 in respect of anything done, or omitted to be done, in the exercise  
12 or performance, or the purported exercise or performance, of  
13 powers, functions or duties conferred or imposed on the judicial  
14 manager by or under this Act.
- 15 (2) Subsection (1) does not apply to an act or omission in bad faith.
- 16 (3) A judicial manager is not liable under section 588G of the  
17 *Corporations Act 2001*. This subsection does not limit the scope of  
18 subsection (1).
- 19 (4) Subsection (1) does not limit, and is not limited by any of the  
20 following provisions:  
21 (a) section @14C-LIA, 156A, 156B, 246A or 246B;  
22 (b) section 58 of the *Australian Prudential Regulation Authority*  
23 *Act 1998*.
- 24 *Signpost to secrecy obligations*
- 25 (5) Part 6 of the Australian Prudential Regulation Authority Act 1998  
26 prohibits certain disclosures of information received by judicial  
27 managers under this Act.

28 **50 Section 179C**

29 Repeal the section, substitute:

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1 **179C Involving APRA in proposed appointment of external**  
2 **administrators of life companies and NOHCs**

- 3 (1) At least 2 weeks before a person other than APRA:  
4 (a) makes an application to a court under Chapter 5 of the  
5 *Corporations Act 2001* for the appointment of an external  
6 administrator of a life company or of a registered NOHC of a  
7 life company; or  
8 (b) makes another kind of application (whether or not to a court)  
9 for the appointment of an external administrator of a life  
10 company or of a registered NOHC of a life company; or  
11 (c) appoints an external administrator of a life company or of a  
12 registered NOHC of a life company (otherwise than as the  
13 result of an application made by another person);  
14 the person must give APRA written notice that the person proposes  
15 to make the application or appointment.

- 16 (2) If there is an approved form for the notice, the person must give the  
17 notice in the approved form.

- 18 (2A) Subsection (1) does not apply if APRA gives the person written  
19 notice, before the person makes the application or appointment,  
20 that APRA consents to the person making the application or  
21 appointment.

- 22 (3) APRA is entitled to be heard on the application.

- 23 (4) After receiving the notice, APRA may request the person to  
24 provide details of the proposed application.

25 *Offence*

- 26 (5) A person (other than APRA) commits an offence if:  
27 (a) the person:  
28 (i) makes an application to a court under Chapter 5 of the  
29 *Corporations Act 2001* for the appointment of an  
30 external administrator of a life company or of a  
31 registered NOHC of a life company; or  
32 (ii) makes another kind of application (whether or not to a  
33 court) for the appointment of an external administrator
-

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- 1 of a life company or of a registered NOHC of a life  
2 company; or  
3 (iii) appoints an external administrator of a life company or  
4 of a registered NOHC of a life company (otherwise than  
5 as the result of an application made by another person);  
6 and  
7 (b) APRA did not give the person written notice, before the  
8 person made the application or appointment, of APRA's  
9 consent to the person making the application or appointment,  
10 in accordance with subsection (2A); and  
11 (c) at least 2 weeks before making the application or  
12 appointment:  
13 (i) if there is an approved form for the purposes of this  
14 paragraph—the person did not give APRA notice in the  
15 approved form indicating that the person proposed to  
16 make the application or appointment; or  
17 (ii) otherwise—the person did not give APRA written  
18 notice indicating that the person proposed to make the  
19 application or appointment.

20 Penalty: 60 penalty units.

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

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

## 23 51 Subsection 181(2)

24 Repeal the subsection, substitute:

- 25 (2) APRA may only make an application if any of the following  
26 requirements are met:  
27 (a) APRA is satisfied that it is necessary or proper that the  
28 application be made, having regard to the conclusions  
29 reached by APRA as a result of any of the following  
30 situations:  
31 (i) APRA investigating the business of the life company  
32 under Division 3 of Part 7;  
33 (ii) APRA taking control of the life company's business  
34 under subsection @13A-LIA(1);



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- 1 (iii) an administrator of the life company’s business  
2 recommending to APRA under section @14B-LIA that  
3 APRA apply for the life company to be wound up;  
4 (b) if the life company is an eligible foreign life insurance  
5 company—APRA considers that any of the following  
6 requirements are met:  
7 (i) an application for the appointment of an external  
8 administrator of the eligible foreign life insurance  
9 company, or for a similar procedure in respect of the  
10 eligible foreign life insurance company, has been made  
11 in one or more foreign countries;  
12 (ii) an external administrator has been appointed to the  
13 eligible foreign life insurance company, or a similar  
14 appointment has been made in respect of the eligible  
15 foreign life insurance company, in a foreign country.

## 52 At the end of section 181

16 Add:

- 17 (4) To avoid doubt, subsection (1) applies even if a Life Insurance Act  
18 statutory manager is in control of:  
19 (a) unless paragraph (b) applies—the life company’s business; or  
20 (b) if the life company is an eligible foreign life insurance  
21 company—the Australian business assets and liabilities of the  
22 eligible foreign life insurance company.  
23

## 53 Section 183

24 Omit “a life company,” substitute “an entity covered by subsection (4),  
25 or the proposed winding-up of an entity covered by subsection (4),”.

## 54 At the end of section 183

26 Add:

- 27 (4) This subsection covers the following entities:  
28 (a) a life company;  
29 (b) a registered NOHC;  
30 (c) a subsidiary of a life company or registered NOHC.  
31  
32

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1 **55 Paragraph 183B(2)(a)**

2 After “the winding up of the friendly society” insert “, or the proposed  
3 winding up of the friendly society”.

4 **56 Subsection 184(1)**

5 Repeal the subsection, substitute:

6 (1) APRA may apply to the Court for directions regarding any matter  
7 arising under:

8 (a) the winding-up of an entity covered by subsection 183(4); or

9 (b) the proposed winding-up of an entity covered by  
10 subsection 183(4).

11 **57 Subsection 185(1)**

12 Repeal the subsection, substitute:

13 (1) APRA may ask a liquidator for specified information in writing  
14 about:

15 (a) the winding-up of an entity covered by subsection 183(4) and  
16 the other affairs of the entity; or

17 (b) the proposed winding-up of an entity covered by  
18 subsection 183(4) and the other affairs of the entity.

19 **58 Subsection 190(5)**

20 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
21 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
22 *1999*”.

23 **59 After paragraph 230A(3A)(d)**

24 Insert:

25 (e) each subsidiary of a life company or of a registered NOHC;  
26 or

27 (f) each subsidiary of a life company or of a registered NOHC,  
28 included in a specified class of subsidiaries; or

29 **60 At the end of Division 1 of Part 10A**

30 Add:

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1 **230AAA Obligation to comply with the prudential standards**

2 A life company, registered NOHC or a subsidiary of a life  
3 company or registered NOHC to which a prudential standard  
4 applies must comply with the standard.

5 **61 After Division 1 of Part 10A**

6 Insert:

7 **Division 1A—Conversion and write-off provisions**

8 **230AAB Definitions**

9 In this Division:

10 *conversion and write-off* provisions means the provisions of the  
11 prudential standards that relate to the conversion or writing off of:

- 12 (a) Additional Tier 1 and Tier 2 capital; or  
13 (b) any other instrument.

14 *conversion entity*: an entity (the *first entity*) is a *conversion entity*  
15 for an instrument if:

- 16 (a) the instrument is issued by another entity; and  
17 (b) the instrument converts, in accordance with the terms of the  
18 instrument, into one or more ordinary shares of the first entity  
19 for the purposes of the conversion and write-off provisions.

20 *converts*: an instrument *converts* into one or more ordinary shares  
21 of an entity including by redeeming or cancelling the instrument  
22 and replacing the instrument with ordinary shares.

23 *related subsidiary* of a life company means a subsidiary of a  
24 holding company of the life company.

25 *specified law* means any of the following:

- 26 (a) the *Financial Sector (Shareholdings) Act 1998*;  
27 (b) the *Foreign Acquisitions and Takeovers Act 1975*;  
28 (c) Chapter 6 of the *Corporations Act 2001* (takeovers);

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- 1 (d) any other Australian law, or law of a foreign country or part  
2 of a foreign country, prescribed by the regulations for the  
3 purposes of this paragraph.

## 4 **230AAC Conversion and write-off provisions**

### 5 *Application*

- 6 (1) This section applies in relation to an instrument that contains terms  
7 that are for the purposes of the conversion and write-off provisions  
8 and is issued by:  
9 (a) a life company; or  
10 (b) a holding company of a life company; or  
11 (c) a subsidiary or related subsidiary of a life company; or  
12 (d) an entity of a kind prescribed by the regulations for the  
13 purposes of this paragraph.

### 14 *Conversion of instrument despite other laws etc.*

- 15 (2) The instrument may be converted in accordance with the terms of  
16 the instrument despite:  
17 (a) any Australian law or any law of a foreign country or a part  
18 of a foreign country, other than a specified law; and  
19 (b) the constitution of the entity issuing the instrument, or any  
20 conversion entity for the instrument; and  
21 (c) any contract or arrangement to which the entity issuing the  
22 instrument, or any conversion entity for the instrument, is a  
23 party; and  
24 (d) any listing rules of a financial market in whose official list  
25 the entity issuing the instrument, or any conversion entity for  
26 the instrument, is included.

### 27 *Write-off of instrument despite other laws etc.*

- 28 (3) The instrument may be written off in accordance with the terms of  
29 the instrument despite:  
30 (a) any Australian law or any law of a foreign country or a part  
31 of a foreign country; and  
32 (b) the constitution of the entity issuing the instrument; and
-

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- 1 (c) any contract or arrangement to which the entity issuing the  
2 instrument is a party; and  
3 (d) any listing rules of a financial market in whose official list  
4 the entity issuing the instrument is included.

## 5 **230AAD Conversion or write-off etc. not grounds for denial of** 6 **obligations**

- 7 (1) This section applies if an entity (the *first entity*) is party to a  
8 contract, whether the proper law of the contract is:  
9 (a) Australian law (including the law of a State or Territory); or  
10 (b) law of a foreign country (including the law of part of a  
11 foreign country).
- 12 (2) None of the matters mentioned in subsection (3) allows the  
13 contract, or a party to the contract, to do any of the following:  
14 (a) deny any obligation under the contract;  
15 (b) accelerate any debt under the contract;  
16 (c) close out any transaction relating to the contract;  
17 (d) enforce any security under the contract.  
18 This subsection has effect subject to subsection (4).
- 19 (3) The matters are as follows:  
20 (a) a relevant instrument being converted for the purposes of the  
21 conversion and write-off provisions;  
22 (b) a relevant instrument being written off for the purposes of the  
23 conversion and write-off provisions;  
24 (c) the occurrence of an event (which may be the making of a  
25 determination (however described) by APRA) that results in  
26 a relevant instrument being required to be converted or  
27 written off for the purposes of the conversion and write-off  
28 provisions.
- 29 (4) Subsection (2) does not prevent the first entity:  
30 (a) denying an obligation to another entity; or  
31 (b) accelerating a debt to an another entity; or  
32 (c) closing out a transaction with another entity; or  
33 (d) enforcing a security against another entity;
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1 unless the first entity is a body corporate and the other entity is a  
2 related body corporate of the first entity.

3 (5) In this section:

4 ***relevant instrument*** means an instrument to which  
5 section 230AAC applies:

6 (a) that is issued by the first entity, or for which the first entity is  
7 a conversion entity; or

8 (b) if the first entity is a body corporate:

9 (i) that is issued by a related body corporate of the first  
10 entity; or

11 (ii) for which a related body corporate of the first entity is a  
12 conversion entity.

