

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Financial Regulator Assessment Authority Bill 2020

No. , 2020

(Treasury)

**A Bill for an Act to establish the Financial
Regulator Assessment Authority, and for related
purposes**

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1 **A Bill for an Act to establish the Financial**
2 **Regulator Assessment Authority, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Financial Regulator Assessment Authority Act*
9 2020.

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Part 1 Preliminary

Section 2

1 **2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2020.	1 July 2020

- 7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

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

13 **3 Object of this Act**

- 14 The object of this Act is to provide for the independent assessment
15 of APRA's effectiveness and ASIC's effectiveness.

16 **4 Simplified outline of this Act**

- 17 This Act establishes the Financial Regulator Assessment Authority.
18 The Authority assesses APRA's effectiveness and ASIC's
19 effectiveness and reports to the Minister. The Authority also
20 undertakes capability reviews of APRA and ASIC when requested
21 by the Minister.
22 The Authority consists of the Chair, the Departmental member and
23 2 other members. It is assisted by APS employees in the
24 Department whose services are made available by the Secretary.

1 The Authority may request information from APRA and ASIC.
2 There are limitations on how some of this information can be used
3 and disclosed.

4 **5 Definitions**

5 In this Act:

6 ***appointed member*** means a member other than the Departmental
7 member.

8 ***APRA*** means the Australian Prudential Regulation Authority.

9 ***APRA executive*** means:

- 10 (a) an APRA member (within the meaning of subsection 3(1) of
11 the *Australian Prudential Regulation Authority Act 1998*); or
12 (b) an APRA staff member (within the meaning of that
13 subsection) who holds, or performs the duties of, a position
14 prescribed by the rules.

15 ***APRA's effectiveness***: see subsection 13(1).

16 ***ASIC*** means the Australian Securities and Investments
17 Commission.

18 ***ASIC executive*** means:

- 19 (a) a member of ASIC; or
20 (b) a staff member (within the meaning of subsection 5(1) of the
21 *Australian Securities and Investments Commission Act 2001*)
22 who holds, or performs the duties of, a position prescribed by
23 the rules.

24 ***ASIC's effectiveness***: see subsection 13(2).

25 ***Authority*** means the Financial Regulator Assessment Authority.

26 ***Chair*** means the Chair of the Authority.

27 ***Departmental member***: see section 23.

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Part 1 Preliminary

Section 5

- 1 **enforcement body** has the same meaning as in the *Privacy Act*
2 *1988*.
- 3 **enforcement related activity** has the same meaning as in the
4 *Privacy Act 1988*.
- 5 **entrusted person** means:
6 (a) a member; or
7 (b) a staff member; or
8 (c) the Secretary; or
9 (d) an APS employee; or
10 (e) a consultant engaged under section 37; or
11 (f) any other person employed or engaged to provide services to
12 the Commonwealth in connection with the Authority; or
13 (g) an employee of a person mentioned in paragraph (e) or (f)
14 whose duties relate to the Authority.
- 15 **member** means a member of the Authority and includes the Chair
16 and the Departmental member.
- 17 **paid work** means work for financial gain or reward (whether as an
18 employee, a self-employed person or otherwise).
- 19 **protected information** means information of any of the following
20 kinds that is obtained by the Authority from APRA or ASIC (the
21 **source agency**):
22 (a) information that is prohibited from being disclosed under a
23 law of the Commonwealth other than this Act;
24 (b) information the disclosure of which by the source agency
25 would or could reasonably be expected to found an action by
26 a person (other than the Commonwealth) for breach of a duty
27 of confidence;
28 (c) information that is protected against disclosure by legal
29 professional privilege;
30 (d) information the disclosure of which:
31 (i) could reasonably be expected to prejudice the security,
32 defence or international relations of Australia; or

- 1 (ii) could reasonably be expected to prejudice relations
2 between the Commonwealth Government and the
3 Government of a State or Territory; or
4 (iii) would involve disclosing deliberations or decisions of
5 the Cabinet, or of a Committee of the Cabinet; or
6 (iv) could reasonably be expected to endanger a person's life
7 or physical safety; or
8 (v) could reasonably be expected to prejudice one or more
9 enforcement related activities; or
10 (vi) would involve unreasonably disclosing personal
11 information (within the meaning of the *Privacy Act*
12 *1988*).

13 **rules** means the rules made under section 50.

14 **Secretary** means the Secretary of the Department.

15 **staff member** means a member of the staff assisting the Authority
16 (see section 36).

17 **use**, in relation to information, includes make a record of.

18 **6 Act binds the Crown**

19 (1) This Act binds the Crown in each of its capacities.

20 (2) This Act does not make the Crown liable to be prosecuted for an
21 offence.

22 **7 Act extends to things outside Australia**

23 This Act extends to acts, omissions, matters and things outside
24 Australia.

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Part 2 Establishment, functions and cooperation

Division 1 Simplified outline of this Part

Section 8

1 **Part 2—Establishment, functions and cooperation**

2 **Division 1—Simplified outline of this Part**

3 **8 Simplified outline of this Part**

4

The Financial Regulator Assessment Authority is established.

5

The Authority's functions include:

6

(a) regularly assessing APRA's effectiveness and ASIC's effectiveness and reporting to the Minister; and

7

8

(b) undertaking capability reviews of APRA and ASIC when requested by the Minister.

9

10

APRA and ASIC and their members and staff are required to cooperate with and provide information to the Authority.

11

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Establishment, functions and cooperation **Part 2**

Authority **Division 2**

Section 9

1 **Division 2—Authority**

2 **9 Establishment**

3 The Financial Regulator Assessment Authority is established by
4 this section.

5 **10 Membership**

6 The Authority consists of the following members:

- 7 (a) a Chair;
8 (b) the Departmental member;
9 (c) 2 other members.

10 **11 Authority is part of the Department for certain purposes**

11 For the purposes of paragraph (a) of the definition of *Department*
12 *of State* in section 8 of the *Public Governance, Performance and*
13 *Accountability Act 2013*, the Authority is prescribed in relation to
14 the Department.

15 Note: This means that the members are officials of the Department for the
16 purposes of the *Public Governance, Performance and Accountability*
17 *Act 2013*.

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Part 2 Establishment, functions and cooperation

Division 3 Functions

Section 12

1 **Division 3—Functions**

2 **12 Functions**

3 *Functions*

- 4 (1) The Authority has the following functions:
- 5 (a) to assess APRA's effectiveness and report to the Minister;
- 6 (b) to assess ASIC's effectiveness and report to the Minister;
- 7 (c) when requested by the Minister, to undertake a capability
- 8 review of APRA and report to the Minister;
- 9 (d) when requested by the Minister, to undertake a capability
- 10 review of ASIC and report to the Minister;
- 11 (e) on its own initiative or when requested by the Minister, to
- 12 report to the Minister on any matter relating to either or both
- 13 of the following:
- 14 (i) APRA's effectiveness;
- 15 (ii) ASIC's effectiveness;
- 16 (f) any other function conferred by this Act or any other law of
- 17 the Commonwealth;
- 18 (g) any other function that is incidental or conducive to the
- 19 performance of any of the above functions.
- 20 (2) However, the functions of the Authority do not include assessing
- 21 or reporting on only a single case.
- 22 (3) For the purposes of paragraphs (1)(c) and (d), the Authority may
- 23 undertake a capability review itself, or it may cause a capability
- 24 review to be undertaken by someone else.

25 *Ministerial requests*

- 26 (4) A request by the Minister that the Authority undertake a capability
- 27 review or report on a matter may include terms of reference
- 28 (including timeframes) for the capability review or report.
- 29 (5) If a request is made in writing, the request is not a legislative
- 30 instrument.