## 13 **62 Section 230AA**

14 Before “This Subdivision”, insert “(1)”.

## 15 **63 At the end of section 230AA**

16 Add:

17 (2) Subsections (3) and (4) apply if:

18 (a) APRA has given a recapitalisation direction to the life  
19 company under subsection 230AB(1) (the ***primary***  
20 ***recapitalisation direction***); and

21 (b) the life company is a subsidiary of a NOHC/NOHC  
22 subsidiary; and

23 (c) the NOHC/NOHC subsidiary is a company that:

24 (i) is registered under the *Corporations Act 2001*; and

25 (ii) has a share capital; and

26 (d) the NOHC/NOHC subsidiary does not have a Life Insurance  
27 Act statutory manager.

28 (3) This Subdivision applies to the NOHC/NOHC subsidiary in the  
29 same way that it does to a life company.

30 (4) However, disregard the following provisions in applying this  
31 Subdivision to the NOHC/NOHC subsidiary:

32 (a) subsection 230AB(1);

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1 (b) subsection 230AC(1).

2 (5) In this section:

3 *NOHC/NOHC subsidiary* means a body corporate that is any of  
4 the following:

5 (a) a registered NOHC;

6 (b) a subsidiary of a registered NOHC.

## 7 **64 Paragraph 230AB(1)(b)**

8 After “APRA considers that”, insert “, in the absence of external  
9 support”.

## 10 **65 After subsection 230AB(1)**

11 Insert:

12 (1A) Subsection (1B) applies if subsections 230AA(3) and (4) apply to a  
13 NOHC/NOHC subsidiary because of a primary recapitalisation  
14 direction given to a life company (as mentioned in  
15 subsection 230AA(2)).

16 (1B) For the purposes of facilitating compliance with the primary  
17 recapitalisation direction, APRA may give the NOHC/NOHC  
18 subsidiary a direction (also a *recapitalisation direction*) that  
19 requires the NOHC/NOHC subsidiary to do anything that is  
20 specified in the direction.

## 21 **66 After subsection 230AB(2)**

22 Insert:

23 (2A) The regulations may specify that a particular form of support is not  
24 external support for the purposes of paragraph (1)(b).

## 25 **67 At the end of section 230AB**

26 Add:

27 (4) A recapitalisation direction may deal with the time by which, or  
28 period during which, it is to be complied with.

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1 (5) APRA may, by notice in writing to the life company, vary the  
2 recapitalisation direction if, at the time of the variation, it considers  
3 that the variation is necessary and appropriate.

4 (6) The direction has effect until APRA revokes it by notice in writing  
5 to the life company. APRA may revoke the direction if, at the time  
6 of revocation, it considers that the direction is no longer necessary  
7 or appropriate.

## 8 **68 After subsection 230AC(1)**

9 Insert:

10 (1A) If the recapitalisation direction is a direction to a NOHC/NOHC  
11 subsidiary under subsection 230AB(1B), the direction may direct  
12 the NOHC/NOHC subsidiary to do any of the following:

13 (a) issue:

14 (i) shares, or rights to acquire shares, in the NOHC/NOHC  
15 subsidiary; or

16 (ii) other capital instruments in the NOHC/NOHC  
17 subsidiary of a kind specified in the direction;

18 (b) acquire:

19 (i) shares, or rights to acquire shares, in the life company  
20 mentioned in subsection 230AB(1A); or

21 (ii) other capital instruments in the life company mentioned  
22 in subsection 230AB(1A) of a kind specified in the  
23 direction;

24 (c) acquire:

25 (i) shares, or rights to acquire shares, in a specified body  
26 corporate covered by subsection (1B); or

27 (ii) other capital instruments in a specified body corporate  
28 covered by subsection (1B), of a kind specified in the  
29 direction.

30 (1B) This subsection covers a body corporate if:

31 (a) the body corporate is a subsidiary of the NOHC/NOHC  
32 subsidiary; and

33 (b) the life company is a subsidiary of the body corporate.



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- 1 (1C) Without limiting the generality of subsections (1), (1A) and (2), but  
2 subject to subsection (3), a direction referred to in those  
3 subsections may:  
4 (a) deal with some only of the matters referred to in those  
5 subsections; or  
6 (b) deal with a particular class or particular classes of those  
7 matters; or  
8 (c) make different provision with respect to different matters or  
9 different classes of matters.

## 10 **69 Subsection 230AC(2)**

11 Omit “paragraph (1)(a)”, substitute “paragraph (1)(a) or  
12 subparagraph (1A)(a)(i), (1A)(b)(i) or (1A)(c)(i)”.

## 13 **70 Subsection 230AC(3)**

14 Omit “paragraph (1)(b)”, substitute “paragraph (1)(b) or  
15 subparagraph (1A)(a)(ii), (1A)(b)(ii) or (1A)(c)(ii)”.

## 16 **71 Subsection 230AD(3) (heading)**

17 Repeal the heading, substitute:

18 *Issue or acquisition of shares etc. despite other laws etc.*

## 19 **72 Subsection 230AD(3)**

20 After “issue”, insert “or acquire”.

## 21 **73 Paragraph 230AD(3)(a)**

22 After “the *Corporations Act 2001*”, insert “(without limiting the scope  
23 of section 251AA of this Act)”.

## 24 **74 Paragraph 230AD(3)(d)**

25 Omit “(as defined in section 761A of the *Corporations Act 2001*) of a  
26 financial market (as defined in that section)”, substitute “of a financial  
27 market”.

## 28 **75 After subsection 230AE(1)**

29 Insert:

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- 1 (1A) If the recapitalisation direction is a direction to a NOHC/NOHC  
2 subsidiary under subsection 230AB(1B), treat the reference in  
3 paragraph (1)(a) to “the policy owners of the company” as being a  
4 reference to “the policy owners of the life company mentioned in  
5 subsection 230AB(1A)”.

## 6 **76 At the end of section 230AE**

7 Add:

- 8 (4) If the recapitalisation direction is a direction to a NOHC/NOHC  
9 subsidiary under subsection 230AB(1B), treat the references in  
10 paragraph (3)(c) to “the company” as being a reference to “the  
11 NOHC/NOHC subsidiary mentioned in subsection 230AB(1B)”.

## 12 **77 Section 230AJ**

13 Repeal the section, substitute:

### 14 **230AJ Recapitalisation direction not grounds for denial of** 15 **obligations**

- 16 (1) This section applies if a body corporate is party to a contract,  
17 whether the proper law of the contract is:  
18 (a) Australian law (including the law of a State or Territory); or  
19 (b) law of a foreign country (including the law of part of a  
20 foreign country).
- 21 (2) None of the matters mentioned in subsection (3) allows the  
22 contract, or a party to the contract, to do any of the following:  
23 (a) deny any obligations under the contract;  
24 (b) accelerate any debt under the contract;  
25 (c) close out any transaction relating to the contract;  
26 (d) enforce any security under the contract.  
27 This subsection has effect subject to subsection (4).
- 28 (3) The matters are as follows:  
29 (a) the body corporate being subject to a recapitalisation  
30 direction;

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1 (b) a related body corporate of the body corporate being subject  
2 to a recapitalisation direction.

3 (4) Subsection (2) does not prevent the body corporate doing any of  
4 the following:

5 (a) denying an obligation to an entity that is not a related body  
6 corporate of the body corporate;

7 (b) accelerating a debt to an entity that is not a related body  
8 corporate of the body corporate;

9 (c) closing out a transaction with an entity that is not a related  
10 body corporate of the body corporate;

11 (d) enforcing a security against an entity that is not a related  
12 body corporate of the body corporate.

## 13 **78 Subsection 230AK(9)**

14 Repeal the subsection.

## 15 **79 Subsection 230B(1)**

16 Omit “Without limiting subsection (1AA), APRA may”, substitute  
17 “APRA may”.

## 18 **80 Paragraph 230B(1)(b)**

19 Omit “and such a contravention is likely to give rise to a prudential  
20 risk”, substitute “and the direction is reasonably necessary for one or  
21 more prudential matters relating to the body corporate”.

## 22 **81 Subsection 230B(1AA)**

23 Repeal the subsection, substitute:

24 (1AA) APRA may give a body corporate that is a life company or is a  
25 registered NOHC a direction of a kind specified in subsection (2) if  
26 APRA has reason to believe that:

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

30 (b) a subsidiary of the body corporate is likely to contravene this  
31 Act or the *Financial Sector (Collection of Data) Act 2001*; or

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- 1 (d) the direction is in respect of a subsidiary of the body  
2 corporate and is necessary in the interests of:
- 3 (i) if the body corporate is a life company—policy owners  
4 or prospective policy owners of the life company; or
- 5 (ii) if the body corporate is a registered NOHC—policy  
6 owners or prospective policy owners of any life  
7 company that is a subsidiary of the NOHC; or
- 8 (e) a subsidiary of the body corporate is, or is about to become,  
9 unable to meet the subsidiary's liabilities; or
- 10 (f) there is, or there might be, a material risk to the security of  
11 the assets of a subsidiary of the body corporate; or
- 12 (g) there has been, or there might be, a material deterioration in  
13 the financial condition of a subsidiary of the body corporate;  
14 or
- 15 (h) a subsidiary of the body corporate is conducting the  
16 subsidiary's affairs in an improper or financially unsound  
17 way; or
- 18 (j) a subsidiary of the body corporate is conducting the  
19 subsidiary's affairs in a way that may cause or promote  
20 instability in the Australian financial system; or
- 21 (k) a subsidiary of the body corporate is conducting the  
22 subsidiary's affairs in a way that may cause it to be unable to  
23 continue to supply services to:
- 24 (i) if the body corporate is a life company—the life  
25 company; or
- 26 (ii) if the body corporate is a registered NOHC—any life  
27 company that is a subsidiary of the NOHC; or
- 28 (l) the direction is in respect of a subsidiary of the body  
29 corporate and the failure to issue a direction would materially  
30 prejudice the interests of:
- 31 (i) if the body corporate is a life company—policy owners  
32 or prospective policy owners of the life company; or
- 33 (ii) if the body corporate is a registered NOHC— policy  
34 owners or prospective policy owners of any life  
35 company that is a subsidiary of the NOHC.
- 36 (1AB) However, APRA can only make a direction as a result of a ground  
37 referred to in (1AA)(a), (b), (c), (e), (f), (g), (h) or (k) if APRA
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1 considers that the direction is reasonably necessary for one or more  
2 prudential matters relating to the body corporate.

3 (1AC) APRA may give a body corporate that is a subsidiary of a life  
4 company or of a registered NOHC a direction of a kind specified in  
5 subsection (3) if:

6 (a) APRA has given the life company or registered NOHC a  
7 direction under subsection (1AA) because one or more of the  
8 grounds referred to in that subsection have been satisfied in  
9 respect of the subsidiary; or

10 (b) APRA may give the life company or registered NOHC a  
11 direction under subsection (1AA) because one or more of the  
12 grounds referred to in that subsection have been satisfied in  
13 respect of the subsidiary.

14 (1AD) APRA cannot give a direction under subsection (1AC) to a body  
15 corporate of a kind specified in regulations (if any) made for the  
16 purposes of this subsection.

17 (1AE) Subsections (1), (1AA) and (1AC) do not limit each other.

## 18 **82 Paragraph 230B(1A)(b)**

19 Repeal the paragraph, substitute:

20 (b) specify:

21 (i) in the case of a direction under subsection (1AC)— the  
22 ground referred to in subsection (1AA) as a result of  
23 which the direction is given; or

24 (ii) otherwise—the ground referred to in subsection (1) or  
25 (1AA) as a result of which the direction is given

## 26 **83 After subsection 230B(1A)**

27 Insert:

28 (1AAA) In deciding whether to give a direction under subsection (1), (1AA)  
29 or (1AC) to a body corporate, APRA may disregard any external  
30 support for the body corporate.

31 (1AAB) The regulations may specify that a particular form of support is not  
32 external support for the purposes of subsection (1AAA).