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- 1 (6) The Minister may withdraw or amend a request at any time before
2 the Authority reports to the Minister.

3 **13 Meanings of *APRA's effectiveness* and *ASIC's effectiveness***

- 4 (1) ***APRA's effectiveness*** means the following:
- 5 (a) the effectiveness of APRA in achieving the purposes
 - 6 mentioned in subsection 8(1) of the *Australian Prudential*
 - 7 *Regulation Authority Act 1998* (purpose for establishing
 - 8 APRA);
 - 9 (b) the extent to which APRA meets the requirement in
 - 10 subsection 8(2) of that Act (balance objectives);
 - 11 (c) the effectiveness of APRA in performing its functions;
 - 12 (d) the effectiveness of APRA in exercising its powers (other
 - 13 than a power to make a legislative instrument);
 - 14 (e) the extent to which APRA is independent in performing its
 - 15 functions and exercising its powers;
 - 16 (f) the effectiveness of frameworks for accountability of APRA
 - 17 executives;
 - 18 (g) the extent to which APRA complies with Division 4
 - 19 (cooperation with the Authority);
 - 20 (h) any matter connected with the performance of APRA's
 - 21 functions or the exercise of APRA's powers that is prescribed
 - 22 by the rules.
- 23 (2) ***ASIC's effectiveness*** means the following:
- 24 (a) the extent to which ASIC meets the requirements in section 1
 - 25 of the *Australian Securities and Investments Commission Act*
 - 26 *2001* (objects);
 - 27 (b) the effectiveness of ASIC in performing its functions;
 - 28 (c) the effectiveness of ASIC in exercising its powers (other than
 - 29 a power to make a legislative instrument);
 - 30 (d) the extent to which ASIC is independent in performing its
 - 31 functions and exercising its powers;
 - 32 (e) the effectiveness of frameworks for accountability of ASIC
 - 33 executives;

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Part 2 Establishment, functions and cooperation

Division 3 Functions

Section 14

- 1 (f) the extent to which ASIC complies with Division 4
2 (cooperation with the Authority);
3 (g) any matter connected with the performance of ASIC's
4 functions or the exercise of ASIC's powers that is prescribed
5 by the rules.

6 **14 Timing for performance of functions**

- 7 (1) The Authority must undertake the assessments mentioned in
8 paragraphs 12(1)(a) and (b) at least once every 2 years, starting in
9 2021.
- 10 (2) At least once every 4 years, starting in 2021, the Minister must:
11 (a) consider requesting the Authority to undertake a capability
12 review of APRA; and
13 (b) consider requesting the Authority to undertake a capability
14 review of ASIC.

15 **15 Assessments and reviews undertaken by others**

- 16 (1) In performing the functions mentioned in paragraphs 12(1)(a) to
17 (e), the Authority may take into account any of the following that
18 the Authority considers relevant:
19 (a) an assessment relating to APRA's effectiveness or ASIC's
20 effectiveness undertaken by someone other than the
21 Authority;
22 (b) a review relating to APRA or ASIC undertaken by someone
23 other than the Authority.
- 24 (2) Subsection (1) does not limit the matters the Authority may take
25 into account in performing its functions or exercising its powers.

26 **16 Reports and reviews to be given to APRA or ASIC**

27 *Proposed reports*

- 28 (1) Before giving a report or capability review mentioned in section 12
29 to the Minister, the Authority must give a copy of the proposed
30 report or review to the following:
-

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- 1 (a) if the proposed report or review relates to APRA—APRA;
2 (b) if the proposed report or review relates to ASIC—ASIC.

- 3 (2) If the recipient of the proposed report or review gives written
4 comments to the Authority, the Authority must:
5 (a) consider the comments before giving the final report or
6 review to the Minister; and
7 (b) give a copy of the comments to the Minister with the final
8 report or review.

9 *Final reports*

- 10 (3) If the Authority gives a report or capability review mentioned in
11 section 12 to the Minister, the Authority must give a copy to the
12 following:
13 (a) if the report or review relates to APRA—APRA;
14 (b) if the report or review relates to ASIC—ASIC.
- 15 (4) The Authority must not publish a report or capability review
16 mentioned in section 12 unless the report or review has been tabled
17 in a House of the Parliament or published by the Minister.

18 **17 Regular assessment reports must be tabled**

19 The Minister must cause a copy of a report mentioned in paragraph
20 12(1)(a) or (b) to be tabled in each House of the Parliament within
21 20 sitting days of that House after the report is received by the
22 Minister.

23 **18 Powers**

24 The Authority has power to do all things necessary or convenient
25 to be done for or in connection with the performance of its
26 functions.

27 **19 Independence**

28 Subject to this Act and to other laws of the Commonwealth:

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Part 2 Establishment, functions and cooperation

Division 3 Functions

Section 19

- 1 (a) the Authority has complete discretion in the performance of
2 its functions and the exercise of its powers; and
3 (b) the Authority is not subject to direction from anyone in
4 relation to:
5 (i) how a particular assessment or capability review will be
6 undertaken; or
7 (ii) the content of a report to the Minister.

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Establishment, functions and cooperation **Part 2**

Cooperation with Authority **Division 4**

Section 20

1 **Division 4—Cooperation with Authority**

2 **20 Cooperation with Authority**

3 *Cooperation*

4 (1) A person to whom this section applies must cooperate with the
5 Authority, the members and the staff members, to the extent
6 reasonably necessary to enable the Authority to perform its
7 functions and exercise its powers.

8 *Information gathering*

- 9 (2) Without limiting subsection (1), a person to whom this section
10 applies must, to the extent reasonably necessary to enable the
11 Authority to perform its functions and exercise its powers:
- 12 (a) give the Authority any information that is requested by the
13 Authority; and
14 (b) produce any document in APRA's or ASIC's possession that
15 is requested by the Authority; and
16 (c) answer any questions asked by the Authority.
- 17 (3) A request by the Authority under paragraph (2)(a) or (b) must
18 allow the person a reasonable time to comply.
- 19 (4) The Authority must notify a person that it intends to ask the person
20 questions under paragraph (2)(c) a reasonable time before asking
21 the questions.

22 *Persons to whom this section applies*

- 23 (5) This section applies to the following:
- 24 (a) APRA;
25 (b) an APRA member (within the meaning of subsection 3(1) of
26 the *Australian Prudential Regulation Authority Act 1998*);
27 (c) an APRA staff member (within the meaning of that
28 subsection);
29 (d) ASIC;

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Part 2 Establishment, functions and cooperation

Division 4 Cooperation with Authority

Section 21

- 1 (e) a member of ASIC;
- 2 (f) a staff member (within the meaning of subsection 5(1) of the
- 3 *Australian Securities and Investments Commission Act 2001*).

4 **21 Legal professional privilege**

- 5 (1) A person is not excused from giving information, producing a
- 6 document or answering a question under section 20 on the ground
- 7 that to do so would disclose material that is protected against
- 8 disclosure by legal professional privilege.
- 9 (2) The fact that a person is not excused under subsection (1) from
- 10 giving information, producing a document or answering a question
- 11 does not otherwise affect a claim of legal professional privilege
- 12 that anyone may make in relation to that information, document or
- 13 answer.

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Members, staff and consultants **Part 3**
Simplified outline of this Part **Division 1**

Section 22

1 **Part 3—Members, staff and consultants**

2 **Division 1—Simplified outline of this Part**

3 **22 Simplified outline of this Part**

4

Three members of the Authority, including the Chair, are appointed by the Minister. The other member is the Secretary or the Secretary's nominee.

5

6

7

The Chair is to convene meetings of the Authority.