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1 **84 Paragraph 230B(2)(v)**

2 Repeal the paragraph, substitute:

3 (v) to make changes to the body corporate's systems, business  
4 practices or operations;

5 (w) to reconstruct, amalgamate or otherwise alter all or part of  
6 any of the following:

7 (i) the business, structure or organisation of the body  
8 corporate;

9 (ii) the business, structure or organisation of the group  
10 constituted by the body corporate and its subsidiaries;

11 (x) to do, or to refrain from doing, anything else in relation to the  
12 affairs of the body corporate.

13 **85 After subsection 230B(3)**

14 Insert:

15 (3A) Without limiting the generality of paragraph (2)(x), a direction  
16 under that paragraph to an eligible foreign life insurance company  
17 may be any one or more of the following:

18 (a) a direction that the company act in a way so as to ensure that:

19 (i) a particular asset, or a particular class of assets, of the  
20 company is returned to the control (however described)  
21 of the part of the company's life insurance business that  
22 is carried on in Australia; or

23 (ii) a particular liability, or a particular class of liabilities, of  
24 the company ceases to be the responsibility (however  
25 described) of the part of the company's life insurance  
26 business that is carried on in Australia;

27 (b) a direction that the company not act in a way that has the  
28 result that:

29 (i) a particular asset, or a particular class of assets, of the  
30 company ceases to be under the control (however  
31 described) of the part of the company's life insurance  
32 business that is carried on in Australia; or

33 (ii) a particular liability, or a particular class of liabilities, of  
34 the company becomes the responsibility (however

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1 described) of the part of the company's life insurance  
2 business that is carried on in Australia.

3 (3B) The kinds of direction that may be given as mentioned in  
4 subsection (2) are not limited by any other provision in this Part.

5 (3C) The kinds of direction that may be given as mentioned in a  
6 particular paragraph of subsection (2) are not limited by any other  
7 paragraph of that subsection.

## 8 **86 Subsections 230C(1) to (2)**

9 Repeal the subsections, substitute:

10 (1) This section applies if a body corporate is party to a contract,  
11 whether the proper law of the contract is:  
12 (a) Australian law (including the law of a State or Territory); or  
13 (b) law of a foreign country (including the law of part of a  
14 foreign country).

15 (1A) None of the matters mentioned in subsection (1B) allows the  
16 contract, or a party to the contract, to do any of the following:  
17 (a) deny any obligations under the contract;  
18 (b) accelerate any debt under the contract;  
19 (c) close out any transaction relating to the contract;  
20 (d) enforce any security under the contract.

21 This subsection has effect subject to subsections (1C), (2) and (3).

22 (1B) The matters are as follows:  
23 (a) the body corporate being subject to a direction by APRA  
24 under section 230B;  
25 (b) a related body corporate of the body corporate being subject  
26 to a direction by APRA under section 230B.

27 (1C) Subsection (1A) does not prevent the body corporate doing any of  
28 the following:  
29 (a) denying an obligation to an entity that is not a related body  
30 corporate of the body corporate;  
31 (b) accelerating a debt to an entity that is not a related body  
32 corporate of the body corporate;

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1 (c) closing out a transaction with an entity that is not a related  
2 body corporate of the body corporate;

3 (d) enforcing a security against an entity that is not a related  
4 body corporate of the body corporate.

5 (2) If the body corporate is prevented from fulfilling its obligations  
6 under the contract because of a direction under section 230B, other  
7 than a direction under paragraph 230B(2)(o), the other party or  
8 parties to the contract are, subject to any orders made under  
9 subsection (3), relieved from obligations owed to the body  
10 corporate under the contract.

## 11 **87 Section 230E**

12 Repeal the section.

## 13 **88 At the end of Division 2 of Part 10A**

14 Add:

### 15 **Subdivision C—Secrecy and disclosure provisions relating to all** 16 **directions**

#### 17 **231 APRA may determine that a direction is covered by secrecy** 18 **provision**

19 (1) This section applies if APRA has given an entity (the *directed*  
20 *entity*) a direction under this Act.

21 (2) APRA may determine, in writing, that the direction is covered  
22 under this subsection if APRA considers that the direction is  
23 necessary to protect the policy owners of any life company or to  
24 promote financial system stability in Australia.

25 Note: For repeal of a determination, see subsection 33(3) of the *Acts*  
26 *Interpretation Act 1901*.

27 (3) APRA must give the directed entity a copy of the determination as  
28 soon as practicable after making it.

29 (4) An instrument under subsection (2) is not a legislative instrument.



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- 1 (5) If APRA makes a determination under subsection (2), APRA must  
2 consider whether it is appropriate in the circumstances to also  
3 make a determination under either or both of subsections 231C(2)  
4 and 231C(5).

## 5 **231A Secrecy relating to directions**

- 6 (1) A person commits an offence if:  
7 (a) APRA has given an entity (the *directed entity*) a direction  
8 under this Act; and  
9 (b) the direction is covered by a determination under  
10 subsection 231(2); and  
11 (c) the person is, or has been, covered by subsection (2) of this  
12 section in relation to the direction; and  
13 (d) the person discloses information; and  
14 (e) the information reveals the fact that the direction was made.

15 Penalty: Imprisonment for 2 years.

- 16 (2) A person is covered by this subsection in relation to the direction if  
17 the person is:  
18 (a) the directed entity; or  
19 (b) an officer, employee or contractor of the directed entity at a  
20 time on or after APRA gave the directed entity the direction.  
21 (c) any other person who, because of his or her employment, or  
22 in the course of that employment, has acquired information  
23 that reveals the fact that the direction was made.

### 24 *Exception*

- 25 (3) Subsection (1) does not apply if:  
26 (a) the disclosure is authorised by section 231B, 231C, 231D,  
27 231E or 231F; or  
28 (b) the disclosure is required by an order or direction of a court  
29 or tribunal.

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

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1 **231B Disclosure of publicly available information**

2 A person covered by subsection 231A(2) in relation to a direction  
3 may disclose information that reveals the fact that the direction was  
4 made, to the extent that the information has already been lawfully  
5 made available to the public.

6 **231C Disclosure allowed by APRA**

7 (1) A person covered by subsection 231A(2) in relation to a direction  
8 may disclose information that reveals the fact that the direction was  
9 made if:

- 10 (a) a determination under subsection (2) allows the disclosure by  
11 the person; and  
12 (b) if APRA has included conditions in the determination—those  
13 conditions are satisfied.

14 *Determinations relating to specified person*

15 (2) APRA may, in writing, make a determination allowing:

- 16 (a) a specified person covered by subsection 231A(2) in relation  
17 to a specified direction; or  
18 (b) a specified person covered by subsection 231A(2) in relation  
19 to a direction that is in a specified class of directions;  
20 to disclose specified information in relation to the direction.

21 (3) An instrument under subsection (2) is not a legislative instrument.

22 (4) APRA must give a copy of the determination as soon as practicable  
23 after making it to:

- 24 (a) the directed entity; and  
25 (b) the person specified, or each person specified, in the  
26 determination.

27 *Determinations relating to specified class of persons*

28 (5) APRA may, by legislative instrument, make a determination  
29 allowing:

- 30 (a) a specified class of persons covered by subsection 231A(2)  
31 in relation to a specified direction; or
-

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- 1 (b) a specified class of persons covered by subsection 231A(2)  
2 in relation to a direction that is in a specified class of  
3 directions;  
4 to disclose specified information in relation to the direction.

5 *Conditions in determinations*

- 6 (6) APRA may include conditions in a determination under  
7 subsection (2) or (5) that relate to any of the following:  
8 (a) the kind of entities to which the disclosure may be made;  
9 (b) the way in which the disclosure is to be made;  
10 (c) any other matter that APRA considers appropriate.

11 **231D Disclosure to legal representative for purpose of seeking legal**  
12 **advice**

13 A person covered by subsection 231A(2) in relation to a direction  
14 may disclose information that reveals the fact that the direction was  
15 made if:

- 16 (a) the disclosure is to the person's legal representative; and  
17 (b) the purpose of the person making the disclosure is for the  
18 legal representative to provide legal advice, or another legal  
19 service, in relation to the direction.

20 **231E Disclosure allowed by APRA Act secrecy provision**

- 21 (1) A person covered by subsection 231A(2) in relation to a direction  
22 may disclose information that reveals the fact that the direction was  
23 made if:  
24 (a) the person is:  
25 (i) an APRA member (within the meaning of  
26 subsection 56(1) of the *Australian Prudential*  
27 *Regulation Authority Act 1998*); or  
28 (ii) an APRA staff member (within the meaning of that  
29 subsection); or  
30 (iii) a Commonwealth officer (within the meaning of the  
31 *Crimes Act 1914*) who is covered by paragraph (c) of  
32 the definition of "officer" in subsection 56(1) of the



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1 **89 Subsection 236(1)**

2 Omit “, subject to subsection (1AA),”.

3 **90 Subsection 236(1) (paragraphs (g) and (ga) of the**  
4 **definition of *reviewable decision*)**

5 Repeal the paragraphs, substitute:

6 (g) a decision to revoke registration under subsection 26(1);

7 (ga) a refusal to revoke the registration of a company under  
8 section 27;

9 (gaa) a decision to give a direction under subsection 27A(1);

10 (gab) a refusal to approve a proposed assignment under  
11 subsection 27A(4);

12 (gac) a decision to impose conditions on an approval under  
13 subsection 27A(4);

14 **91 After paragraph 236(1)(ge)**

15 Insert:

16 (gf) a decision to give a notice under subsection 28AA(2);

17 **92 After section 246**

18 Insert:

19 **246A Protection from liability—general**

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

25 (2) To avoid doubt, any information provided by a person to APRA  
26 under section 88A or 98A is taken, for the purposes of  
27 subsection (1), to be provided in the exercise of a power or the  
28 performance of a function under this Act.

29 (3) Subsection (1) does not apply to a person referred to in section 58  
30 of the *Australian Prudential Regulation Authority Act 1998* and, to  
31 avoid doubt, does not affect the operation of that section.

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## 246B Protection from liability—directions and secrecy

- (1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:
- (a) the person does the thing, or omits to do the thing, for the purpose of any of the following:
    - (i) complying with a direction under this Act given by APRA to a body corporate;
    - (ii) complying with section 231A (secrecy); and
  - (b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and
  - (c) the person is any of the following:
    - (i) an officer or senior manager of the body corporate, of a subsidiary of the body corporate, of a registered NOHC of the body corporate or of a subsidiary of a registered NOHC of the body corporate;
    - (ii) an employee or agent of the body corporate, of a subsidiary of the body corporate, of a registered NOHC of the body corporate or of a subsidiary of a registered NOHC of the body corporate.

(2) In subsection (1):

*employee* of a body corporate includes a person engaged to provide advice or services to the body corporate.

*officer* has the meaning given by section 9 of the *Corporations Act 2001*.

## 246C Protection from liability—provisions do not limit each other

The following provisions do not limit the operation of each other:

- (a) section @14C-LIA;
  - (b) subsection 50(2);
  - (c) section 89;
  - (d) section 99;
  - (e) section 156A;
  - (f) section 156B;
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- 1 (g) section 179;  
2 (h) section 246A;  
3 (i) section 246B;  
4 (j) section 247;  
5 (k) section 58 of the *Australian Prudential Regulation Authority*  
6 *Act 1998*.

## 7 **93 After section 251**

8 Insert:

### 9 **251AA Act has effect despite the Corporations Act**

10 This Act has effect despite any provision of the *Corporations Act*  
11 *2001*.

## 12 **94 Schedule**

13 Insert:

14 ***administrator***, of a body corporate's business, means an  
15 administrator appointed under subsection @13A-LIA(1) to take  
16 control of the body corporate's business.

17 ***Australian business assets and liabilities***, of an eligible foreign  
18 life insurance company, has the meaning given by  
19 subsection 16ZE(3).