8

9

10

The Authority is assisted by APS employees in the Department whose services are made available by the Secretary. The Secretary may engage consultants to assist the Authority.

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Part 3 Members, staff and consultants

Division 2 Departmental member

Section 23

1 **Division 2—Departmental member**

2 **23 Departmental member**

- 3 (1) The *Departmental member* is:
- 4 (a) the person nominated by the Secretary under subsection (2);
- 5 or
- 6 (b) if there is no such nomination—the Secretary.
- 7 (2) The Secretary may, in writing, nominate an SES employee in the
- 8 Department (other than a staff member) to be the Departmental
- 9 member.

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Members, staff and consultants **Part 3**

Appointed members **Division 3**

Section 24

1 **Division 3—Appointed members**

2 **24 Appointment**

3 (1) Appointed members are to be appointed by the Minister by written
4 instrument.

5 Note: An appointed member may be reappointed, subject to subsection
6 25(2): see section 33AA of the *Acts Interpretation Act 1901*.

7 (2) The Minister must appoint one appointed member to be the Chair.

8 (3) An appointed member holds office on a part-time basis.

9 **25 Period of appointment**

10 (1) An appointed member holds office for the period specified in the
11 instrument of appointment. The period must not exceed 5 years.

12 (2) A person must not hold office as an appointed member for a total
13 of more than 10 years.

14 **26 Acting appointments**

15 *Acting members*

16 (1) The Minister may, by written instrument, appoint a person to act as
17 an appointed member:

18 (a) during a vacancy in the office of an appointed member
19 (whether or not an appointment has previously been made to
20 the office); or

21 (b) during any period, or during all periods, when an appointed
22 member:

23 (i) is absent from duty; or

24 (ii) is, for any reason, unable to perform the duties of the
25 office.

26 Note: For rules that apply to acting appointments, see sections 33AB and
27 33A of the *Acts Interpretation Act 1901*.

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Part 3 Members, staff and consultants

Division 3 Appointed members

Section 27

1

Acting Chair

2

(2) The Minister may, by written instrument, appoint an appointed member to act as the Chair:

3

4

(a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or

5

6

(b) during any period, or during all periods, when the Chair:

7

(i) is absent from duty; or

8

(ii) is, for any reason, unable to perform the duties of the office.

9

10

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

11

12

27 Remuneration

13

(1) An appointed member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the appointed member is to be paid the remuneration that is prescribed by the rules.

14

15

16

17

18

(2) An appointed member is to be paid the allowances that are prescribed by the rules.

19

20

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

21

22

28 Leave

23

The Minister may grant leave of absence to any appointed member on the terms and conditions that the Minister determines.

24

25

29 Terms and conditions

26

An appointed member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

27

28

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1 **30 Other paid work**

2 An appointed member must not engage in any paid work that, in
3 the Minister's opinion, conflicts or could conflict with the proper
4 performance of the member's duties.

5 **31 Disclosure of interests**

- 6 (1) A disclosure by an appointed member under section 29 of the
7 *Public Governance, Performance and Accountability Act 2013*
8 (which deals with the duty to disclose interests) must be made to
9 the Minister.
- 10 (2) Subsection (1) applies in addition to any rules made for the
11 purposes of that section.
- 12 (3) For the purposes of this Act and the *Public Governance,*
13 *Performance and Accountability Act 2013*, the appointed member
14 is taken not to have complied with section 29 of that Act if the
15 member does not comply with subsection (1) of this section.

16 **32 Resignation**

- 17 (1) An appointed member may resign the member's appointment by
18 giving the Minister a written resignation.
- 19 (2) The resignation takes effect on the day it is received by the
20 Minister or, if a later day is specified in the resignation, on that
21 later day.