20 ***Australian financial sector statutory manager*** (or ***AFS statutory***  
21 ***manager***) means:

- 22 (a) a Banking Act statutory manager (within the meaning of  
23 the *Banking Act 1959*); or  
24 (b) an Insurance Act statutory manager (within the meaning  
25 of the *Insurance Act 1973*); or  
26 (c) a Life Insurance Act statutory manager.

27 ***direction under this Act*** means a direction under any of the  
28 following provisions:

- 29 (a) section 27A;  
30 (b) section 125A;  
31 (c) section 230AB;
-

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1 (d) section 230B.

2 **95 Schedule (paragraph (a) of the definition of *external***  
3 ***administrator*)**

4 Omit “or provisional liquidator”.

5 **96 Schedule (paragraph (b) of the definition of *external***  
6 ***administrator*)**

7 Omit “a judicial manager”, substitute “a judicial manager or Life  
8 Insurance Act statutory manager”.

9 **97 Schedule**

10 Insert:

11 *financial market* has the meaning given by section 761A of the  
12 *Corporations Act 2001*.

13 *holding company*, of a body corporate, means another body  
14 corporate of which the first body corporate is a subsidiary.

15 *Life Insurance Act statutory manager* has the meaning given by  
16 subsection 13A(2).

17 *liquidator* includes a provisional liquidator.

18 *listing rules* has the meaning given by section 761A of the  
19 *Corporations Act 2001*.

20 *NOHC/NOHC subsidiary* has the meaning given by  
21 subsection 230AA(5).

22 *prudential matters* means matters relating to:

23 (a) the conduct of any part of the affairs of, or the structuring or  
24 organising of, a life company, a registered NOHC, a relevant  
25 group of bodies corporate, or a particular member or  
26 members of such a group, in such a way as:

27 (i) to keep the life company, NOHC, group or member or  
28 members of the group in a sound financial position; or

29 (ii) to facilitate resolution of the life company, NOHC,  
30 group or member or members of the group; or

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- 1 (iii) to protect the interests of policy owners of any life  
2 company; or  
3 (iv) not to cause or promote instability in the Australian  
4 financial system; or  
5 (b) the conduct of any part of the affairs of a life company, a  
6 registered NOHC, a relevant group of bodies corporate, or a  
7 particular member or members of such a group, with  
8 integrity, prudence and professional skill.

## 98 Schedule (definition of *recapitalisation direction*)

10 Omit “subsection 230AB(1)”, substitute “subsection 230AB(1) or  
11 (1B)”.

## 12 99 Schedule (definition of *related company*)

13 Repeal the definition, substitute:

14 *related body corporate*:

- 15 (a) in Part 7—has the meaning given by section 129; and  
16 (b) otherwise—has the meaning given by section 16.

## 17 100 Schedule

18 Insert:

19 *relevant group of bodies corporate* has the meaning given by  
20 section 15A.

21 *resolution* means the process by which APRA and other relevant  
22 persons manage or respond to the failure or potential failure of an  
23 entity, including through the exercise of powers and functions  
24 under this Act or another law.

25 *subsidiary* has the meaning given by section 16.

## 26 Part 2—Consequential amendments

## 27 Part 3—Application provisions

28 *[These provisions will be drafted following exposure.]*

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# EXPOSURE DRAFT

Schedule 4 Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

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1 **Schedule 4—Amendment of the Financial**  
2 **Sector (Business Transfer and Group**  
3 **Restructure) Act 1999**

4 **Part 1—Main amendments**

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

7 **1 Title**

8 After “to provide for transfers of business between some kinds of  
9 financial institutions,” insert “to provide for transfers of shares and  
10 other interests in some kinds of financial institutions,”.

11 **2 Section 1**

12 Repeal the section, substitute:

13 **1 Short title**

14 This Act may be cited as the *Financial Sector (Transfer and*  
15 *Restructure) Act 1999*.

16 Note: This item amends the short title of the Act. If another amendment of the Act is  
17 described by reference to the Act’s previous short title, that other amendment has effect  
18 after the commencement of this item as an amendment of the Act under its amended  
19 short title (see section 10 of the *Acts Interpretation Act 1901*).

20 **3 Subsection 4(1) (definition of *certificate of transfer*)**

21 Repeal the definition, substitute:

22 *certificate of transfer*:

- 23 (a) in relation to a voluntary transfer of business—means a  
24 certificate issued under section 18;  
25 (b) in relation to a compulsory transfer of business—means a  
26 certificate issued under section 33;  
27 (c) in relation to a compulsory transfer of shares—means a  
28 certificate issued under section 33.
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# EXPOSURE DRAFT

Amendment of the Financial Sector (Business Transfer and Group Restructure) Act  
1999 **Schedule 4**  
Main amendments **Part 1**

---

1 **4 Subsection 4(1) (definition of *compulsory transfer***  
2 ***determination*)**

3 Repeal the definition, substitute:

4 *compulsory transfer determination* means:

- 5 (a) a compulsory transfer of business determination; or  
6 (b) a compulsory transfer of shares determination.

7 **5 Subsection 4(1)**

8 Insert:

9 *compulsory transfer of business determination* means a  
10 determination under section 25.

11 *compulsory transfer of shares determination* means a  
12 determination under section 25AA.

13 *eligible foreign life insurance company* has the same meaning as  
14 in the *Life Insurance Act 1995*.

15 *foreign ADI* has the same meaning as in the *Banking Act 1959*.

16 *foreign general insurer* has the same meaning as in the *Insurance*  
17 *Act 1973*.

18 *Australian business assets and liabilities*, of a body corporate that  
19 is a foreign ADI, a foreign general insurer or an eligible foreign  
20 life insurance company, means the following:

- 21 (a) the assets and liabilities of the body corporate in Australia;  
22 (b) any other rights and liabilities that the body corporate has as  
23 a result of its operations in Australia.

24 **6 Subsection 4(1) (definition of *partial transfer*)**

25 Repeal the definition, substitute:

26 *partial transfer* means a transfer of business described in  
27 subsection 8(2).

# EXPOSURE DRAFT

**Schedule 4** Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

**Part 1** Main amendments

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1 **7 Subsection 4(1) (after paragraph (a) of the definition of**  
2 **receiving body)**

3 Insert:

- 4 (aa) in relation to a transfer of shares under Part 4—a body  
5 corporate to which shares in another body corporate are to be  
6 transferred, or have been transferred under that Part; or

7 **8 Subsection 4(1) (definition of *regulated body*)**

8 Repeal the definition, substitute:

9 ***regulated body*** means a body corporate that is:

- 10 (a) an ADI; or  
11 (b) a life insurance company; or  
12 (c) a general insurer.

13 **9 Subsection 4(1) (definition of *regulated business*)**

14 Repeal the definition, substitute:

15 ***regulated business*** in relation to a regulated body, means:

- 16 (a) for a body that is an ADI—the body’s banking business  
17 (within the meaning of the *Banking Act 1959*); or  
18 (b) for a body that is a life insurance company—the body’s life  
19 insurance business (within the meaning of the *Life Insurance*  
20 *Act 1995*); or  
21 (c) for a body that is a general insurer—the body’s insurance  
22 business (within the meaning of the *Insurance Act 1973*).

23 **10 Subsection 4(1) (definition of *related*)**

24 Repeal the definition.

25 **11 Subsection 4(1)**

26 Insert:

27 ***related body corporate***, in relation to a body corporate, means a  
28 body corporate that is related to the first-mentioned body, as  
29 determined in accordance with section 4A.

# EXPOSURE DRAFT

Amendment of the Financial Sector (Business Transfer and Group Restructure) Act  
1999 **Schedule 4**  
Main amendments **Part 1**

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1 **12 Subsection 4(1) (definition of *total transfer*)**

2 Repeal the definition, substitute:

3 *total transfer* means a transfer of business described in  
4 subsection 8(3).

5 **13 Subsection 4(1) (after paragraph (a) of the definition of**  
6 ***transferring body*)**

7 Insert:

8 (aa) in relation to a transfer of shares under Part 4—a body  
9 corporate, shares in which are to be transferred, or have been  
10 transferred, to another body corporate under that Part; or

11 **14 After section 4**

12 Insert:

13 **4A Related body corporate**

14 For the purposes of this Act, the question whether a body corporate  
15 is related to another body corporate is to be determined in the same  
16 way as that question is determined for the purposes of the  
17 *Corporations Act 2001*.

18 **15 Paragraph 8(1)(a)**

19 Omit “transfers under Part 3”, substitute “transfers of business under  
20 Part 3”.

21 **16 Paragraph 8(1)(b)**

22 Omit “transfers under Part 4”, substitute “transfers of business under  
23 Part 4”.

24 **17 Subsection 8(1)**

25 Omit “Either kind of transfer”, substitute “Either kind of transfer of  
26 business”.

27 **18 After subsection 8(1)**

28 Insert:

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# EXPOSURE DRAFT

**Schedule 4** Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

**Part 1** Main amendments

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1 (1A) This Act also provides for *compulsory transfers* of shares in  
2 regulated bodies.

## 3 **19 At the end of subsection 8(4)**

4 Add:

5 Note: The regulated bodies making the application cannot be general  
6 insurers (see section 10).

## 7 **20 Subsection 8(5)**

8 Omit “*compulsory transfer determination*”, substitute “*compulsory*  
9 *transfer of business determination*”.

## 10 **21 After subsection 8(5)**

11 Insert:

12 (5A) For a compulsory transfer of shares to take effect, APRA must:

13 (a) make a determination (the *compulsory transfer of shares*  
14 *determination*) that there is to be a transfer of shares in a  
15 body (the *transferring body*) to another body (the *receiving*  
16 *body*); and

17 (b) issue a certificate (the *certificate of transfer*) stating that the  
18 transfer is to take effect.

19 The transfer of shares takes effect when the certificate of transfer  
20 comes into force.

## 21 **22 At the end of subsection 9(1)**

22 Add:

23 Note: The regulated bodies making the application cannot be general  
24 insurers (see section 10).

## 25 **23 Subsection 11(1)**

26 Omit “approve a transfer of business if APRA considers that:”,  
27 substitute “approve a transfer of business if:”.

## 28 **24 Paragraph 11(1)(a)**

29 Before “application for approval”, insert “APRA considers that”.

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Amendment of the Financial Sector (Business Transfer and Group Restructure) Act  
1999 **Schedule 4**  
Main amendments **Part 1**

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1 **25 Paragraph 11(1)(b)**

2 Before “the transfer has been”, insert “APRA considers that”.

3 **26 Paragraph 11(1)(c)**

4 Before “the transfer should be approved”, insert “APRA considers  
5 that”.

6 **27 Paragraph 11(1)(d)**

7 Before “legislation to facilitate”, insert “APRA has considered  
8 whether”.

9 **28 After subsection 11(1)**

10 Insert:

11 (1A) To avoid doubt, APRA may make a determination under this  
12 section even if the legislation mentioned in paragraph (1)(d) has  
13 not been enacted as mentioned in that paragraph.

14 **29 Section 14**

15 Before “State or Territory legislation referred”, insert “(1)”.

16 **30 At the end of section 14**

17 Add:

18 (2) To avoid doubt, this section is enacted only for the purposes of  
19 paragraph 11(1)(d).

20 Note: Under that paragraph, in order to make a determination under  
21 section 11, APRA needs to consider whether legislation satisfying the  
22 requirements of this section has been enacted. However, APRA is not  
23 prevented from making such a determination if such legislation has  
24 not been enacted (see subsection 11(1A)).

25 **31 Paragraph 24(1)(a)**

26 Omit “*compulsory transfer determination*”, substitute “*compulsory*  
27 *transfer of business determination*”.

28 **32 After subsection 24(1)**

29 Insert:

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# EXPOSURE DRAFT

**Schedule 4** Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

**Part 1** Main amendments

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- 1 (1A) For a compulsory transfer of shares to take effect, APRA must:  
2 (a) make a determination (the *compulsory transfer of shares*  
3 *determination*) that there is to be a transfer of shares in a  
4 body (the *transferring body*) to another body (the *receiving*  
5 *body*) (see section 25AA); and  
6 (b) issue a certificate (the *certificate of transfer*) stating that the  
7 transfer is to take effect (see section 33).
- 8 (1B) A compulsory transfer of business determination and a compulsory  
9 transfer of shares determination are both *compulsory transfer*  
10 *determinations*.

11 **33 Subsection 24(2)**

12 Omit “the compulsory transfer determination”, substitute “a compulsory  
13 transfer determination”.

14 **34 Subsection 24(3)**

15 Omit “The compulsory transfer determination”, substitute “A  
16 compulsory transfer determination”.

17 **35 Subsection 24(4)**

18 Omit “the certificate of transfer”, substitute “a certificate of transfer”.

19 **36 Subsection 24(4)**

20 Omit “the certificate of transfer”, substitute “a certificate of transfer for  
21 a transfer of shares or for a transfer of business”.

22 **37 Subsection 24(5)**

23 Omit “The transfer of business”, substitute “A transfer of business”.

24 **38 At the end of section 24**

25 Add:

26 (6) A transfer of shares takes effect when the certificate of transfer  
27 comes into force (see section 35A).

28 **39 Section 25 (heading)**

29 Repeal the heading, substitute:

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Amendment of the Financial Sector (Business Transfer and Group Restructure) Act  
1999 **Schedule 4**  
Main amendments **Part 1**

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1 **25A Compulsory transfer of business determinations**

2 **40 Subparagraphs 25(1)(a)(iii) and (iv)**

3 Repeal the subparagraphs, substitute:

- 4 (iii) APRA is investigating the affairs of the transferring  
5 body, or has appointed a person to investigate the affairs  
6 of the transferring body, under subsection 13A(1) of the  
7 *Banking Act 1959*; or  
8 (iv) there is a Banking Act statutory manager of the  
9 transferring body under the *Banking Act 1959*; or

10 **41 Subparagraph 25(1C)(a)(iii)**

11 Omit “company; and”, substitute “company; or”.

12 **42 At the end of paragraph 25(1C)(a)**

13 Add:

- 14 (iv) there is a Life Insurance Act statutory manager of the  
15 transferring body under the *Life Insurance Act 1995*;  
16 and

17 **43 Subsection 25(1D)**

18 Omit “only the business”, substitute “only business”.

19 **44 After subparagraph 25(1D)(a)(iii)**

20 Insert:

- 21 (iiia) there is a Life Insurance Act statutory manager of the  
22 transferring body under the *Life Insurance Act 1995*; or

23 **45 After subsection 25(1D)**

24 Insert:

25 *Transfer from a body corporate related to a life insurance*  
26 *company to another body*

- 27 (1DA) APRA may make a written determination that there is to be a total  
28 transfer or partial transfer of business from a body corporate that is  
29 related to a life insurance company and is not an ADI, general

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- 1 insurer or life insurance company to another body corporate (the  
2 *transferee*). APRA may make the determination only if:
- 3 (a) APRA is making, or has made within a reasonable period, a  
4 determination under subsection (1C) or (1D) relating to the  
5 life insurance company for the total transfer or partial transfer  
6 of its business to a body corporate (the *original receiving*  
7 *body*) (whether or not the transfer provided for in that  
8 determination has occurred); and
- 9 (b) the transferee is the original receiving body or is related to  
10 the original receiving body.

## 11 **46 Subparagraph 25(1E)(a)(iii)**

12 Omit “insurer; and”, substitute “insurer; or”.

## 13 **47 At the end of paragraph 25(1E)(a)**

14 Add:

- 15 (iv) there is an Insurance Act statutory manager of the  
16 transferring body under the *Insurance Act 1973*; and

## 17 **48 Subsection 25(1F)**

18 Omit “only the business”, substitute “only business”.

## 19 **49 After subparagraph 25(1F)(a)(iii)**

20 Insert:

- 21 (iiia) there is an Insurance Act statutory manager of the  
22 transferring body under the *Insurance Act 1973*; or

## 23 **50 After subsection 25(1F)**

24 Insert:

25 *Transfer from a body corporate related to a general insurer to*  
26 *another body*

- 27 (1G) APRA may make a written determination that there is to be a total  
28 transfer or partial transfer of business from a body corporate that is  
29 related to a general insurer and is not an ADI, general insurer or  
30 life insurance company to another body corporate (the *transferee*).  
31 APRA may make the determination only if:
-

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- 1 (a) APRA is making, or has made within a reasonable period, a  
2 determination under subsection (1E) or (1F) relating to the  
3 general insurer for the total transfer or partial transfer of its  
4 business to a body corporate (the *original receiving body*)  
5 (whether or not the transfer provided for in that determination  
6 has occurred); and  
7 (b) the transferee is the original receiving body or is related to  
8 the original receiving body.

## 9 **51 Paragraph 25(2)(f)**

10 Omit “is satisfied that”, substitute “has considered whether”.

## 11 **52 After subsection 25(2)**

12 Insert:

- 13 (2A) To avoid doubt, APRA may make a determination under this  
14 section even if the legislation mentioned in paragraph (2)(f) has not  
15 been enacted as mentioned in that paragraph.

## 16 **53 After section 25**

17 Insert:

## 18 **25AA Compulsory transfer of shares determinations**

19 *Transferring body is regulated body*

- 20 (1) APRA may make a written determination that there is to be a  
21 transfer of shares in a regulated body to another body corporate.  
22 APRA may make the determination only if:  
23 (a) any of the following requirements are met:  
24 (i) if the regulated body is an ADI—the Minister has  
25 declared under section 25A that a transfer of shares in  
26 the transferring body to the receiving body should  
27 occur;  
28 (ii) if the regulated body is an ADI and subparagraph (i)  
29 does not apply—APRA is satisfied that any of the  
30 conditions in subparagraphs 25(1)(a)(i), (ii), (iii), (iv) or  
31 (v) have been satisfied;

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- 1 (iii) if the regulated body is a life insurance company—  
2 APRA is satisfied that any of the conditions in  
3 subparagraphs 25(1C)(a)(i), (ii), (iii) or (iv) have been  
4 satisfied;  
5 (iv) if the regulated body is a general insurer—APRA is  
6 satisfied that any of the conditions in  
7 subparagraphs 25(1E)(a)(i), (ii), (iii) or (iv) have been  
8 satisfied; and  
9 (b) if the transferring body is an ADI—APRA has considered the  
10 interests of depositors of the transferring body (when viewed  
11 as a group) and considers that, having regard to their  
12 interests, it would be appropriate for the transfer to be made;  
13 and  
14 (ba) if the transferring body is a life insurance company or general  
15 insurer—APRA has considered the interests of policy owners  
16 of the transferring body (when viewed as a group) and  
17 considers that, having regard to their interests, it would be  
18 appropriate for the transfer to be made; and  
19 (c) if the receiving body is an ADI—APRA is satisfied that the  
20 transfer is appropriate, having regard to the interests of  
21 depositors of the receiving body when viewed as a group;  
22 and  
23 (d) if the receiving body is a life insurance company or general  
24 insurer—APRA is satisfied that the transfer is appropriate,  
25 having regard to the interests of policy owners of the  
26 receiving body when viewed as a group; and  
27 (e) the conditions in subsection (4) exist.

28 *Transferring body cannot be foreign body*

- 29 (2) APRA cannot make a determination under this section if the  
30 transferring body is any of the following:  
31 (a) a foreign ADI;  
32 (b) a foreign general insurer;  
33 (c) an eligible foreign life insurance company.

34 *Common conditions for making a determination under this section*

- 35 (4) APRA may make a determination under this section only if:
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- 1 (d) APRA is satisfied that the board of directors of the receiving  
2 body has consented to the transfer; and  
3 (e) APRA is satisfied that the transfer is appropriate, having  
4 regard to:  
5 (ii) the interests of the financial sector as a whole; and  
6 (iii) any other matters that APRA considers relevant; and  
7 (g) either:  
8 (i) the Minister has consented to the transfer; or  
9 (ii) the Minister's consent to the transfer is not required (see  
10 section 29).

11 *Formal requirements for determinations under this section*

- 12 (5) A determination under this section must include particulars of the  
13 transfer, including the names of the transferring body and the  
14 receiving body.  
15 (6) A determination under this section must include a statement of the  
16 reasons why the determination has been made.  
17 (7) A determination under this section must be signed by an authorised  
18 APRA officer.

19 *Determinations under this section are not legislative instruments*

- 20 (8) A determination made under this section is not a legislative  
21 instrument.

22 **54 Section 25A**

23 Repeal the section, substitute:

24 **25A Ministerial declaration that compulsory transfer should occur**  
25 **in relation to ADI**

- 26 (1) The Minister may declare in writing given to APRA that:  
27 (a) a transfer of business should occur from a specified ADI to  
28 another specified body corporate; or  
29 (b) a transfer of shares in a specified ADI to another specified  
30 body corporate should occur; or
-

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1

(c) either:

2

(i) a transfer of business should occur from a specified ADI to another specified body corporate; or

3

4

(ii) a transfer of shares in a specified ADI to another specified body corporate should occur.

5

6

(2) A declaration made under subsection (1) is not a legislative instrument.

7

8

## **55 Section 26**

9

Omit “the compulsory transfer determination” (wherever occurring), substitute “a compulsory transfer determination”.

10

11

## **56 Subsection 27(1)**

12

Omit “The consent referred to in paragraph 25(2)(d)”, substitute “The consent referred to in paragraph 25(2)(d) or 25AA(4)(d)”.

13

14

## **57 Section 28**

15

Before “State or Territory legislation referred”, insert “(1)”.

16

## **58 At the end of section 28**

17

Add:

18

(2) To avoid doubt, this section is enacted only for the purposes of paragraph 25(2)(f).

19

20

Note: Under that paragraph, in order to make a determination under section 25, APRA needs to consider whether legislation satisfying the requirements of this section has been enacted. However, APRA is not prevented from making such a determination if such legislation has not been enacted (see subsection 25(2A)).

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22

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## **59 Section 29**

26

Omit “see paragraph 25(2)(g)”, substitute “see paragraph 25(2)(g) or 25AA(4)(g)”.

27

28

## **60 Section 29**

29

Before “The Minister’s”, insert “(1)”.

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1 **61 At the end of section 29**

2 Add:

3 (2) A determination made under paragraph (1)(a) is not a legislative  
4 instrument.

5 (3) A determination made under paragraph (1)(b) is a legislative  
6 instrument.

7 **62 Subsection 30(1)**

8 Repeal the subsection, substitute:

9 (1) The transferring body or the receiving body, or both of those  
10 bodies, may provide APRA with a written statement specifying, or  
11 specifying a mechanism for determining, things that are to happen,  
12 or that are taken to be the case, in relation to:

13 (a) in the case of a transfer of business—assets and liabilities  
14 that are to be transferred, or in relation to the transfer of  
15 business that is to be effected; or

16 (b) in the case of a transfer of shares—shares that are to be  
17 transferred, or in relation to the transfer of shares that is to be  
18 effected.