22 **33 Termination of appointment**

- 23 (1) The Minister may terminate the appointment of an appointed
24 member:
25 (a) for misbehaviour; or
26 (b) if the member is unable to perform the duties of the
27 member's office because of physical or mental incapacity.
- 28 (2) The Minister may terminate the appointment of an appointed
29 member if:

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Part 3 Members, staff and consultants

Division 3 Appointed members

Section 33

- 1 (a) the member:
2 (i) becomes bankrupt; or
3 (ii) applies to take the benefit of any law for the relief of
4 bankrupt or insolvent debtors; or
5 (iii) compounds with the member's creditors; or
6 (iv) makes an assignment of the member's remuneration for
7 the benefit of the member's creditors; or
8 (b) the member is absent, except on leave of absence, from 3
9 consecutive meetings of the Authority; or
10 (c) the member engages in paid work that, in the Minister's
11 opinion, conflicts or could conflict with the proper
12 performance of member's duties (see section 30); or
13 (d) the member fails, without reasonable excuse, to comply with
14 section 29 of the *Public Governance, Performance and*
15 *Accountability Act 2013* (which deals with the duty to
16 disclose interests) or rules made for the purposes of that
17 section.

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1 **Division 4—Decision making by Authority**

2 **34 Meetings of Authority**

3 (1) The Chair must convene such meetings of the Authority as are, in
4 the Chair's opinion, necessary for the efficient performance of the
5 Authority's functions and exercise of the Authority's powers.

6 (2) Subject to subsection (3), the Authority may operate in the way it
7 determines.

8 Note: Section 33B of the *Acts Interpretation Act 1901* contains information
9 about the ways in which members may participate in meetings.

10 (3) The Chair must ensure that minutes of meetings are kept.

11 **35 Decisions without meetings**

12 (1) The Authority is taken to have made a decision at a meeting if:

13 (a) without meeting, a majority of the members entitled to vote
14 on the proposed decision indicate agreement with the
15 decision; and

16 (b) that agreement is indicated in accordance with the method
17 determined by the Authority under subsection (2); and

18 (c) all the members were informed of the proposed decision, or
19 reasonable efforts were made to inform all the members of
20 the proposed decision.

21 (2) Subsection (1) applies only if the Authority:

22 (a) has determined that it may make decisions of that kind
23 without meeting; and

24 (b) has determined the method by which members are to indicate
25 agreement with proposed decisions.

26 (3) For the purposes of paragraph (1)(a), a member is not entitled to
27 vote on a proposed decision if the member would not have been
28 entitled to vote on that proposal if the matter had been considered
29 at a meeting of the Authority.

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Part 3 Members, staff and consultants

Division 4 Decision making by Authority

Section 35

- 1 (4) The Authority must keep a record of decisions made in accordance
2 with this section.

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Members, staff and consultants **Part 3**

Staff and consultants **Division 5**

Section 36

1 **Division 5—Staff and consultants**

2 **36 Arrangements relating to the staff of the Department**

3 (1) The staff assisting the Authority are to be APS employees in the
4 Department whose services are made available to the Authority, by
5 the Secretary, in connection with the performance of any of the
6 Authority’s functions or the exercise of any of the Authority’s
7 powers.

8 (2) When performing services for the Authority, the staff are subject to
9 the directions of the Authority.

10 **37 Consultants**

11 The Secretary may, on behalf of the Commonwealth, engage
12 consultants to assist in the performance of any of the Authority’s
13 functions or the exercise of any of the Authority’s powers.

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Part 4 Information management

Division 1 Simplified outline of this Part

Section 38

1 **Part 4—Information management**

2 **Division 1—Simplified outline of this Part**

3 **38 Simplified outline of this Part**

4

Some of the information the Authority obtains from APRA or ASIC is protected information.

5

6

The Authority must not include protected information in reports or capability reviews.

7

8

An entrusted person may commit an offence if the person uses or discloses protected information other than in certain circumstances.