19 **63 Subsection 31(1)**

20 Omit “The compulsory transfer determination”, substitute “A  
21 compulsory transfer determination”.

22 **64 Paragraph 31(1)(a)**

23 Omit “transfer of business”, substitute “transfer of business or transfer  
24 of shares”.

25 **65 Paragraph 31(1)(b)**

26 Omit “transfer of business”, substitute “transfer of business or transfer  
27 of shares”.

28 **66 Section 32**

29 Omit “the compulsory transfer determination”, substitute “a compulsory  
30 transfer determination”.

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**Schedule 4** Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

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1 **67 Paragraph 33(1)(c)**

2 Omit “paragraph 25(2)(d)”, substitute “paragraph 25(2)(d) or  
3 25AA(4)(d)”.

4 **68 Paragraph 33(2)(b)**

5 Omit “state whether”, substitute “in the case of a transfer of business—  
6 state whether”.

7 **69 Paragraph 33(2)(c)**

8 Omit “if it is a partial transfer”, substitute “in the case of a transfer of  
9 business that is a partial transfer”.

10 **70 Subsection 33(3)**

11 Repeal the subsection, substitute:

12 (3) The certificate may include provisions specifying, or specifying a  
13 mechanism for determining, other things that are to happen, or that  
14 are taken to be the case:

15 (a) in the case of a transfer of business—in relation to assets and  
16 liabilities that are to be transferred, or in relation to the  
17 transfer of business that is to be effected, whether the transfer  
18 is total or partial; or

19 (b) in the case of a transfer of shares—in relation to shares that  
20 are to be transferred, or in relation to the transfer of shares  
21 that is to be effected.

22 **71 Section 35 (heading)**

23 Repeal the heading, substitute:

24 **35 Time and effect of compulsory transfer—transfer of business**

25 **72 Before subsection 35(1)**

26 Insert:

27 (1A) This section applies if a compulsory transfer of business  
28 determination has been made.



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1 **73 After section 35**

2 Insert:

3 **35A Time and effect of compulsory transfer—transfer of shares**

4 (1A) This section applies if a compulsory transfer of shares  
5 determination has been made.

6 (1) When the certificate of transfer comes into force, the receiving  
7 body becomes the successor in law of the persons that held shares  
8 in the transferring body just before the certificate of transfer comes  
9 into force, to the extent of the transfer.

10 (1AA) As a result of subsection (1), all the shares in the transferring body,  
11 wherever those shares are located, become (respectively) shares  
12 held by the receiving body without any transfer, conveyance or  
13 assignment.

14 (1AB) Furthermore, those shares become shares held by the receiving  
15 body free from any trust, liability or other encumbrance.

16 (2) If the certificate includes provisions of a kind referred to in  
17 subsection 33(3):

18 (a) if the provisions specify that particular things are to happen  
19 or are taken to be the case—those things are, by force of this  
20 section, taken to happen, or to be the case, in accordance with  
21 those provisions; and

22 (b) if the provisions specify a mechanism for determining things  
23 that are to happen or are taken to be the case—things  
24 determined in accordance with that mechanism are, by force  
25 of this section, taken to happen, or to be the case, as  
26 determined in accordance with that mechanism.

27 (3) If there is an approved section 30 statement in relation to the  
28 transfer, then:

29 (a) if the statement specifies that particular things are to happen  
30 or are taken to be the case—those things are, by force of this  
31 section, taken to happen, or to be the case, in accordance with  
32 the statement; and

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- 1 (b) if the statement specifies a mechanism for determining things  
2 that are to happen or are taken to be the case—things  
3 determined in accordance with that mechanism are, by force  
4 of this section, taken to happen, or to be the case, as  
5 determined in accordance with that mechanism.

## 6 **74 Before subsection 36(1)**

7 Insert:

- 8 (1A) This section applies if a compulsory transfer of business  
9 determination has been made

## 10 **75 Section 36AA**

11 Repeal the section, substitute:

### 12 **36AA Compulsory transfer not ground for denial of obligations**

- 13 (1) This section applies if a body corporate covered by subsection (2)  
14 is or was party to a contract, whether the proper law of the contract  
15 is:

- 16 (a) Australian law (including the law of a State or Territory); or  
17 (b) law of a foreign country (including the law of part of a  
18 foreign country).

- 19 (2) This subsection covers the following:

- 20 (a) a body corporate that is, or is proposed to become, a  
21 transferring body;  
22 (b) a body corporate that is related to a body corporate  
23 mentioned in paragraph (a).

- 24 (3) None of the matters mentioned in subsection (4) allows the  
25 contract, or a party to the contract, to do any of the following:

- 26 (a) deny any obligations under the contract;  
27 (b) accelerate any debt under the contract;  
28 (c) close out any transaction relating to the contract;  
29 (d) enforce any security under the contract.

30 This subsection has effect subject to subsection (5).

- 31 (4) The matters are as follows:
-

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- 1 (a) an act being done for the purposes of Division 2 or 3, or a  
2 certificate of transfer coming into force under Division 3, in  
3 connection with the body corporate;  
4 (b) an act being done for the purposes of Division 2 or 3, or a  
5 certificate of transfer coming into force under Division 3, in  
6 connection with a related body corporate of the body  
7 corporate.
- 8 (5) Subsection (3) does not prevent the body corporate doing any of  
9 the following:  
10 (a) denying an obligation to an entity that is not a related body  
11 corporate of the body corporate;  
12 (b) accelerating a debt to an entity that is not a related body  
13 corporate of the body corporate;  
14 (c) closing out a transaction with an entity that is not a related  
15 body corporate of the body corporate;  
16 (d) enforcing a security against an entity that is not a related  
17 body corporate of the body corporate.

## 76 At the end of Part 4

18 Add:  
19

## 20 **Division 5—Special provisions relating to compulsory** 21 **transfers of shares**

### 22 **36AC Application of Division**

23 This Division applies in relation to a compulsory transfer of shares  
24 under this Part, or a proposed compulsory transfer of shares under  
25 this Part.

### 26 **36AD Extended meaning of *share***

27 Treat all of the following things as being a share:

- 28 (a) a legal or equitable right or interest in a share;  
29 (b) an interest in a share that is an interest of a kind specified in  
30 the regulations.

# EXPOSURE DRAFT

**Schedule 4** Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

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1 **36AE Regulations may make special provision in relation to**  
2 **compulsory transfer of shares**

- 3 (1) The regulations may provide in relation to any of the following  
4 matters:
- 5 (a) the payment by the receiving body to the holder of shares in  
6 the transferring body of a purchase price for those shares;
  - 7 (b) the resolution of disputes between the receiving body and the  
8 holder of shares in the transferring body (including the  
9 resolution of such disputes by an administrative tribunal or a  
10 court);
  - 11 (c) the publication of information relating to the compulsory  
12 transfer of shares, or proposed compulsory transfer of shares,  
13 by APRA, the transferring body and the receiving body;
  - 14 (d) the freeing of shares in the transferring body from any trust,  
15 liability or other encumbrance when they become shares held  
16 by the receiving body;
  - 17 (e) any matter incidental to:
    - 18 (i) the compulsory transfer of shares, or proposed  
19 compulsory transfer of shares; or
    - 20 (ii) any of the other matters mentioned in this subsection.
- 21 (2) The regulations may prescribe penalties, not exceeding 50 penalty  
22 units, for offences against the regulations.
- 23 (3) The regulations may provide that some or all of the provisions of  
24 this Act apply with the modifications (if any) specified in the  
25 regulations. The regulations have effect accordingly. Nothing in  
26 this subsection limits the operation of those provisions (as they  
27 have effect subject to any modification specified in the  
28 regulations).
- 29 (4) This section does not limit the regulations that may be made for the  
30 purposes of this Act.

31 **77 Paragraphs 37(1)(c) and (d)**

32 Repeal the paragraphs, substitute:

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# EXPOSURE DRAFT

- 1 (c) in the case of a transfer of business—a specified asset of the  
2 transferring body has become a transferred asset of that  
3 receiving body; or  
4 (d) in the case of a transfer of business—a specified liability of  
5 the transferring body has become a transferred liability of the  
6 receiving body; or  
7 (e) in the case of a transfer of shares —a specified share in the  
8 transferring body has become a share held by that receiving  
9 body.

## 10 **78 Section 42**

11 Omit:

12 “about the business that is to be, or that may be, transferred”, substitute:

13 about:

- 14 (a) in the case of a transfer of business—the business that is to  
15 be, or that may be, transferred; or  
16 (b) in the case of a transfer of shares:  
17 (i) the shares that are to be, or that may be, transferred; and  
18 (ii) the business of the transferring body.

## 19 **79 Subsection 43(4)**

20 Omit “a transfer of business”, substitute “the transfer of business or  
21 transfer of shares”.

## 22 **80 Subsection 43(9)**

23 Omit “a transfer of business (whether voluntary or compulsory),”,  
24 substitute “a transfer of business (whether voluntary or compulsory), a  
25 transfer of shares,”.

## 26 **81 Paragraph 43(9A)(a)**

27 Omit “a transfer of business”, substitute “a transfer of business or  
28 transfer of shares”.

## 29 **82 After section 43**

30 Insert:

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# EXPOSURE DRAFT

**Schedule 4** Amendment of the Financial Sector (Business Transfer and Group Restructure) Act 1999

**Part 2** Application provisions

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1     **43A Transfers of Australian regulated business of foreign body**

2             (1) This section applies to a transfer of business under Part 3 or 4 from  
3             a transferring body to another body if the transferring body is:

4                 (a) a foreign ADI; or

5                 (b) a foreign general insurer; or

6                 (c) an eligible foreign life insurance company.

7             (2) For the purposes of the transfer of business, treat the Australian  
8             business assets and liabilities of the transferring body as the entire  
9             business of the transferring body.

10     **Part 2—Application provisions**

11     *[These provisions will be drafted following exposure.]*

# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

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1 **Schedule 5—Amendment of the Payment**  
2 **Systems and Netting Act 1998**

3 **Part 1—Main amendments**

4 *Payment Systems and Netting Act 1998*

5 **1 Section 5**

6 Insert:

7 *ADI* means an authorised deposit-taking institution within the  
8 meaning of the *Banking Act 1959*.

9 *AFS statutory manager* has the meaning given by the *Insurance*  
10 *Act 1973*.

11 *Banking Act statutory manager* has the same meaning as in the  
12 *Banking Act 1959*.

13 **2 Section 5 (definition of *Business Transfer Act*)**

14 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
15 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
16 *1999*”.

17 **3 Section 5 (before paragraph (a) of the definition of *direction***  
18 ***stay provision*)**

19 Insert:

20 (aa) subsection 11CAC(2) of the *Banking Act 1959*;

21 **4 Section 5 (after paragraph (b) of the definition of *direction***  
22 ***stay provision*)**

23 Insert:

24 (ba) subsection 36C(2) of the *Insurance Act 1973*;

25 **5 Section 5 (after paragraph (d) of the definition of *direction***  
26 ***stay provision*)**

27 Insert:

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# EXPOSURE DRAFT

Schedule 5 Amendment of the Payment Systems and Netting Act 1998

Part 1 Main amendments

---

1 (da) subsection 230AAD(2) of the *Life Insurance Act 1995*;

2 **6 Section 5 (paragraph (d) of the definition of *external***  
3 ***administration*)**

4 Repeal the paragraph, substitute:

5 (d) a Banking Act statutory manager takes control of the  
6 person's business under the *Banking Act 1959*; or

7 (da) an Insurance Act statutory manager takes control of the  
8 person's business under the *Insurance Act 1973*; or

9 (db) a Life Insurance Act statutory manager takes control of the  
10 person's business under the *Life Insurance Act 1995*; or

11 **7 Section 5**

12 Insert:

13 ***general insurer*** has the same meaning as in the *Insurance Act*  
14 *1973*.

15 ***Insurance Act statutory manager*** has the same meaning as in the  
16 *Insurance Act 1973*.

17 ***life company*** has the same meaning as in the *Life Insurance Act*  
18 *1995*.

19 ***Life Insurance Act statutory manager*** has the same meaning as in  
20 the *Life Insurance Act 1995*.

21 ***receiving body*** has the same meaning as in the Business Transfer  
22 Act.

23 **8 Section 5 (definition of *regulated body*)**

24 Repeal the definition, substitute:

25 ***regulated body*** means a body corporate that is any of the  
26 following:

27 (a) an ADI;

28 (b) a general insurer;

29 (c) a life company;



# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

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- 1 (d) an authorised NOHC (within the meaning of the *Banking Act*  
2 *1959*);  
3 (e) an authorised NOHC (within the meaning of the *Insurance*  
4 *Act 1973*);  
5 (f) a registered NOHC (within the meaning of the *Life Insurance*  
6 *Act 1995*);  
7 (g) a subsidiary of a body corporate mentioned in paragraph (a),  
8 (b), (c), (d), (e), or (f); or  
9 (h) a private health insurer within the meaning of the *Private*  
10 *Health Insurance (Prudential Supervision) Act 2015*.

## 9 Section 5 (definition of *regulated business*)

11  
12 Repeal the definition, substitute:

13 *regulated business*:

- 14 (a) in relation to an ADI—means the ADI’s banking business  
15 (within the meaning of the *Banking Act 1959*); and  
16 (b) in relation to a general insurer—means the general insurer’s  
17 insurance business (within the meaning of the *Insurance Act*  
18 *1973*); and  
19 (c) in relation to a life company—means the life company’s life  
20 insurance business (within the meaning of the *Life Insurance*  
21 *Act 1995*).

## 10 Section 5

22  
23 Insert:

24 *related body corporate*, in relation to a body corporate, means a  
25 body corporate that is related to the first-mentioned body, as  
26 determined in accordance with section 5AA.

27 *specified moratorium provision*: each of the following is a  
28 *specified moratorium provision*:

- 29 (a) section 15BA of the *Banking Act 1959*;  
30 (b) section 15BB of the *Banking Act 1959*;  
31 (c) section 15BC of the *Banking Act 1959*;  
32 (d) section 62PA of the *Insurance Act 1973*;  
33 (e) section 62PB of the *Insurance Act 1973*;
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# EXPOSURE DRAFT

Schedule 5 Amendment of the Payment Systems and Netting Act 1998

Part 1 Main amendments

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- 1 (f) section 62PC of the *Insurance Act 1973*;  
2 (g) section @15BA-IA of the *Insurance Act 1973*;  
3 (h) section @15BB-IA of the *Insurance Act 1973*;  
4 (j) section @15BC-IA of the *Insurance Act 1973*;  
5 (k) section 161A of the *Life Insurance Act 1995*;  
6 (l) section 161B of the *Life Insurance Act 1995*;  
7 (m) section 161C of the *Life Insurance Act 1995*;  
8 (n) section @15BA-LIA of the *Life Insurance Act 1995*;  
9 (o) section @15BB-LIA of the *Life Insurance Act 1995*;  
10 (p) section @15BC-LIA of the *Life Insurance Act 1995*.

11 **11 Section 5 (after paragraph (fb) of the definition of**  
12 ***specified provisions*)**

13 Insert:

- 14 (fc) the specified moratorium provisions; and

15 **12 Section 5 (before paragraph (a) of the definition of**  
16 ***specified stay provision*)**

17 Insert:

- 18 (aa) subsection 11CAC(2) of the *Banking Act 1959*;

19 **13 Section 5 (after paragraph (e) of the definition of *specified***  
20 ***stay provision*)**

21 Insert:

- 22 (ea) subsection 36C(2) of the *Insurance Act 1973*;

23 **14 Section 5 (after paragraph (g) of the definition of *specified***  
24 ***stay provision*)**

25 Insert:

- 26 (ga) subsection @14AC-IA(2) of the *Insurance Act 1973*;  
27 (gb) subsection @15C-IA(2) of the *Insurance Act 1973*;

28 **15 Section 5 (after paragraph (k) of the definition of *specified***  
29 ***stay provision*)**

30 Insert:

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# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

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- 1 (ka) subsection @14AC-LIA(2) of the *Life Insurance Act 1995*;  
2 (kb) subsection @15C-LIA(2) of the *Life Insurance Act 1995*;  
3 (kc) subsection 230AAD(2) of the *Life Insurance Act 1995*;

## 4 **16 Section 5 (definition of *statutory/judicial management*)**

5 Repeal the definition, substitute:

6 *statutory/judicial management*: a person is under  
7 *statutory/judicial management* if:

- 8 (a) an AFS statutory manager has control of the person's  
9 business under the *Banking Act 1959*, the *Insurance Act 1973*  
10 or the *Life Insurance Act 1995*; or  
11 (b) the person is under judicial management under the *Insurance*  
12 *Act 1973*; or  
13 (c) the person, or a part of the person's business, is under judicial  
14 management under the *Life Insurance Act 1995*.

## 15 **17 After section 5**

16 Insert:

### 17 **5AA Related body corporate**

18 For the purposes of this Act, the question whether a body corporate  
19 is related to another body corporate is to be determined in the same  
20 way as that question is determined for the purposes of the  
21 *Corporations Act 2001*.

## 22 **18 After paragraph 14(3)(a)**

23 Insert:

- 24 (aa) subject to subsection (3A); and

## 25 **19 After subsection 14(3)**

26 Insert:

- 27 (3A) If section 15A does not apply in relation to a security,  
28 paragraphs (1)(ca) and (2)(fa) of this section have effect in relation  
29 to the security subject to the specified moratorium provisions.

30 Note: Section 5 defines *specified moratorium provision*.

# EXPOSURE DRAFT

Schedule 5 Amendment of the Payment Systems and Netting Act 1998

Part 1 Main amendments

---

1 **20 Subsection 15A(1)**

2 Omit “to which a regulated body is a party”.

3 **21 Before paragraph 15A(1)(a)**

4 Insert:

5 (aa) a party to the contract is:

6 (i) a regulated body; or

7 (ii) a related body corporate of a regulated body; and

8 **22 Subsection 15A(2)**

9 Omit “to which a regulated body is a party”.

10 **23 Before paragraph 15A(2)(a)**

11 Insert:

12 (aa) a party to the contract is:

13 (i) a regulated body; or

14 (ii) a related body corporate of a regulated body; and

15 **24 Paragraph 15B(1)(a)**

16 Omit “to which a regulated body is a party”.

17 **25 After paragraph 15B(1)(a)**

18 Insert:

19 (aa) a party to the contract is:

20 (i) a regulated body; or

21 (ii) a related body corporate of a regulated body; and

22 **26 After paragraph 15B(1)(b)**

23 Omit “a party”, substitute “the party”.

24 **27 Section 15C (heading)**

25 Repeal the heading, substitute:

# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

---

1 **15C When APRA may declare that non-direction stays continue—**  
2 **regulated body is party to trigger contract**

3 **28 Subsections 15C(1) and (2)**

4 Repeal the subsections, substitute:

5 (1) Subsection (2) applies if:

6 (a) a trigger event to which a specified stay provision (other than  
7 a direction stay provision) applies:

8 (i) is an event that involves a regulated body (the *trigger*  
9 *body*); and

10 (ii) happens in relation to a close-out netting contract (the  
11 *trigger contract*) to which the regulated body is a party;  
12 and

13 (b) APRA is satisfied that all the matters in subsection (3) will be  
14 satisfied in relation to the party in respect of which the  
15 declaration under subsection (2) will be made:

16 (i) unless subparagraph (ii) applies—at the time the  
17 declaration will be made; or

18 (ii) if a certificate of transfer will come into force under the  
19 Business Transfer Act for a transfer of business from  
20 the trigger body to a receiving body—just after that  
21 coming into force; and

22 (c) the party in respect of which the declaration under  
23 subsection (2) will be made is not in external administration  
24 (disregarding paragraphs (d), (da), (db), (e) and (f) of the  
25 definition of *external administration* in section 5); and

26 (d) APRA has not already made a declaration under section 15B  
27 in relation to the trigger event happening in relation to the  
28 trigger contract.

29 (2) APRA may, before the end of the resolution period for the trigger  
30 event, declare that the specified stay provision is to continue to  
31 apply to:

32 (a) unless paragraph (b) or (c) applies:

33 (i) all close-out netting contracts to which the regulated  
34 body is a party; and

# EXPOSURE DRAFT

Schedule 5 Amendment of the Payment Systems and Netting Act 1998

Part 1 Main amendments

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- 1 (ii) all securities given over financial property, in respect of  
2 obligations under those close-out netting contracts; or  
3 (b) in the case of a total transfer under the Business Transfer Act:  
4 (i) all close-out netting contracts to which the regulated  
5 body is a party (and to which the receiving body will  
6 become a party immediately after the transfer); and  
7 (ii) all securities given over financial property, in respect of  
8 obligations under those close-out netting contracts; or  
9 (c) in the case of a partial transfer under the Business Transfer  
10 Act—either or both of the following:  
11 (i) all close-out netting contracts to which the regulated  
12 body is a party (and to which the regulated body will  
13 remain a party immediately after the transfer), and all  
14 securities given over financial property in respect of  
15 obligations under those contracts;  
16 (ii) all close-out netting contracts to which the regulated  
17 body is a party (and to which the receiving body will  
18 become a party immediately after the transfer), and all  
19 securities given over financial property in respect of  
20 obligations under those contracts.

## 29 Paragraphs 15C(3)(c) and (d)

21 Repeal the paragraphs, substitute:

- 22 (c) if the party is an ADI, a general insurer or a life company—  
23 that the party has each material authorisation (however  
24 described) necessary for its regulated business;  
25 (d) if minimum capital requirements under the *Banking Act*  
26 *1959*, the *Insurance Act 1973* or the *Life Insurance Act 1995*  
27 apply to the party—that either subsection (4) or  
28 subsection (5) is satisfied in respect of the party.  
29

## 30 Paragraph 15C(5)(b)

30 Repeal the paragraph, substitute:

- 31 (b) those arrangements will remain in place until at least the  
32 earliest day on which one or more of the following occurs:  
33 (i) subsection (4) is satisfied;  
34

# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

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- 1 (ii) if a Banking Act statutory manager is in control of the  
2 party's business—APRA makes an ultimate termination  
3 of control under subsection 13C(3) of the *Banking Act*  
4 *1959*;
- 5 (iii) if an Insurance Act statutory manager is in control of the  
6 party's business—APRA makes an ultimate termination  
7 of control under subsection @13C-IA(3) of the  
8 *Insurance Act 1973*;
- 9 (iv) if a Life Insurance Act statutory manager is in control of  
10 the party's business—APRA makes an ultimate  
11 termination of control under subsection @13C-LIA(3)  
12 of the *Life Insurance Act 1995*;
- 13 (v) if the party is under judicial management under the  
14 *Insurance Act 1973*—an order under section 62ZF of  
15 that Act cancelling the judicial management comes into  
16 force;
- 17 (vi) if the party is under judicial management under the *Life*  
18 *Insurance Act 1995*—an order under section 172 of that  
19 Act cancelling the judicial management comes into  
20 force.