9

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1 **Division 2—Inclusion of information in reports and**
2 **reviews**

3 **39 Protected information not to be included in reports and reviews**

- 4 (1) The Authority must not include protected information in a report or
5 capability review mentioned in section 12.
- 6 (2) Before giving a report or capability review to the Minister, the
7 Authority must consult with the following to ensure that protected
8 information is not included in the report or review:
- 9 (a) if the report or review is prepared using information obtained
10 by the Authority from APRA—APRA;
- 11 (b) if the report or review is prepared using information obtained
12 by the Authority from ASIC—ASIC.

EXPOSURE DRAFT

Part 4 Information management

Division 3 Secrecy

Section 40

1 **Division 3—Secrecy**

2 **Subdivision A—Unauthorised use or disclosure of protected**
3 **information**

4 **40 Unauthorised use or disclosure of protected information**

5 (1) A person commits an offence if:

6 (a) the person is, or has been, an entrusted person; and

7 (b) the person obtains information in the person’s capacity as an
8 entrusted person; and

9 (c) the information is protected information; and

10 (d) the person uses or discloses the information; and

11 (e) the use or disclosure is not authorised by a provision in
12 Subdivision B.

13 Penalty: Imprisonment for 2 years.

14 (2) Subsection (1) does not apply in relation to use or disclosure of
15 information if the information has already been lawfully made
16 available to the public.

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 (3) Subsection (1) does not apply if the conduct is:

20 (a) authorised by a law of the Commonwealth other than this
21 Act; or

22 (b) in compliance with a requirement under a law of the
23 Commonwealth other than this Act.

24 Note: A defendant bears an evidential burden in relation to a matter in
25 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

26 (4) Section 15.4 of the *Criminal Code* (Extended geographical
27 jurisdiction—category D) applies to an offence against
28 subsection (1).

1 **41 Limit on disclosure to courts and tribunals**

2 (1) Except where it is necessary to do so for the purposes of this Act, a
3 person who is, or has been, an entrusted person is not to be
4 required to disclose, or produce a document containing, protected
5 information to:

6 (a) a court; or

7 (b) a tribunal, authority or person that has the power to require
8 the answering of questions or the production of documents.

9 (2) However, subsection (1) does not prevent a person who is, or has
10 been, an officer (within the meaning of section 56 of the *Australian*
11 *Prudential Regulation Authority Act 1998*) from being required to
12 disclose protected information (within the meaning of that section),
13 or to produce a protected document (within the meaning of that
14 section), when it is necessary to do so for the purposes of a
15 prudential regulation framework law (within the meaning of that
16 section).

17 **Subdivision B—Authorised use or disclosure of protected**
18 **information**

19 **42 Authorisation to use or disclose protected information in**
20 **performing functions or exercising powers**

21 An entrusted person may use or disclose protected information:

22 (a) for the purposes of this Act; or

23 (b) in performing functions or exercising powers as an entrusted
24 person.

25 **43 Authorisation to disclose protected information to certain officers**
26 **and bodies**

27 (1) An entrusted person may disclose protected information to:

28 (a) the Secretary; or

29 (b) APRA; or

30 (c) ASIC.

EXPOSURE DRAFT

Part 4 Information management

Division 3 Secrecy

Section 44

- 1 (2) An entrusted person may use protected information for the
2 purposes of disclosing protected information under subsection (1).

3 **44 Authorisation to use or disclose protected information for**
4 **purposes of enforcement related activity**

- 5 (1) An entrusted person may use protected information, or disclose
6 protected information to an enforcement body, if the entrusted
7 person reasonably believes that the use or disclosure is reasonably
8 necessary for, or directly related to, one or more enforcement
9 related activities being conducted by, or on behalf of, an
10 enforcement body.
- 11 (2) An enforcement body to which protected information is disclosed
12 under subsection (1) may use or disclose the information for the
13 purposes of conducting one or more enforcement related activities.

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Part 5—Miscellaneous

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45 Simplified outline of this Part

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This Part deals with miscellaneous matters such as liability, delegations and rules.