## 31 At the end of Division 2 of Part 4

21 Add:

### 22 **15D When APRA may declare that non-direction stays continue— 23 related body corporate of regulated body is party to 24 trigger contract**

- 25
- 26 (1) Subsection (2) applies if:
- 27 (a) a trigger event to which a specified stay provision (other than  
28 a direction stay provision) applies:
- 29 (i) is an event that involves a regulated body (the ***trigger***  
30 ***body***); and
- 31 (ii) happens in relation to one or more close-out netting  
32 contracts (each of which is a ***trigger contract***) to which  
33 a related body corporate of the trigger body (the  
34 ***contracting body***) is a party; and

# EXPOSURE DRAFT

Schedule 5 Amendment of the Payment Systems and Netting Act 1998

Part 1 Main amendments

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- 1 (b) APRA is satisfied that all the matters in subsection (3) will be  
2 satisfied in relation to each entity covered under  
3 subsection (1A):
- 4 (i) unless subparagraph (ii) applies—at the time the  
5 declaration will be made; or
- 6 (ii) if a certificate of transfer will come into force under the  
7 Business Transfer Act for a transfer of business from  
8 the trigger body to a receiving body—just after that  
9 coming into force; and
- 10 (c) each entity covered under subsection (1A) is not in external  
11 administration (disregarding paragraphs (d), (da), (db), (e)  
12 and (f) of the definition of *external administration* in  
13 section 5); and
- 14 (d) APRA has not already made a declaration under section 15B  
15 in relation to the trigger event happening in relation to the  
16 trigger contract.
- 17 (1A) For the purposes of paragraph (1)(b) and (c), an entity is covered  
18 under this subsection if it is:
- 19 (a) if section 15E does not apply—the trigger body; or
- 20 (b) if section 15E applies because of a transfer of business under  
21 the Business Transfer Act from the trigger body to a  
22 receiving body:
- 23 (i) in the case of a total transfer of business—the receiving  
24 body; or
- 25 (ii) in the case of a partial transfer of business—an entity  
26 specified in a determination under subsection 15E(3).
- 27 (2) APRA may, before the end of the resolution period for the trigger  
28 event, make a declaration that the specified stay provision is to  
29 continue to apply to:
- 30 (a) each trigger contract specified in the declaration; and
- 31 (b) all securities given over financial property, in respect of  
32 obligations under each trigger contract specified in the  
33 declaration.
- 34 (2A) APRA may specify either or both of the following in a declaration  
35 under subsection (2):
- 36 (a) one or more trigger contracts;
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# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

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(b) one or more classes of trigger contracts.

Note: See subsection 15E(2) for a restriction on when APRA may make a declaration under subsection (2) of this section in the case of a transfer of business from the trigger body to a receiving body.

(3) For the purposes of paragraph (1)(b), the matters are as follows:

(a) that the entity covered under subsection (1A) is able to meet all its liabilities under:

(i) close-out netting contracts to which it is a party; and

(ii) securities given over financial property in respect of obligations of the entity under those contracts;

as and when they become due and payable;

(b) that the entity covered under subsection (1A) is solvent (within the meaning of the *Corporations Act 2001*);

(c) if the entity covered under subsection (1A) is an ADI, a general insurer or a life company—that the entity has each material authorisation (however described) necessary for its regulated business;

(d) if minimum capital requirements under the *Banking Act 1959*, the *Insurance Act 1973* or the *Life Insurance Act 1995* apply to the entity covered under subsection (1A)—that either subsection (4) or subsection (5) is satisfied in respect of the entity covered under subsection (1A).

(4) This subsection is satisfied if the entity's level of capital complies with the minimum capital requirements that apply to it under:

(a) the *Banking Act 1959*, the *Insurance Act 1973* or the *Life Insurance Act 1995* (as the case requires); and

(b) the applicable prudential standards made under that Act.

(5) This subsection is satisfied if:

(a) arrangements are in place to ensure that the entity performs all its obligations under:

(i) close-out netting contracts to which it is a party; and

(ii) securities given over financial property in respect of obligations of the entity under those contracts;

as and when they are due to be performed; and

# EXPOSURE DRAFT

## Schedule 5 Amendment of the Payment Systems and Netting Act 1998

### Part 1 Main amendments

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- 1 (b) those arrangements will remain in place until at least the  
2 earliest day on which one or more of the following occurs:  
3 (i) subsection (4) is satisfied;  
4 (ii) if a Banking Act statutory manager is in control of the  
5 entity's business—APRA makes an ultimate  
6 termination of control under subsection 13C(3) of the  
7 *Banking Act 1959*;  
8 (iii) if an Insurance Act statutory manager is in control of the  
9 entity's business—APRA makes an ultimate  
10 termination of control under subsection @13C-IA(3) of  
11 the *Insurance Act 1973*;  
12 (iv) if a Life Insurance Act statutory manager is in control of  
13 the entity's business—APRA makes an ultimate  
14 termination of control under subsection @13C-LIA(3)  
15 of the *Life Insurance Act 1995*;  
16 (v) if the entity is under judicial management under the  
17 *Insurance Act 1973*—an order under section 62ZF of  
18 that Act cancelling the judicial management comes into  
19 force;  
20 (vi) if the entity is under judicial management under the *Life*  
21 *Insurance Act 1995*—an order under section 172 of that  
22 Act cancelling the judicial management comes into  
23 force.

24 (6) A declaration under subsection (2) cannot be varied or revoked.

25 (7) A declaration under this section is not a legislative instrument.

26 (8) The regulations may do any of the following:

- 27 (a) prescribe requirements relating to how declarations under  
28 subsection (2) are to be made (including requirements  
29 relating to the content or form of declarations);  
30 (b) prescribe requirements relating to the notification or  
31 publication of declarations under subsection (2);  
32 (c) include provisions that apply to determining, either generally  
33 or for a particular purpose, the time when declarations under  
34 subsection (2) are taken to be made.

35 Note: Regulations under paragraph (c) may (for example) provide that, for  
36 the purpose of this section, a declaration is taken not to have been

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# EXPOSURE DRAFT

Amendment of the Payment Systems and Netting Act 1998 **Schedule 5**  
Main amendments **Part 1**

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1 made until certain requirements of regulations under paragraph (b)  
2 have been complied with.

3 **15E Declaration under subsection 15D(2)—total or partial transfer**  
4 **of business**

5 (1) This section applies if:

6 (a) the requirement in paragraph 15D(1)(a) is satisfied in relation  
7 to a trigger event; and

8 (b) a certificate of transfer will come into force under the  
9 Business Transfer Act for:

10 (i) a total transfer of business from the trigger body to a  
11 receiving body; or

12 (ii) a partial transfer of business from the trigger body to a  
13 receiving body.

14 (2) APRA must not make a declaration under subsection 15D(2) in  
15 relation to the trigger event unless APRA is satisfied that the  
16 declaration will not have a detrimental effect on any counterparty  
17 to a close-out netting contract to which the declaration would  
18 apply.

19 (3) For the purposes of subparagraph 15D(1A)(b)(ii), APRA may  
20 make a written determination specifying either or both of the  
21 following:

22 (a) the trigger body;

23 (b) the receiving body.

24 (4) A determination under subsection (3) cannot be varied or revoked.

25 (5) A determination under this section is not a legislative instrument.

26 (6) The regulations may do any of the following:

27 (a) prescribe requirements relating to how determinations under  
28 subsection (3) are to be made (including requirements  
29 relating to the content or form of declarations);

30 (b) prescribe requirements relating to the notification or  
31 publication of determinations under subsection (3);

# EXPOSURE DRAFT

Schedule 5 Amendment of the Payment Systems and Netting Act 1998

Part 2 Application provisions

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1 (c) include provisions that apply to determining, either generally  
2 or for a particular purpose, the time when determinations  
3 under subsection (3) are taken to be made.

4 Note: Regulations under paragraph (c) may (for example) provide that, for  
5 the purpose of this section, a determination is taken not to have been  
6 made until certain requirements of regulations under paragraph (b)  
7 have been complied with.

## 8 Part 2—Application provisions

9 *[These provisions will be drafted following exposure.]*

# EXPOSURE DRAFT

Amendment of the Australian Prudential Regulation Authority Act 1998 **Schedule 6**  
Main amendments **Part 1**

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1 **Schedule 6—Amendment of the Australian**  
2 **Prudential Regulation Authority Act**  
3 **1998**

4 **Part 1—Main amendments**

5 *Australian Prudential Regulation Authority Act 1998*

6 **1 Subsection 3(1) (paragraph (f) of the definition of *prudential***  
7 ***regulation framework law*)**

8 Repeal the paragraph, substitute:

9 (f) the *Financial Sector (Transfer and Restructure) Act 1999*;

10 **2 At the end of section 58**

11 Add:

12 (4) Subsection (1) does not limit, and is not limited by any of the  
13 following provisions:

14 (a) section 14C, 52A, 52B, 70A or 70AA of the *Banking Act*  
15 *1959*;

16 (b) section @14C-IA, 38A, 38B, 127B or 127C of the *Insurance*  
17 *Act 1973*;

18 (c) section @14C-LIA, 156A, 156B, 246A or 246B of the *Life*  
19 *Insurance Act 1995*.

20 **3 Subparagraph 59(2)(a)(i)**

21 Repeal the subparagraph, substitute:

22 (i) the activities of persons conducting investigations,  
23 under Division 2 of Part II of the *Banking Act 1959*;

24 **4 After paragraph 59(2)(a)**

25 Insert:

26 (aaa) information on the following matters:

27 (i) the activities of Banking Act statutory managers (within  
28 the meaning of the *Banking Act 1959*);

# EXPOSURE DRAFT

Schedule 6 Amendment of the Australian Prudential Regulation Authority Act 1998

Part 2 Application provisions

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- 1 (ii) the activities of Insurance Act statutory managers  
2 (within the meaning of the *Insurance Act 1973*);  
3 (iii) the activities of Life Insurance Act statutory managers  
4 (within the meaning of the *Life Insurance Act 1995*);

5 **Part 2—Application provisions**

6 *[These provisions will be drafted following exposure.]*

# EXPOSURE DRAFT

Amendment of other Acts **Schedule 7**  
Application provisions **Part 2**

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1 **Schedule 7—Amendment of other Acts**

2 *Corporations Act 2001*

3 **1 At the end of subsection 256B(1)**

4 Add:

5 Note 5: A company may reduce its share capital for the purposes of the  
6 conversion and write-off provisions determined by APRA despite this  
7 Division (see Subdivision B of Division 1A of Part II of the *Banking*  
8 *Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and  
9 Division 1A of Part 10A of the *Life Insurance Act 1995*).

10 **2 At the end of subsection 437F(8)**

11 Add:

12 Note: An alteration in the status of members of a company that is made  
13 during the administration of the company may not be void if it is made  
14 for the purposes of the conversion and write-off provisions determined  
15 by APRA (see Subdivision B of Division 1A of Part II of the *Banking*  
16 *Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and  
17 Division 1A of Part 10A of the *Life Insurance Act 1995*).

18 **3 At the end of subsection 468A(8)**

19 Add:

20 Note: An alteration in the status of members of a company that is made after  
21 the commencement of the winding up by the Court may not be void if  
22 it is made for the purposes of the conversion and write-off provisions  
23 (see Subdivision B of Division 1A of Part II of the *Banking Act 1959*,  
24 Division 2 of Part IIIA of the *Insurance Act 1973* and Division 1A of  
25 Part 10A of the *Life Insurance Act 1995*).

26 *Income Tax Assessment Act 1997*

27 **4 Paragraph 202-47(1)(a)**

28 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
29 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
30 *1999*”.

# EXPOSURE DRAFT

Schedule 7 Amendment of other Acts

Part 2 Application provisions

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1 **5 Section 320-300**

2 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
3 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
4 *1999*”.

5 **6 Paragraph 325-305(a)**

6 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
7 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
8 *1999*”.

9 **7 Paragraph 615-35(a)**

10 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
11 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
12 *1999*”.

13 **8 Paragraph 322-30(b)**

14 Omit “Division 3 of Part VC”, substitute “sections 62ZZF and 62ZZG”.

15 **9 Paragraph 322-30(b) (Note 2)**

16 Omit “Division 3 of Part VC”, substitute “Sections 62ZZF and 62ZZG”.

17 **10 Subsection 703-37(1)**

18 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
19 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
20 *1999*”.

21 **11 Paragraph 703-37(4)(a)**

22 Omit “*Financial Sector (Business Transfer and Group Restructure) Act*  
23 *1999*”, substitute “*Financial Sector (Transfer and Restructure) Act*  
24 *1999*”.

25