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46 Protection from liability

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(1) A member or a staff member (the *protected person*) is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of an act done or omitted to be done in good faith:

- (a) in the performance or purported performance of any function of the Authority or the protected person under or in relation to this Act; or
- (b) in the exercise or purported exercise of any power of the Authority or the protected person under or in relation to this Act.

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(2) An individual mentioned in subsection 20(5) is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of any of the following acts done in good faith under, or purportedly under, subsection 20(2):

- (a) giving the Authority information;
- (b) producing a document to the Authority;
- (c) answering a question asked by the Authority.

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47 Delegation by Minister

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(1) The Minister may, in writing, delegate to:

- (a) the Secretary; or
- (b) an SES employee or an acting SES employee in the Department, other than a staff member;

the Minister's functions or powers under the following provisions:

EXPOSURE DRAFT

Part 5 Miscellaneous

Section 48

- 1 (c) subsection 26(2) (appointment of acting Chair);
2 (d) section 28 (leave).

3 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
4 provisions relating to delegations.

- 5 (2) A delegate must not perform a function, or exercise a power,
6 delegated under subsection (1) if the delegate is the Departmental
7 member.
8 (3) In performing a function, or exercising a power, delegated under
9 subsection (1), the delegate must comply with any written
10 directions of the Minister.

11 **48 Delegation by Authority**

- 12 (1) The Authority may, in writing, delegate to a member or staff
13 member the Authority's functions or powers under the following
14 provisions:
15 (a) subsections 16(1) and (3) (reports and reviews to be given to
16 APRA or ASIC);
17 (b) subsection 39(2) (protected information not to be included in
18 reports and reviews).
19 (2) The Authority may, in writing, delegate the Authority's functions
20 or powers under subsection 20(2) (cooperation with the Authority)
21 to:
22 (a) a member; or
23 (b) a staff member who is:
24 (i) an SES employee; or
25 (ii) an acting SES employee; or
26 (iii) classified as Executive Level 2 or equivalent; or
27 (iv) acting in a position usually occupied by an APS
28 employee who is so classified.

29 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
30 provisions relating to delegations.

- 1 (3) In performing a function, or exercising a power, delegated under
2 subsection (1) or (2), the delegate must comply with any written
3 directions of the Authority.
- 4 (4) The delegation continues in force despite a change in the
5 membership of the Authority.
- 6 (5) The delegation may be varied or revoked by the Authority
7 (whether or not there has been a change in the membership of the
8 Authority).

9 **49 Delegation by Secretary**

- 10 (1) The Secretary may, in writing, delegate to an SES employee or an
11 acting SES employee in the Department the Secretary's functions
12 or powers under the following provisions:
13 (a) section 36 (arrangements relating to staff of the Department);
14 (b) section 37 (consultants).

15 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
16 provisions relating to delegations.

- 17 (2) Despite subsection (1), the Secretary's functions or powers under
18 section 36 cannot be delegated to a staff member.
- 19 (3) A delegate must not perform a function, or exercise a power,
20 delegated under subsection (1) if the delegate is the Departmental
21 member.
- 22 (4) In performing a function, or exercising a power, delegated under
23 subsection (1), the delegate must comply with any written
24 directions of the Secretary.

25 **50 Rules**

- 26 (1) The Minister may, by legislative instrument, make rules
27 prescribing matters:
28 (a) required or permitted by this Act to be prescribed by the
29 rules; or

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Part 5 Miscellaneous

Section 50

- 1 (b) necessary or convenient to be prescribed for carrying out or
2 giving effect to this Act.
- 3 (2) To avoid doubt, the rules may not do the following:
4 (a) create an offence or civil penalty;
5 (b) provide powers of:
6 (i) arrest or detention; or
7 (ii) entry, search or seizure;
8 (c) impose a tax;
9 (d) set an amount to be appropriated from the Consolidated
10 Revenue Fund under an appropriation in this Act;
11 (e) directly amend the text of this Act.